

# STATE OF NEW YORK

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5891--D

2021-2022 Regular Sessions

## IN SENATE

March 22, 2021

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Introduced by Sens. PARKER, BAILEY, JACKSON -- read twice and ordered printed, and when printed to be committed to the Committee on Education -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- committee discharged and said bill committed to the Committee on Higher Education -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- recommitted to the Committee on Higher Education in accordance with Senate Rule 6, sec. 8 -- committee discharged, bill amended, 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:

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 two new sections 6438-a  
4 and 6438-b to read as follows:

5 § 6438-a. Student-athlete compensation. 1. (a) A college shall not  
6 uphold any rule, requirement, standard, or other limitation that  
7 prevents a student of that institution participating in intercollegiate  
8 athletics from earning compensation pursuant to this section including  
9 as a result of the use of the student's name, image, or likeness. Earn-  
10 ing compensation as a result of the use of a student's name, image, or  
11 likeness shall not affect the student's scholarship eligibility.

12 (b) An athletic association, conference, or other group or organiza-  
13 tion with authority over intercollegiate athletics, including, but not  
14 limited to, the National Collegiate Athletic Association (NCAA), shall  
15 not prevent a student of a college participating in intercollegiate

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

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1 athletics from earning compensation pursuant to this section including  
2 as a result of the use of the student's name, image, or likeness.

3 (c) An athletic association, conference, or other group or organiza-  
4 tion with authority over intercollegiate athletics, including, but not  
5 limited to, the National Collegiate Athletic Association (NCAA), shall  
6 not prevent a college from participating in intercollegiate athletics as  
7 a result of the compensation of a student-athlete pursuant to this  
8 section including for the use of the student's name, image, or likeness.

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

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

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

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

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

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

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

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

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

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

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

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

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

3 (iv) the proposed contract would reasonably be judged to cause finan-  
4 cial loss or reputational damage to the institution; or

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

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

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

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

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

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

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

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

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

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

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

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

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

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

9 § 6438-b. Community college athlete name, image and likeness working  
10 group. 1. There shall be established within the department by the chan-  
11 cancellor of the state university of New York, the community college  
12 athlete name, image and likeness working group, to examine and review  
13 existing state university of New York athletic bylaws, state and federal  
14 laws and national athletic association bylaws regarding a college  
15 athlete's use of such athlete's name, image and likeness for compen-  
16 sation. The department shall provide necessary secretariat and support  
17 services to the working group.

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

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

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

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

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

28 (v) one member appointed by the governor;

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

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

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

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

40 § 3. This act shall take effect immediately; provided, however, that  
41 section 6438-a of the education law, as added by section two of this  
42 act, shall take effect January 1, 2023.