

LEGISLATURE OF NEBRASKA
ONE HUNDRED SIXTH LEGISLATURE
SECOND SESSION

LEGISLATIVE BILL 962

FINAL READING

Introduced by Hunt, 8; Blood, 3; Brewer, 43; Crawford, 45; DeBoer, 10;
Hansen, M., 26; McCollister, 20; Morfeld, 46; Pansing
Brooks, 28; Vargas, 7; Wayne, 13; Wishart, 27; Stinner, 48;
Cavanaugh, 6; Howard, 9; Kolowski, 31; Quick, 35;
McDonnell, 5.

Read first time January 13, 2020

Committee: Business and Labor

- 1 A BILL FOR AN ACT relating to postsecondary institutions; to amend
- 2 sections 48-2610 and 48-2614, Reissue Revised Statutes of Nebraska;
- 3 to adopt the Nebraska Fair Pay to Play Act; to change the Nebraska
- 4 Uniform Athlete Agents Act; to provide severability; and to repeal
- 5 the original sections.
- 6 Be it enacted by the people of the State of Nebraska,

1 Section 1. Sections 1 to 9 of this act shall be known and may be
2 cited as the Nebraska Fair Pay to Play Act.

3 Sec. 2. For purposes of the Nebraska Fair Pay to Play Act:

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

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

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

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

19 (5) Postsecondary institution has the same meaning as in section
20 85-2403;

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

26 (7) Sponsor means an individual or organization that pays money or
27 provides goods or services in exchange for advertising rights;

28 (8) Student-athlete has the same meaning as in section 48-2602; and

29 (9) Team contract means a contract between a postsecondary
30 institution or a postsecondary institution's athletic department and a
31 sponsor.

1 Sec. 3. (1) No postsecondary institution shall uphold any rule,
2 requirement, standard, or limitation that prevents a student-athlete from
3 fully participating in an intercollegiate sport for such postsecondary
4 institution because such student-athlete earns compensation for the use
5 of such student-athlete's name, image, or likeness rights or athletic
6 reputation.

7 (2) No collegiate athletic association shall penalize a student-
8 athlete or prevent a student-athlete from fully participating in an
9 intercollegiate sport because such student-athlete earns compensation for
10 the use of such student-athlete's name, image, or likeness rights or
11 athletic reputation.

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

18 (4) No postsecondary institution shall allow compensation earned by
19 a student-athlete for the use of such student-athlete's name, image, or
20 likeness rights or athletic reputation to affect the duration, amount, or
21 eligibility for or renewal of any athletic grant-in-aid or other
22 institutional scholarship, except that compensation earned by a student-
23 athlete for the use of such student-athlete's name, image, or likeness
24 rights or athletic reputation may be used for the calculation of income
25 for determining eligibility for need-based financial aid.

26 Sec. 4. Any student-athlete who enters into a contract that
27 provides compensation for the use of such student-athlete's name, image,
28 or likeness rights or athletic reputation shall disclose such contract to
29 an official of the postsecondary institution for which such student-
30 athlete participates in an intercollegiate sport. The official to which
31 such contract shall be disclosed shall be designated by each

1 postsecondary institution, and the designation shall be communicated in
2 writing to each student-athlete participating in an intercollegiate sport
3 for such postsecondary institution. Unless otherwise required by law,
4 each postsecondary institution shall be prohibited from disclosing any
5 terms of such contract that the student-athlete or the student-athlete's
6 professional representation deems to be a trade secret or otherwise
7 nondisclosable.

8 Sec. 5. (1) No student-athlete shall enter into a contract with a
9 sponsor that provides compensation to the student-athlete for use of the
10 student-athlete's name, image, and likeness rights or athletic reputation
11 if (a) such contract requires such student-athlete to display such
12 sponsor's apparel or to otherwise advertise for the sponsor during
13 official team activities and (b) compliance with such contract
14 requirement would conflict with a team contract. Any postsecondary
15 institution asserting such conflict shall disclose to the student-athlete
16 and the student-athlete's professional representation, if applicable, the
17 full team contract that is asserted to be in conflict. The student-
18 athlete and the student-athlete's professional representation, if
19 applicable, shall be prohibited from disclosing any terms of a team
20 contract that the postsecondary institution deems to be a trade secret or
21 otherwise nondisclosable.

22 (2) No team contract shall prevent a student-athlete from receiving
23 compensation for the use of such student-athlete's name, image, and
24 likeness rights or athletic reputation when the student-athlete is not
25 engaged in official team activities.

26 Sec. 6. (1) No postsecondary institution or collegiate athletic
27 association shall penalize a student-athlete or prevent a student-athlete
28 from fully participating in an intercollegiate sport because such
29 student-athlete obtains professional representation in relation to a
30 contract or legal matter.

31 (2) No collegiate athletic association shall penalize a

1 postsecondary institution or prevent a postsecondary institution from
2 fully participating in an intercollegiate sport because a student-athlete
3 participating in an intercollegiate sport for such postsecondary
4 institution obtains professional representation in relation to a contract
5 or legal matter.

6 Sec. 7. (1) The Nebraska Fair Pay to Play Act shall not be applied
7 in a manner that violates any contract in effect prior to the date
8 determined by a postsecondary institution pursuant to section 9 of this
9 act with regard to such postsecondary institution or any student-athlete
10 who participates in an intercollegiate sport for such postsecondary
11 institution for as long as such contract remains in effect without
12 modification.

