STATE OF NEW YORK

5115--B

2021-2022 Regular Sessions

IN ASSEMBLY

February 11, 2021

Introduced by M. of A. SOLAGES, MAGNARELLI -- read once and referred to the Committee on Higher Education -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- again reported from said committee with amendments, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the education law, in relation to enacting the "New York collegiate athletic participation compensation act"

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Short title. This act shall be known and may be cited as the "New York collegiate athletic participation compensation act".

§ 2. The education law is amended by adding two new sections 6438-a and 6438-b to read as follows:

§ 6438-a. Student-athlete compensation. 1. (a) A college shall not uphold any rule, requirement, standard, or other limitation that prevents a student of that institution participating in intercollegiate athletics from earning compensation pursuant to this section including as a result of the use of the student's name, image, or likeness. Earning compensation as a result of the use of a student's name, image, or likeness shall not affect the student's scholarship eligibility.

(b) An athletic association, conference, or other group or organization with authority over intercollegiate athletics, including, but not limited to, the National Collegiate Athletic Association (NCAA), shall not prevent a student of a college participating in intercollegiate athletics from earning compensation pursuant to this section including as a result of the use of the student's name, image, or likeness.

(c) An athletic association, conference, or other group or organization with authority over intercollegiate athletics, including, but not limited to, the National Collegiate Athletic Association (NCAA), shall not prevent a college from participating in intercollegiate athletics as

EXPLANATION--Matter in *italics* (underscored) is new; matter in brackets [-] is old law to be omitted.

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a result of the compensation of a student-athlete pursuant to this section including for the use of the student's name, image, or likeness.

(d) A community college shall be exempt from the requirements of this section.

2. A college, athletic association, conference, or other group or organization with authority over intercollegiate athletics shall not provide a prospective student-athlete with compensation in relation to the athlete's name, image, or likeness.

3. (a) A college, athletic association, conference, or other group or organization with authority over intercollegiate athletics shall not prevent a student-athlete participating in intercollegiate athletics from obtaining professional representation in relation to contracts or legal matters, including, but not limited to, representation provided by athlete agents or legal representation provided by attorneys.

(b) Professional representation obtained by student-athletes shall be from persons registered and/or licensed by the state. Professional representation provided by athlete agents shall be by persons registered pursuant to article thirty-nine-E of the general business law. Legal representation of student-athletes shall be by attorneys licensed pursuant to article fifteen of the judiciary law.

(c) Athlete agents representing student-athletes shall comply with the federal Sports Agent Responsibility and Trust Act, established in chapter 104 of title 15 of the United States Code, in their relationships with student-athletes.

4. A scholarship from the college in which a student is enrolled that provides the student with the cost of attendance at that institution is not compensation for purposes of this section, and a scholarship shall not be revoked as a result of earning compensation, or obtaining legal or athletic agent representation.

5. (a) A student-athlete shall not enter into a contract providing compensation to the athlete for use of the athlete's name, image, or likeness if a provision of the contract causes a conflict as described in paragraph (d) of this subdivision.

(b) A student-athlete who enters into a contract providing compensation to the athlete for use of the athlete's name, image, or likeness shall disclose the contract in advance of executing it to an official of the college, to be designated by the college.

(c) A college asserting a conflict described in paragraph (a) of this subdivision shall disclose to the athlete or the athlete's legal representation the relevant contractual provisions that are in conflict; provided, however, that a college shall not be required to disclose any financial terms of such contract unless otherwise required by applicable law.

