

LEGISLATURE OF NEBRASKA
ONE HUNDRED SEVENTH LEGISLATURE
SECOND SESSION

LEGISLATIVE BILL 1137

FINAL READING

Introduced by Hunt, 8; Hansen, M., 26.

Read first time January 19, 2022

Committee: Business and Labor

- 1 A BILL FOR AN ACT relating to the Nebraska Fair Pay to Play Act; to amend
- 2 sections 48-3601, 48-3602, 48-3603, 48-3604, 48-3605, 48-3606,
- 3 48-3607, 48-3608, and 48-3609, Reissue Revised Statutes of Nebraska;
- 4 to rename the act; to change provisions relating to name, image, or
- 5 likeness rights of a student-athlete; to harmonize provisions; and
- 6 to repeal the original sections.
- 7 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 48-3601, Reissue Revised Statutes of Nebraska, is
2 amended to read:

3 48-3601 Sections 48-3601 to 48-3609 shall be known and may be cited
4 as the Nebraska Student-Athlete Name, Image, or Likeness Rights Fair Pay
5 ~~to Play~~ Act.

6 Sec. 2. Section 48-3602, Reissue Revised Statutes of Nebraska, is
7 amended to read:

8 48-3602 For purposes of the Nebraska Student-Athlete Name, Image, or
9 Likeness Rights Fair Pay to Play Act:

10 (1) Athletic grant-in-aid means the money given to a student-athlete
11 by a postsecondary institution for tuition, fees, room, board, and
12 textbooks as consideration for the student-athlete's participation in an
13 intercollegiate sport for such postsecondary institution and does not
14 include compensation for the use of the student-athlete's name, image, or
15 likeness rights or athletic reputation;

16 (2) Collegiate athletic association means any athletic association,
17 conference, or other group or organization with authority over
18 intercollegiate sports;

19 (3) Compensation for the use of a student-athlete's name, image, or
20 likeness rights or athletic reputation includes, but is not limited to,
21 consideration received pursuant to an endorsement contract as defined in
22 section 48-2602;

23 (4) Intercollegiate sport has the same meaning as in section
24 48-2602;

25 (5) Postsecondary institution has the same meaning as in section
26 85-2403;

27 (6) Professional representation includes, but is not limited to,
28 representation provided by an athlete agent holding a certificate of
29 registration under the Nebraska Uniform Athlete Agents Act, a financial
30 advisor registered under the Securities Act of Nebraska, or an attorney
31 admitted to the bar by order of the Supreme Court of this state;

1 (7) Sponsor means an individual or organization that pays money or
2 provides goods or services in exchange for advertising rights;

3 (8) Student-athlete has the same meaning as in section 48-2602; and

4 (9) Team contract means a contract between a postsecondary
5 institution or a postsecondary institution's athletic department and a
6 sponsor.

7 Sec. 3. Section 48-3603, Reissue Revised Statutes of Nebraska, is
8 amended to read:

9 48-3603 (1) No postsecondary institution shall uphold any rule,
10 requirement, standard, or limitation that prevents a student-athlete from
11 fully participating in an intercollegiate sport for such postsecondary
12 institution because such student-athlete earns compensation for the use
13 of such student-athlete's name, image, or likeness rights or athletic
14 reputation.

15 (2) No collegiate athletic association shall penalize a student-
16 athlete or prevent a student-athlete from fully participating in an
17 intercollegiate sport because such student-athlete earns compensation for
18 the use of such student-athlete's name, image, or likeness rights or
19 athletic reputation.

20 (3) No collegiate athletic association shall penalize a
21 postsecondary institution or prevent a postsecondary institution from
22 fully participating in an intercollegiate sport because a student-athlete
23 participating in an intercollegiate sport for such postsecondary
24 institution earns compensation for the use of such student-athlete's
25 name, image, or likeness rights or athletic reputation.

