



ANDY BESHEAR
GOVERNOR

EXECUTIVE ORDER

Secretary of State
Frankfort
Kentucky

2021-418
June 24, 2021

**RELATING TO RESPONSIBILITIES OF POSTSECONDARY EDUCATIONAL
INSTITUTIONS AS TO NAME, IMAGE AND LIKENESS
COMPENSATION OF STUDENT-ATHLETES**

Postsecondary educational institutions in the Commonwealth of Kentucky provide personal, academic and developmental resources allowing their students the opportunity for personal and professional growth. However, student-athletes, unlike non-athlete peers, are precluded from pursuing opportunities for compensation associated with their skills and talents, including the commercial use of their name, image and likeness; and

The National Collegiate Athletic Association (“NCAA”) and National Junior College Athletic Association (“NJCAA”) promulgate and enforce rules precluding the student-athletes in our postsecondary educational institutions from earning compensation for the use of their name, image and likeness for a commercial purpose; and

As of today, 19 states have enacted laws requiring their postsecondary educational institutions to allow student-athletes to earn compensation for the use of their name, image, and likeness. Alabama, Florida, Georgia, Mississippi, New Mexico and Texas enacted laws that will take effect July 1, 2021; and

These actions have prompted the NCAA and the United States Congress to discuss creating a national name, image and likeness standard for compensation of student-athletes. However, until that happens, the postsecondary educational institutions in Kentucky will suffer a significant competitive disadvantage as student-athletes seek to attend postsecondary educational institutions that will allow compensation for name, image, and likeness regardless of the NCAA and NJCAA rules against it; and

Pursuant to KRS 391.170, the General Assembly recognizes that student-athletes possess property rights in their name and likeness and should be protected from commercial exploitation, and no state law or regulation prevents the postsecondary educational institutions located in the Commonwealth from allowing their student-athletes to earn compensation for the commercial use of their name, image and likeness; and

I have consulted with the leadership of the General Assembly, which has committed to consideration of the issue of retroactive liability protection for the postsecondary institutions in legislative action that the General Assembly might take on the subject;

NOW THEREFORE, I, Andy Beshear, Governor of the Commonwealth of Kentucky, by virtue of the authority vested in me by Sections 69 and 81 of the Kentucky Constitution, and KRS 12.020, do hereby Declare, Order and Direct the following:

- I. The postsecondary educational institutions located in the Commonwealth of Kentucky shall not prevent a student-athlete from earning compensation for the use of the name, image and likeness of the student-athlete while enrolled at a postsecondary institution or from obtaining a certified agent for any matter or activity relating to such compensation, except as outlined below:



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- A. Compensation in exchange for the student-athlete's athletic participation in intercollegiate athletics or other sports competitions;
 - B. Compensation in exchange for a contract of endorsement, promotion or other activity that the postsecondary educational institution determines is in conflict with an existing contract of endorsement, promotional or other activity entered by the postsecondary educational institution;
 - C. Compensation by, compensation arranged by, or compensation at the direction of the postsecondary educational institution, entities or organizations that support or benefit the postsecondary institution, or another athletic authority, or their officers, directors, employees, or agents for the use of a student-athlete's name, image or likeness;
 - D. The postsecondary educational institution may create reasonable limitations on or promulgate reasonable rules pertaining to the dates and times that a student-athlete may participate in endorsement, promotional, social media, or other activities related to a name, image and likeness agreement or contract or upon potential agreements or contracts for compensation of name, image and likeness that the postsecondary educational institution determines is incompatible or detrimental to the image, purpose or stated mission of the postsecondary educational institution, such as, but not limited to, the promotion or advertisement of alcohol, tobacco products, firearms or sexually-oriented activities, or that uses or relies upon the intellectual property and trademarks possessed by the postsecondary educational institution; and
 - E. The postsecondary educational institution may require the disclosure of any contract or agreement between a student-athlete and third party to a designated official of the institution that pertains to compensation for the commercial use of the student-athlete's name, image and likeness.
- II. Implementation of rules, policies or directives by the postsecondary institution for permitting or reasonably limiting student-athletes' ability to earn compensation for the use of their name, image, or likeness shall be consistent with Title IX of the Education Amendments of 1972 and refrain from discrimination or treating individuals differently based upon race, sex, religion or other personal status protected under state or federal law.
 - III. Postsecondary educational institutions should provide financial literacy, social media and brand management, and time management education and resources for student-athletes that earn compensation for the use of their name, image and likeness, as well as other students seeking such education or resources. The education and resources provided should not include marketing, referrals or solicitations by any entity or association outside of the postsecondary institution.
 - IV. The use of an "athlete agent" for purposes of assisting with contracts for compensation for the student-athlete's name, image and likeness shall conform to KRS 164.6901-.6935 and comply with the Sports Agent Responsibility and Trust Act established in 15 U.S.C. Section 7801, et seq.
 - V. For purposes of this order,
 - A. "Athletic authority" means any athletic association, conference, or other group or organization with authority over intercollegiate athletic programs, including but not limited to the National Collegiate Athletic Association and the National Junior College Athletic Association;



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- B. "Compensation" means any form of payment or remuneration, including but not limited to cash, gifts, in-kind items of value, social media compensation, payments for licensing or use of publicity rights, payments for other intellectual or intangible property rights under federal or state law, and any other form of payment or remuneration; It does not mean:
 - i. Educational expenses or any financial aid, benefits, or awards provided to a student-athlete in accordance with rules of an athletic association;
 - ii. Federal or state grants or scholarships;
 - iii. Payment of wages and benefits at a rate commensurate with prevailing rate for similar work in the locality of the institution to a student-athlete for work actually performed other than for athletic ability or participation in intercollegiate athletics;
- C. "Image" means a picture of the student-athlete;
- D. "Student-athlete" means an individual who engages in, is eligible to engage in, or may be eligible in the future to engage in, an intercollegiate athletics program at a postsecondary educational institution, but does not include for a particular sport an individual who is permanently ineligible to participate in that particular intercollegiate sport;
- E. "Likeness" means a physical, digital, or other depiction or representation of the student-athlete;
- F. "Name" means the first or last name, or the nickname, of the student-athlete when used in a context that reasonably identifies the student-athlete with particularity;
- G. "Postsecondary educational institution" means a college or university which is:
 - i. the University of Kentucky, the University of Louisville, Eastern Kentucky University, Kentucky State University, Morehead State University, Murray State University, Northern Kentucky University, Western Kentucky University; or
 - ii. An institution within the Kentucky Community and Technical College System; or
 - iii. An independent institution located in Kentucky accredited by a accrediting association recognized by the United States Department of Education and licensed by the Council on Postsecondary Education.



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VI. This Order shall remain in effect until superseded by state or federal law.

This Order shall be effective July 1, 2021.

A handwritten signature in black ink that reads "Andy Beshear".

ANDY BESHEAR, Governor
Commonwealth of Kentucky

MICHAEL G. ADAMS
Secretary of State