13 (2) On and after the date determined by a postsecondary institution
14 pursuant to section 9 of this act, such postsecondary institution shall
15 not enter into, modify, or renew any contract in a manner that conflicts
16 with the Nebraska Fair Pay to Play Act.

17 Sec. 8. (1) A student-athlete or a postsecondary institution
18 aggrieved by a violation of the Nebraska Fair Pay to Play Act may bring a
19 civil action against the postsecondary institution or collegiate athletic
20 association committing such violation.

21 (2) A plaintiff who prevails in an action under the Nebraska Fair
22 Pay to Play Act shall be entitled to:

23 (a) Actual damages;

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

26 (c) Reasonable attorney's fees and other litigation costs reasonably
27 incurred.

28 (3) A public postsecondary institution may be sued upon claims
29 arising under the Nebraska Fair Pay to Play Act only to the extent
30 allowed under the State Tort Claims Act, the State Contract Claims Act,
31 or the State Miscellaneous Claims Act, except that a civil action for a

1 violation of the Nebraska Fair Pay to Play Act may only be brought within
2 one year after the cause of action has accrued.

3 Sec. 9. Each postsecondary institution shall determine a date on or
4 before July 1, 2023, upon which the Nebraska Fair Pay to Play Act shall
5 begin to apply to such postsecondary institution and the student-athletes
6 who participate in an intercollegiate sport for such postsecondary
7 institution and to any collegiate athletic association or professional
8 representation in interactions with such postsecondary institution or
9 student-athletes.

10 Sec. 10. Section 48-2610, Reissue Revised Statutes of Nebraska, is
11 amended to read:

12 48-2610 (1) An agency contract must be in a record, signed or
13 otherwise authenticated by the parties.

14 (2) An agency contract must state or contain:

15 (a) The amount and method of calculating the consideration to be
16 paid by the student-athlete for services to be provided by the athlete
17 agent under the contract and any other consideration the athlete agent
18 has received or will receive from any other source for entering into the
19 contract or for providing the services;

20 (b) The name of any person not listed in the application for
21 registration or renewal of registration who will be compensated because
22 the student-athlete signed the agency contract;

23 (c) A description of any expenses that the student-athlete agrees to
24 reimburse;

25 (d) A description of the services to be provided to the student-
26 athlete;

27 (e) The duration of the contract; and

28 (f) The date of execution.

29 (3) An agency contract must contain, in close proximity to the
30 signature of the student-athlete, a conspicuous notice in boldface type
31 in capital letters stating:

1 WARNING TO STUDENT-ATHLETE

2 ~~IF YOU SIGN THIS CONTRACT:~~

3 (1) IF YOU ENTER INTO NEGOTIATIONS FOR, OR SIGN, A PROFESSIONAL-
4 SPORTS-SERVICES CONTRACT, YOU MAY LOSE YOUR ELIGIBILITY TO COMPETE AS A
5 STUDENT-ATHLETE IN YOUR SPORT;

6 (2) IF YOU HAVE AN ATHLETIC DIRECTOR, WITHIN 72 HOURS AFTER ENTERING
7 INTO THIS CONTRACT, BOTH YOU AND YOUR ATHLETE AGENT MUST NOTIFY YOUR
8 ATHLETIC DIRECTOR; AND

9 (3) YOU MAY CANCEL THIS CONTRACT WITHIN 14 DAYS AFTER SIGNING IT.
10 ~~CANCELLATION OF THIS CONTRACT MAY NOT REINSTATE YOUR ELIGIBILITY.~~

11 (4) An agency contract that does not conform to this section is
12 voidable by the student-athlete. If a student-athlete voids an agency
13 contract, the student-athlete is not required to pay any consideration
14 under the contract or to return any consideration received from the
15 athlete agent to induce the student-athlete to enter into the contract.

16 (5) The athlete agent shall give a record of the signed or otherwise
17 authenticated agency contract to the student-athlete at the time of
18 execution.

19 Sec. 11. Section 48-2614, Reissue Revised Statutes of Nebraska, is
20 amended to read:

21 48-2614 (1) An athlete agent, with the intent to induce a student-
22 athlete to enter into an agency contract, may not:

23 (a) Give any materially false or misleading information or make a
24 materially false promise or representation;

25 (b) Furnish anything of value to a student-athlete before the
26 student-athlete enters into the agency contract; or

27 (c) Furnish anything of value to any individual other than the
28 student-athlete or another registered athlete agent.

29 (2) An athlete agent may not intentionally:

30 (a) Initiate contact with a student-athlete unless registered under
31 the Nebraska Uniform Athlete Agents Act;

1 (b) Refuse or fail to retain or permit inspection of the records
2 required to be retained by section 48-2613;

3 (c) Fail to register when required by section 48-2604;

4 (d) Provide materially false or misleading information in an
5 application for registration or renewal of registration;

6 (e) Predate or postdate an agency contract; or

7 (f) Fail to notify a student-athlete before the student-athlete
8 signs or otherwise authenticates an agency contract for a particular
9 sport that entering into negotiations for, or signing, a professional-
10 sports-services contract ~~the signing or authentication~~ may make the
11 student-athlete ineligible to participate as a student-athlete in that
12 sport.

13 Sec. 12. If any section in this act or any part of any section is
14 declared invalid or unconstitutional, the declaration shall not affect
15 the validity or constitutionality of the remaining portions.

16 Sec. 13. Original sections 48-2610 and 48-2614, Reissue Revised
17 Statutes of Nebraska, are repealed.