

LEGISLATURE OF NEBRASKA
ONE HUNDRED EIGHTH LEGISLATURE
SECOND SESSION

LEGISLATIVE BILL 1393

Introduced by Hansen, 16; at the request of the Governor.

Read first time January 17, 2024

Committee: Business and Labor

- 1 A BILL FOR AN ACT relating to the Nebraska Student-Athlete Name, Image,
- 2 or Likeness Rights Act; to amend sections 48-3602, 48-3603, 48-3604,
- 3 48-3606, and 48-3608, Revised Statutes Cumulative Supplement, 2022;
- 4 to change provisions relating to name, image, or likeness rights and
- 5 limitations, civil actions, and contracts or agreements under the
- 6 act; to provide severability; to repeal the original sections; and
- 7 to declare an emergency.
- 8 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 48-3602, Revised Statutes Cumulative Supplement,
2 2022, is amended to read:

3 48-3602 For purposes of the Nebraska Student-Athlete Name, Image, or
4 Likeness Rights Act:

5 (1) Athletic grant-in-aid means the money given to a student-athlete
6 by a postsecondary institution for tuition, fees, room, board, and
7 textbooks as consideration for the student-athlete's participation in an
8 intercollegiate sport for such postsecondary institution and does not
9 include compensation for the use of the student-athlete's name, image, or
10 likeness rights or athletic reputation;

11 (2) Collegiate athletic association means any athletic association,
12 conference, or other group or organization with authority over
13 intercollegiate sports;

14 (3) Compensation for the use of a student-athlete's name, image, or
15 likeness rights or athletic reputation includes, but is not limited to,
16 consideration received pursuant to an endorsement contract as defined in
17 section 48-2602;

18 (4) Intercollegiate sport has the same meaning as in section
19 48-2602;

20 (5) Name, image, or likeness activity means an activity that
21 involves the use of an individual's name, image, or likeness for
22 commercial or promotional purposes;

23 ~~(6)~~ (5) Postsecondary institution has the same meaning as in section
24 85-2403;

25 ~~(7)~~ (6) Professional representation includes, but is not limited to,
26 representation provided by an athlete agent holding a certificate of
27 registration under the Nebraska Uniform Athlete Agents Act, a financial
28 advisor registered under the Securities Act of Nebraska, or an attorney
29 admitted to the bar by order of the Supreme Court of this state;

30 ~~(8)~~ (7) Sponsor means an individual or organization that pays money
31 or provides goods or services in exchange for advertising rights;

1 (9) ~~(8)~~ Student-athlete has the same meaning as in section 48-2602;
2 and

3 (10) ~~(9)~~ Team contract means a contract between a postsecondary
4 institution or a postsecondary institution's athletic department and a
5 sponsor.

6 Sec. 2. Section 48-3603, Revised Statutes Cumulative Supplement,
7 2022, is amended to read:

8 48-3603 (1) No postsecondary institution shall uphold any rule,
9 requirement, standard, or limitation that prevents a student-athlete from
10 fully participating in an intercollegiate sport for such postsecondary
11 institution because such student-athlete earns or intends to earn
12 compensation for the use of such student-athlete's name, image, or
13 likeness rights or athletic reputation.

14 (2) No collegiate athletic association shall penalize a student-
15 athlete or prevent a student-athlete from fully participating in an
16 intercollegiate sport because such student-athlete earns or intends to
17 earn compensation for the use of such student-athlete's name, image, or
18 likeness rights or athletic reputation.

19 (3) No collegiate athletic association shall penalize a
20 postsecondary institution or prevent a postsecondary institution from
21 fully participating in an intercollegiate sport because a student-athlete
22 participating in an intercollegiate sport for such postsecondary
23 institution earns or intends to earn compensation for the use of such
24 student-athlete's name, image, or likeness rights or athletic reputation.

25 (4) No postsecondary institution shall be prohibited from:

26 (a) Creating, identifying, facilitating, enabling, or supporting
27 student-athlete name, image, or likeness activities; or

28 (b) Entering into agreements with a third-party entity to create,
29 identify, facilitate, enable, or support name, image, or likeness
30 activities.

