STATE OF NEW YORK

5115--E

2021-2022 Regular Sessions

IN ASSEMBLY

February 11, 2021

Introduced by M. of A. SOLAGES, MAGNARELLI, AUBRY, CRUZ, TAYLOR, GIBBS, CUNNINGHAM, SIMON, MONTESANO, GOTTFRIED, STIRPE, BUTTENSCHON, FAHY -- 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 -- recommitted to the Committee on Higher Education in accordance with Assembly Rule 3, sec. 2 -- 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 -- reported and referred to the Committee on Rules -- Rules Committee discharged, bill amended, ordered reprinted as amended and recommitted to the Committee on Rules

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 a new section 6438-a to read as follows:

§ 6438-a. Student-athlete compensation. 1. For the purposes of this section:

(a) "student-athlete" shall mean a student enrolled at a college and participating in intercollegiate athletics; and

(b) "team contract" shall mean 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.

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

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2. (a) A college shall not uphold any rule, requirement, standard, or other limitation that prevents a student-athlete from earning compensation pursuant to this section as a result of the use of the student-athlete's name, image, or likeness.

(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-athlete from earning compensation pursuant to this section as a result of the use of the student-athlete'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 a result of allowing a student-athlete pursuant to this section from earning compensation as a result of the use of the student-athlete's name, image, or likeness.

3. 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 student-athlete's name, image, or likeness.

4. (a) A college, athletic association, conference, or other group or organization with authority over intercollegiate athletics shall not prevent a student-athlete from obtaining professional representation in relation to name, image, or likeness 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 a student-athlete 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.

5. A scholarship from the college in which a student-athlete is enrolled that provides the student-athlete with the cost of attendance at that college is not compensation for purposes of this section, and a scholarship shall not be revoked due to earning compensation as a result of the use of the student-athlete's name, image, or likeness, or due to obtaining legal or athletic agent representation in relation to name, image, or likeness matters.

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

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

(c) A college asserting a conflict pursuant to paragraph (a) of this subdivision shall disclose to the student-athlete or the student-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 pursuant to 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-athlete to violate the team contract; or

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

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

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

(v) the proposed contract would require actions by the student-athlete during team activities; or

(vi) the proposed contract would require actions by the student-athlete during scheduled classes; or

(vii) the proposed contract would use the college'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-athlete to display a sponsor's product, logo, brand, or other indicia, or otherwise advertise for a sponsor, during official team activities; or

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

7. A team of a college's athletic program shall not prevent a student-athlete from using the student-athlete's name, image, or likeness for a commercial purpose when the student-athlete is not engaged in official team activities, except where there is a conflict pursuant to paragraph (d) of subdivision six of this section or any other prohibition in this section.

8. 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 athletics with 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 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;

(d) a degree completion assistance program that provides former student-athletes who disenrolled from the college 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; and

(g) access to a career development program, positioned to assist student-athletes in transferring the valuable skills developed during intercollegiate athletic participation, to a successful post-college career.

§ 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, 2023 and shall apply to contracts entered into, renewed, modified or amended on or after such date.