

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:

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

3 § 2. The education law is amended by adding a new section 6438-a to
4 read as follows:

5 § 6438-a. Student-athlete compensation. 1. For the purposes of this
6 section:

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

9 (b) "team contract" shall mean any written agreement between a
10 student-athlete and a college, or division, department, program or team
11 thereof, which includes goals and objectives, standards, prohibitions,
12 broadcast, advertising or marketing rights or consents, rules or expec-
13 tations 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

1 to disclose any financial terms of such contract unless otherwise
2 required by applicable law.

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

6 (i) the proposed contract would cause the student-athlete to violate
7 the team contract; or

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

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

12 (iv) the proposed contract would reasonably be judged to cause finan-
13 cial loss or reputational damage to the college; or

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

16 (vi) the proposed contract would require actions by the student-ath-
17 lete during scheduled classes; or

18 (vii) the proposed contract would use the college's name, brand, copy-
19 written materials, trademarks, service marks, symbols, nicknames, trade
20 dress, insignia, mascot, uniform styles, colors, imagery, campus land-
21 marks, or any other intellectual property or indicia; or

22 (viii) the proposed contract would require the student-athlete to
23 display a sponsor's product, logo, brand, or other indicia, or otherwise
24 advertise for a sponsor, during official team activities; or

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

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

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

43 (a) a dedicated financial distress fund that would support student-
44 athletes in times of financial need. Disbursements from such fund are
45 not compensation for the purposes of this section;

46 (b) access to ongoing mental health support services provided by coun-
47 selors specially trained to understand the unique issues and pressures
48 student-athletes confront;

49 (c) access to broad-based financial literacy training, with a specific
50 emphasis on the issues and opportunities relevant to student-athletes,
51 during and beyond their tenure at the college;

52 (d) a degree completion assistance program that provides former
53 student-athletes who disenrolled from the college in good academic
54 standing and who earned the NCAA Academic Progress Rate eligibility
55 point for Division I institutions, before completing their degree,

1 access to need-based financial aid and counseling assistance required to
2 support undergraduate degree completion;

3 (e) access to training regarding sex-based discrimination and harass-
4 ment that ensures student-athletes fully understand their rights and
5 responsibilities under the law, including how to make a report of
6 discrimination or harassment on their campus;

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

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

14 § 3. This act shall take effect immediately; provided, however, that
15 section 6438-a of the education law, as added by section two of this
16 act, shall take effect January 1, 2023 and shall apply to contracts
17 entered into, renewed, modified or amended on or after such date.