31 (5) No third-party entity or individual shall be prohibited from:

1 (a) Communicating with a student-athlete to create, identify,
2 facilitate, enable, or support name, image, or likeness activities;

3 (b) Compensating a student-athlete for the use of such student-
4 athlete's name, image, or likeness rights or athletic reputation; or

5 (c) Compensating student-athletes for promoting:

6 (i) An athletics event in which the student-athlete may participate,
7 if the third-party entity or individual has an agreement to promote the
8 athletics event; or

9 (ii) The postsecondary institution which the student-athlete
10 attends.

11 ~~(6) (4)~~ No postsecondary institution shall allow compensation earned
12 by a student-athlete for the use of such student-athlete's name, image,
13 or likeness rights or athletic reputation to affect the duration, amount,
14 or eligibility for or renewal of any athletic grant-in-aid or other
15 institutional scholarship, except that compensation earned by a student-
16 athlete for the use of such student-athlete's name, image, or likeness
17 rights or athletic reputation may be used for the calculation of income
18 for determining eligibility for need-based financial aid.

19 ~~(7)(a) (5)~~ The compensation a student-athlete earns for the use of
20 the student-athlete's name, image, or likeness rights or athletic
21 reputation must be for services actually performed. Student-athletes
22 shall not be paid for contracts that ~~(i) (a)~~ extend beyond the student-
23 athlete's participation in an athletic program at a postsecondary
24 institution, ~~(ii) (b)~~ involve the sale or exchange of awards or other
25 items received for athletic participation, ~~(c) involve compensation from~~
26 ~~a postsecondary institution or a postsecondary institution's employees,~~
27 or ~~(iii) (d)~~ provide compensation for work not performed.

28 (b) A postsecondary institution shall not compensate a student-
29 athlete for the use of the student-athlete's name, image, or likeness
30 rights or athletic reputation unless otherwise permitted or authorized
31 by:

1 (i) A collegiate athletics association and postsecondary institution
2 policy;

3 (ii) A court order; or

4 (iii) A settlement agreement.

5 ~~(8) (6)~~ Student-athletes may be prohibited from entering into
6 contracts or agreements ~~or engaging in activity~~ related to the use of the
7 student-athlete's name, image, or likeness rights or athletic reputation
8 or engaging in name, image, or likeness activities for products,
9 services, entities, or activities reasonably deemed to be inconsistent
10 with the educational mission of the postsecondary institution by such
11 postsecondary institution.

12 ~~(9) (7)~~ Nothing in the Nebraska Student-Athlete Name, Image, or
13 Likeness Rights Act shall limit the ability of a postsecondary
14 institution to establish and enforce standards, requirements,
15 regulations, or obligations for such postsecondary institution's students
16 not inconsistent with the act.

17 ~~(10) (8)~~ Nothing in the Nebraska Student-Athlete Name, Image, or
18 Likeness Rights Act grants to a student-athlete the right to use any
19 name, trademark, service mark, logo, symbol, or other intellectual
20 property that belongs to the postsecondary institution, regardless of
21 whether the intellectual property is registered, to further the student-
22 athlete's opportunities to earn compensation for the use of the student-
23 athlete's name, image, or likeness rights or athletic reputation.

24 (11) Nothing in the Nebraska Student-Athlete Name, Image, or
25 Likeness Rights Act shall be construed to qualify a student-athlete as an
26 employee of a postsecondary institution based solely on the fact that the
27 student-athlete earns compensation for the use of the student-athlete's
28 name, image, or likeness rights or athletic reputation, or is engaged in
29 name, image, or likeness activities pursuant to the act.