26 (4) No postsecondary institution shall allow compensation earned by
27 a student-athlete for the use of such student-athlete's name, image, or
28 likeness rights or athletic reputation to affect the duration, amount, or
29 eligibility for or renewal of any athletic grant-in-aid or other
30 institutional scholarship, except that compensation earned by a student-
31 athlete for the use of such student-athlete's name, image, or likeness

1 rights or athletic reputation may be used for the calculation of income
2 for determining eligibility for need-based financial aid.

3 (5) The compensation a student-athlete earns for the use of the
4 student-athlete's name, image, or likeness must be for services actually
5 performed. Student-athletes shall not be paid for contracts that (a)
6 extend beyond the student-athlete's participation in an athletic program
7 at a postsecondary institution, (b) involve the sale or exchange of
8 awards or other items received for athletic participation, (c) involve
9 compensation from a postsecondary institution or a postsecondary
10 institution's employees, or (d) provide compensation for work not
11 performed.

12 (6) Student-athletes may be prohibited from entering into contracts
13 or agreements or engaging in activity related to the use of the student-
14 athlete's name, image, or likeness for products, services, entities, or
15 activities reasonably deemed to be inconsistent with the educational
16 mission of the postsecondary institution by such postsecondary
17 institution.

18 (7) Nothing in the Nebraska Student-Athlete Name, Image, or Likeness
19 Rights Act shall limit the ability of a postsecondary institution to
20 establish and enforce standards, requirements, regulations, or
21 obligations for such postsecondary institution's students not
22 inconsistent with the act.

23 (8) Nothing in the Nebraska Student-Athlete Name, Image, or Likeness
24 Rights Act grants to a student-athlete the right to use any name,
25 trademark, service mark, logo, symbol, or other intellectual property
26 that belongs to the postsecondary institution, regardless of whether the
27 intellectual property is registered, to further the student-athlete's
28 opportunities to earn compensation for the use of the student-athlete's
29 name, image, or likeness.

30 Sec. 4. Section 48-3604, Reissue Revised Statutes of Nebraska, is
31 amended to read:

1 48-3604 Any student-athlete who enters into a contract or agreement
2 that provides compensation for the use of such student-athlete's name,
3 image, or likeness rights or athletic reputation shall disclose such
4 contract or agreement to an official of the postsecondary institution for
5 which such student-athlete participates in an intercollegiate sport. The
6 official to which such contract or agreement shall be disclosed shall be
7 designated by each postsecondary institution, and the designation shall
8 be communicated in writing to each student-athlete participating in an
9 intercollegiate sport for such postsecondary institution. Unless
10 otherwise required by law, each postsecondary institution shall be
11 prohibited from disclosing any terms of such contract or agreement that
12 the student-athlete or the student-athlete's professional representation
13 deems to be a trade secret or otherwise nondisclosable.

14 Sec. 5. Section 48-3605, Reissue Revised Statutes of Nebraska, is
15 amended to read:

16 48-3605 (1) No student-athlete shall enter into a contract or
17 agreement with a sponsor that provides compensation to the student-
18 athlete for use of the student-athlete's name, image, and likeness rights
19 or athletic reputation if (a) such contract or agreement requires such
20 student-athlete to display such sponsor's apparel or to otherwise
21 advertise for the sponsor during official team activities and (b)
22 compliance with such contract or agreement requirement would conflict
23 with a team contract. Any postsecondary institution asserting such
24 conflict shall disclose to the student-athlete and the student-athlete's
25 professional representation, if applicable, the full team contract that
26 is asserted to be in conflict. The student-athlete and the student-
27 athlete's professional representation, if applicable, shall be prohibited
28 from disclosing any terms of a team contract that the postsecondary
29 institution deems to be a trade secret or otherwise nondisclosable.

30 (2) No team contract shall prevent a student-athlete from receiving
31 compensation for the use of such student-athlete's name, image, and

1 likeness rights or athletic reputation when the student-athlete is not
2 engaged in official team activities.

