

## LEGISLATIVE BILL 1137

Approved by the Governor April 18, 2022

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

A BILL FOR AN ACT relating to the Nebraska Fair Pay to Play Act; to amend sections 48-3601, 48-3602, 48-3603, 48-3604, 48-3605, 48-3606, 48-3607, 48-3608, and 48-3609, Reissue Revised Statutes of Nebraska; to rename the act; to change provisions relating to name, image, or likeness rights of a student-athlete; to harmonize provisions; and to repeal the original sections.

Be it enacted by the people of the State of Nebraska,

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(4) No postsecondary institution shall allow compensation earned by a student-athlete for the use of such student-athlete's name, image, or likeness rights or athletic reputation to affect the duration, amount, or eligibility for or renewal of any athletic grant-in-aid or other institutional scholarship, except that compensation earned by a student-athlete for the use of such student-athlete's name, image, or likeness rights or athletic reputation may be used for the calculation of income for determining eligibility for need-based financial aid.

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

compensation for work not performed.

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

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

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

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

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

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

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

(2) No team contract shall prevent a student-athlete from receiving compensation for the use of such student-athlete's name, image, and likeness rights or athletic reputation when the student-athlete is not engaged in official team activities.

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

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

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

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

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

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

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

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

48-3608 (1) A student-athlete or a postsecondary institution aggrieved by

a violation of the Nebraska Student-Athlete Name, Image, or Likeness Rights Fair Pay to Play Act may bring a civil action against the postsecondary institution or collegiate athletic association committing such violation.

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

- (a) Actual damages;
- (b) Such preliminary and other equitable or declaratory relief as may be appropriate; and
- (c) Reasonable attorney's fees and other litigation costs reasonably incurred.

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

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

48-3609 Each postsecondary institution shall determine a date on or before July 1, 2023, upon which the Nebraska Student-Athlete Name, Image, or Likeness Rights Fair Pay to Play Act shall begin to apply to such postsecondary institution and the student-athletes who participate in an intercollegiate sport for such postsecondary institution and to any collegiate athletic association or professional representation in interactions with such postsecondary institution or student-athletes.

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