30 Sec. 3. Section 48-3604, Revised Statutes Cumulative Supplement,
31 2022, is amended to read:

1 48-3604 Any student-athlete who enters into a contract or agreement
2 that provides compensation for the use of such student-athlete's name,
3 image, or likeness rights or athletic reputation shall disclose such
4 contract or agreement to an official of the postsecondary institution for
5 which such student-athlete participates in an intercollegiate sport. The
6 official to which such contract or agreement shall be disclosed shall be
7 designated by each postsecondary institution, and the designation shall
8 be communicated in writing to each student-athlete participating in an
9 intercollegiate sport for such postsecondary institution. Unless
10 otherwise required by law, each postsecondary institution shall be
11 prohibited from disclosing any information written, produced, collected,
12 assembled, or maintained by such postsecondary institution that includes
13 or reveals any term of a contract or agreement or proposed contract or
14 agreement for the use of a student-athlete's name, image, or likeness
15 rights or athletic reputation terms of such contract or agreement that
16 the student-athlete or the student-athlete's professional representation
17 deems to be a trade secret or otherwise nondisclosable.

18 Sec. 4. Section 48-3606, Revised Statutes Cumulative Supplement,
19 2022, is amended to read:

20 48-3606 (1) No postsecondary institution or collegiate athletic
21 association shall penalize a student-athlete or prevent a student-athlete
22 from fully participating in an intercollegiate sport because such
23 student-athlete obtains professional representation in relation to a
24 contract or legal matter related to the use of the student-athlete's
25 name, image, or likeness rights or athletic reputation.

26 (2) No collegiate athletic association shall penalize a
27 postsecondary institution or prevent a postsecondary institution from
28 fully participating in an intercollegiate sport because a student-athlete
29 participating in an intercollegiate sport for such postsecondary
30 institution obtains professional representation in relation to a contract
31 or legal matter related to the use of the student-athlete's name, image,

1 or likeness rights or athletic reputation.

2 (3) A postsecondary institution may offer education and training to
3 student-athletes to aid them in understanding the opportunities that may
4 become available to them for the use of their name, image, or likeness
5 rights or athletic reputation, including education in the areas of
6 networking and communication, brand-building and management, financial
7 literacy, and compliance.

8 Sec. 5. Section 48-3608, Revised Statutes Cumulative Supplement,
9 2022, is amended to read:

10 48-3608 (1) A student-athlete or a postsecondary institution
11 aggrieved by a violation of the Nebraska Student-Athlete Name, Image, or
12 Likeness Rights Act may bring a civil action against the postsecondary
13 institution or collegiate athletic association committing such violation.

14 (2) A plaintiff who prevails in an action under the Nebraska
15 Student-Athlete Name, Image, or Likeness Rights Act shall be entitled to:

16 (a) Actual damages;

17 (b) Such preliminary and other equitable or declaratory relief as
18 may be appropriate; and

19 (c) Reasonable attorney's fees and other litigation costs reasonably
20 incurred.

21 (3) A public postsecondary institution may be sued upon claims
22 arising under the Nebraska Student-Athlete Name, Image, or Likeness
23 Rights Act only to the extent allowed under the State Tort Claims Act,
24 the State Contract Claims Act, or the State Miscellaneous Claims Act,
25 except that a civil action for a violation of the Nebraska Student-
26 Athlete Name, Image, or Likeness Rights Act may only be brought within
27 one year after the cause of action has accrued.

28 (4) No employee of a postsecondary institution, including a coach or
29 athletic department staff member, shall be liable for any damages to a
30 student-athlete's ability to earn compensation for the use of the
31 student-athlete's name, image, or likeness rights or athletic reputation

1 resulting from decisions and actions routinely taken in the course of
2 intercollegiate athletics.

3 Sec. 6. If any section in this act or any part of any section is
4 declared invalid or unconstitutional, the declaration shall not affect
5 the validity or constitutionality of the remaining portions.

6 Sec. 7. Original sections 48-3602, 48-3603, 48-3604, 48-3606, and
7 48-3608, Revised Statutes Cumulative Supplement, 2022, are repealed.

8 Sec. 8. Since an emergency exists, this act takes effect when
9 passed and approved according to law.