(d) A college asserting a conflict described in paragraph (a) of this subdivision may assert a conflict based on, but not limited to, the following grounds:

(i) the proposed contract would cause the student to violate the team contract; or

(ii) the proposed contract would cause the student to violate the institution's student handbook or code of conduct; or

(iii) the proposed contract would conflict with an existing contract or sponsorship the institution participates in; or

(iv) the proposed contract would reasonably be judged to cause financial loss or reputational damage to the institution; or

(v) the proposed contract would require actions by the player during team activities; or

(vi) the proposed contract would require actions by the player during scheduled classes; or

(vii) the proposed contract would use the institution's name, brand, copywritten materials, trademarks, service marks, symbols, nicknames, trade dress, insignia, mascot, uniform styles, colors, imagery, campus landmarks, or any other intellectual property or indicia; or

(viii) the proposed contract would require the student to display a sponsor's product, logo, brand, or other indicia, or otherwise advertise for a sponsor, during official team activities or any other time, and such sponsor is a competitor of, or offers products or services within the same category as a sponsor of the college.

6. After the effective date of this section, a new team contract or a renewal or modification of a team contract of a college's athletic program shall not prevent a student-athlete from using the athlete's name, image, or likeness for a commercial purpose when the athlete is not engaged in official team activities, except where there is a conflict as described in paragraph (d) of subdivision five of this section or any other prohibition in this section.

7. Each college athletic program that participates in Division 1 NCAA athletics shall offer a student-athlete assistance program or programs, designed to provide student-athletes participating in Division 1 sports with important tools aimed to enhance their well-being and experiences in the classroom, off the field of play, and beyond their tenure as student-athletes. The student-athlete assistance program may include but not be limited to:

(a) A dedicated financial distress fund that would support enrolled and/or current student-athletes in times of financial need. Disbursements from such fund are not compensation for the purposes of this section.

(b) Access to ongoing mental health support services provided by counselors specially trained to understand the unique issues and pressures student-athletes confront.

(c) Access to broad-based financial literacy training, with a specific emphasis on the issues and opportunities relevant to student-athletes, during and beyond their tenure at the college or university.

(d) A student-athlete degree completion assistance program that provides former student-athletes who disenrolled from the institution in good academic standing and who earned the NCAA Academic Progress Rate eligibility point (for Division I institutions), before completing their degree, access to need-based financial aid and counseling assistance required to support undergraduate degree completion.

(e) Access to training regarding sex-based discrimination and harassment that ensures student-athletes fully understand their rights and responsibilities under the law, including how to make a report of discrimination or harassment on their campus.

(f) Access to leadership training that will set the conditions for student-athletes to become successful leaders, improve communication skills, make positive decisions, and manage conflict.

(g) Access to a career development program, positioned to assist student-athletes in transferring the valuable skills developed during sport participation, to a successful post-college or university career.

8. For purposes of this section, "team contract" means any written agreement between a student-athlete and a college, or division, department, program or team thereof, which includes goals and objectives, standards, prohibitions, broadcast, advertising or marketing rights or consents, rules or expectations applicable to the student-athlete.

§ 6438-b. Community college athlete name, image and likeness working group. 1. There shall be established within the department by the chancellor of the state university of New York, the community college athlete name, image and likeness working group, to examine and review existing state university of New York athletic bylaws, state and federal laws and national athletic association bylaws regarding a college athlete's use of such athlete's name, image and likeness for compensation. The department shall provide necessary secretariat and support services to the working group.

2. (a) The community college athlete name, image and likeness working group shall consist of, but not be limited to, the following members:

(i) one representative from the office of the chancellor of the state university of New York;

(ii) at least two community college student-athletes appointed by the chancellor's office;

(iii) a community college athletic administrator appointed by the chancellor's office;

(iv) a community college athletic coach appointed by the chancellor's office;

(v) one member appointed by the governor;

(vi) one member appointed by the temporary president of the senate; and

(vii) one member appointed by the speaker of the assembly.

(b) All appointments to the working group shall be completed on or before July first, two thousand twenty-two.

3. On or before July first, two thousand twenty-three, the working group shall provide a report to the governor, the speaker of the assembly, the temporary president of the senate and the chancellor of the state university of New York, which contains such working group's findings and policy recommendations in connection with its review pursuant to subdivision one of this section.

§ 3. This act shall take effect immediately; provided, however, that section 6438-a of the education law, as added by section two of this act, shall take effect January 1, 2022.