

LEGISLATIVE BILL 962

Approved by the Governor July 24, 2020

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; Chambers, 11.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Sec. 4. Any student-athlete who enters into a contract that provides compensation for the use of such student-athlete's name, image, or likeness rights or athletic reputation shall disclose such contract to an official of the postsecondary institution for which such student-athlete participates in an intercollegiate sport. The official to which such contract shall be disclosed shall be designated by each postsecondary institution, and the designation shall be communicated in writing to each student-athlete participating in an intercollegiate sport for such postsecondary institution. Unless otherwise required by law, each postsecondary institution shall be prohibited from disclosing any terms of such contract that the student-athlete or the student-athlete's professional representation deems to be a trade secret or otherwise nondisclosable.

Sec. 5. (1) No student-athlete shall enter into a contract with a sponsor

that provides compensation to the student-athlete for use of the student-athlete's name, image, and likeness rights or athletic reputation if (a) such contract requires such student-athlete to display such sponsor's apparel or to otherwise advertise for the sponsor during official team activities and (b) compliance with such contract requirement would conflict with a team contract. Any postsecondary institution asserting such conflict shall disclose to the student-athlete and the student-athlete's professional representation, if applicable, the full team contract that is asserted to be in conflict. The student-athlete and the student-athlete's professional representation, if applicable, shall be prohibited from disclosing any terms of a team contract that the postsecondary institution deems to be a trade secret or otherwise nondisclosable.

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

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

(2) No collegiate athletic association shall penalize a postsecondary institution or prevent a postsecondary institution from fully participating in an intercollegiate sport because a student-athlete participating in an intercollegiate sport for such postsecondary institution obtains professional representation in relation to a contract or legal matter.

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

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

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

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

- (a) Actual damages;
- (b) Such preliminary and other equitable or declaratory relief as may be appropriate; and
- (c) Reasonable attorney's fees and other litigation costs reasonably incurred.

(3) A public postsecondary institution may be sued upon claims arising under the Nebraska Fair Pay to Play Act only to the extent allowed under the State Tort Claims Act, the State Contract Claims Act, or the State Miscellaneous Claims Act, except that a civil action for a violation of the Nebraska Fair Pay to Play Act may only be brought within one year after the cause of action has accrued.

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

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

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

(2) An agency contract must state or contain:

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

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

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

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

(e) The duration of the contract; and

(f) The date of execution.

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

WARNING TO STUDENT-ATHLETE

IF YOU SIGN THIS CONTRACT:

(1) IF YOU ENTER INTO NEGOTIATIONS FOR, OR SIGN, A PROFESSIONAL-SPORTS-SERVICES CONTRACT, YOU MAY LOSE YOUR ELIGIBILITY TO COMPETE AS A STUDENT-

ATHLETE IN YOUR SPORT;

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

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

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

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

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

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

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

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

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

(2) An athlete agent may not intentionally:

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

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

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

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

(e) Predate or postdate an agency contract; or

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

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

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