3 Sec. 6. Section 48-3606, Reissue Revised Statutes of Nebraska, is
4 amended to read:

5 48-3606 (1) No postsecondary institution or collegiate athletic
6 association shall penalize a student-athlete or prevent a student-athlete
7 from fully participating in an intercollegiate sport because such
8 student-athlete obtains professional representation in relation to a
9 contract or legal matter related to the use of the student-athlete's
10 name, image, or likeness.

11 (2) No collegiate athletic association shall penalize a
12 postsecondary institution or prevent a postsecondary institution from
13 fully participating in an intercollegiate sport because a student-athlete
14 participating in an intercollegiate sport for such postsecondary
15 institution obtains professional representation in relation to a contract
16 or legal matter related to the use of the student-athlete's name, image,
17 or likeness.

18 (3) A postsecondary institution may offer education and training to
19 student-athletes to aid them in understanding the opportunities that may
20 become available to them for the use of their name, image, or likeness,
21 including education in the areas of networking and communication, brand-
22 building and management, financial literacy, and compliance.

23 Sec. 7. Section 48-3607, Reissue Revised Statutes of Nebraska, is
24 amended to read:

25 48-3607 (1) The Nebraska Student-Athlete Name, Image, or Likeness
26 Rights Fair Pay to Play Act shall not be applied in a manner that
27 violates any contract in effect prior to the date determined by a
28 postsecondary institution pursuant to section 48-3609 with regard to such
29 postsecondary institution or any student-athlete who participates in an
30 intercollegiate sport for such postsecondary institution for as long as
31 such contract remains in effect without modification.

1 (2) On and after the date determined by a postsecondary institution
2 pursuant to section 48-3609, such postsecondary institution shall not
3 enter into, modify, or renew any contract in a manner that conflicts with
4 the Nebraska Student-Athlete Name, Image, or Likeness Rights Fair Pay to
5 Play Act.

6 Sec. 8. Section 48-3608, Reissue Revised Statutes of Nebraska, is
7 amended to read:

8 48-3608 (1) A student-athlete or a postsecondary institution
9 aggrieved by a violation of the Nebraska Student-Athlete Name, Image, or
10 Likeness Rights Fair Pay to Play Act may bring a civil action against the
11 postsecondary institution or collegiate athletic association committing
12 such violation.

13 (2) A plaintiff who prevails in an action under the Nebraska
14 Student-Athlete Name, Image, or Likeness Rights Fair Pay to Play Act
15 shall be entitled to:

16 (a) Actual damages;

17 (b) Such preliminary and other equitable or declaratory relief as
18 may be appropriate; and

19 (c) Reasonable attorney's fees and other litigation costs reasonably
20 incurred.

21 (3) A public postsecondary institution may be sued upon claims
22 arising under the Nebraska Student-Athlete Name, Image, or Likeness
23 Rights Fair Pay to Play Act only to the extent allowed under the State
24 Tort Claims Act, the State Contract Claims Act, or the State
25 Miscellaneous Claims Act, except that a civil action for a violation of
26 the Nebraska Student-Athlete Name, Image, or Likeness Rights Fair Pay to
27 Play Act may only be brought within one year after the cause of action
28 has accrued.

29 Sec. 9. Section 48-3609, Reissue Revised Statutes of Nebraska, is
30 amended to read:

31 48-3609 Each postsecondary institution shall determine a date on or

1 before July 1, 2023, upon which the Nebraska Student-Athlete Name, Image,
2 or Likeness Rights Fair Pay to Play Act shall begin to apply to such
3 postsecondary institution and the student-athletes who participate in an
4 intercollegiate sport for such postsecondary institution and to any
5 collegiate athletic association or professional representation in
6 interactions with such postsecondary institution or student-athletes.

7 Sec. 10. Original sections 48-3601, 48-3602, 48-3603, 48-3604,
8 48-3605, 48-3606, 48-3607, 48-3608, and 48-3609, Reissue Revised Statutes
9 of Nebraska, are repealed.