

# STATE OF NEW YORK

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Cal. No. 881

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 -- reported favorably from said committee, ordered to first and second report, ordered to a third reading, amended and ordered reprinted, retaining its place in the order of third reading -- again amended and ordered reprinted, retaining its place in the order of third reading

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,

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

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1 broadcast, advertising or marketing rights or consents, rules or expect-  
2 tations applicable to the student-athlete.

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

7 (b) An athletic association, conference, or other group or organiza-  
8 tion with authority over intercollegiate athletics, including, but not  
9 limited to, the National Collegiate Athletic Association (NCAA), shall  
10 not prevent a student-athlete from earning compensation pursuant to this  
11 section as a result of the use of the student-athlete's name, image, or  
12 likeness.

13 (c) An athletic association, conference, or other group or organiza-  
14 tion with authority over intercollegiate athletics, including, but not  
15 limited to, the National Collegiate Athletic Association (NCAA), shall  
16 not prevent a college from participating in intercollegiate athletics as  
17 a result of allowing a student-athlete pursuant to this section from  
18 earning compensation as a result of the use of the student-athlete's  
19 name, image, or likeness.

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

24 4. (a) A college, athletic association, conference, or other group or  
25 organization with authority over intercollegiate athletics shall not  
26 prevent a student-athlete from obtaining professional representation in  
27 relation to name, image, or likeness contracts or legal matters, includ-  
28 ing, but not limited to, representation provided by athlete agents or  
29 legal representation provided by attorneys.

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

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

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

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

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

55 (c) A college asserting a conflict pursuant to paragraph (a) of this  
56 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, copy-written 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

1 point for Division I institutions, before completing their degree,  
2 access to need-based financial aid and counseling assistance required to  
3 support undergraduate degree completion;

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

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

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

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