



State of Wisconsin
2023 - 2024 LEGISLATURE

LRB-5180/1
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2023 ASSEMBLY BILL 1048

February 2, 2024 - Introduced by Representatives EMERSON, HONG, J. ANDERSON, BARE, CLANCY, MADISON, PALMERI and SINICKI, cosponsored by Senators LARSON and TAYLOR. Referred to Committee on Colleges and Universities.

AN ACT *to create* 36.39, 38.25 and 39.43 of the statutes; **relating to:** name, image, and likeness compensation for students at institutions of higher education.

Analysis by the Legislative Reference Bureau

This bill creates certain restrictions on higher education institutions, including the Board of Regents of the University of Wisconsin System and its institutions, the Technical College System Board, district boards, and technical colleges, and private colleges (collectively, “institutions”); student athletes; student organization members; and students’ professional representatives in relation to compensation for the use of student athletes’ and student organization members’ name, image, or likeness. In the bill, “student athlete” is defined to mean a student at an institution who participates in an intercollegiate sport. “Intercollegiate sport” is defined as a sport played at the collegiate level for which eligibility requirements for participation are established by an athletic organization, but does not include a recreational, intramural, or club sport. “Student organization member” is defined to mean a student at an institution who participates in an institution-affiliated student organization.

The bill requires institutions to ensure that 1) no institution requirement prevents a student athlete or student organization member from receiving compensation on the basis of the student’s name, image, or likeness; 2) any money

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or item of value received by a student athlete or student organization member for the student's name, image, or likeness is considered compensation and does not affect the student's receipt of a scholarship from the institution; 3) neither an institution nor any person related to or benefiting an institution compensates or promises future compensation to a prospective student athlete for the prospective student athlete's name, image, or likeness; 4) an institution does not compensate or cause compensation to be directed to a student athlete or student organization member for the use of the student's name, image, or likeness; 5) a prospective student athlete or student athlete not be prevented by a contract between the prospective student athlete or student athlete and the institution from using the prospective student athlete's or student athlete's name, image, or likeness for a commercial purpose when the prospective student athlete or student athlete is not engaged in an official team activity; 6) any contract between an institution and a prospective student athlete or student athlete allows the institution and any organization with relevant authority over intercollegiate athletics to use the prospective student athlete's or student athlete's name, image, or likeness for advertising and marketing purposes without paying additional compensation to the prospective student athlete or student athlete; 7) a student athlete or student organization member may obtain professional representation in relation to a name, image, or likeness contract or legal matter; and 8) that each institution create a written policy for how it will respond to a situation in which a student athlete or student organization member at the institution violates the bill's prohibition on a student athlete or student organization member earning name, image, or likeness compensation in connection with certain goods or services.

The bill also requires an attorney representing a student athlete or student organization member in relation to the student's name, image, or likeness to be licensed to practice law in this state, and requires an agent obtained by a student athlete to comply with certain federal law with regard to the agent's relationship with the student athlete.

The bill also prohibits student athletes and student organization members from earning name, image, or likeness compensation in connection with any person related to the development, production, distribution, wholesaling, or retailing of adult entertainment products and services, alcohol products, betting activities, tobacco, electronic smoking products and devices, prescription pharmaceuticals, controlled dangerous substances, and weapons, firearms, or ammunition. Student athletes and student organization members are also prohibited from entering into a name, image, or likeness contract that conflicts with a portion of the student's institutional contract, team contract, or institutional student policy. The bill also requires student athletes and student organization members that enter into a name, image, or likeness contract to disclose the contract to an institutional official, as designated by the institution.

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The bill first applies to affected persons in the fifth fall semester commencing after the effective date of the bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

SECTION 1. 36.39 of the statutes is created to read:

36.39 Name, image, and likeness compensation. (1) DEFINITIONS. In this section:

(a) “Intercollegiate sport” means a sport played at the collegiate level for which eligibility requirements for participation are established by an athletic organization. “Intercollegiate sport” does not include a recreational, intramural, or club sport.

(b) “Prospective student athlete” means an individual who is not yet a student athlete but who is considering whether to become a student athlete.

(c) “Student athlete” means a student at an institution who participates in an intercollegiate sport.

(d) “Student organization member” means a student at an institution who participates in an institution-affiliated student organization.

(2) BOARD AND INSTITUTION REQUIREMENTS. The board shall ensure all of the following:

(a) Subject to the requirements of this section, that no board or institution rule, requirement, standard, or other limitation prevents a student athlete or a student organization member from receiving compensation, or entering into a contract to receive compensation, on the basis of the student’s name, image, or likeness.

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(b) That if a student athlete or student organization member receives money or an item of value on the basis of the student's name, image, or likeness, the money or item of value is considered compensation for the purposes of this section, and that the compensation does not affect the student's receipt of a scholarship from the institution at which the student is enrolled.

(c) That neither the board, an institution, nor an entity whose purpose includes supporting or benefiting the board, an institution, or an institution's athletic programs, nor any person related to the board, an institution, or such an entity, compensates or causes compensation to be directed for use of a prospective student athlete's name, image, or likeness or promises that, if a prospective student athlete attends an institution, the prospective student athlete will receive future compensation based on name, image, or likeness.

(d) That neither the board nor an institution compensates or causes compensation to be directed to a student athlete or student organization member for the use of the student's name, image, or likeness.

(e) That any contract between the board or an institution and a prospective student athlete or a student athlete does not prevent that individual from using the individual's name, image, or likeness for a commercial purpose when the individual is not engaged in an official team activity.

(f) That any contract between the board or an institution and a prospective student athlete or a student athlete allows the institution and any organization with relevant authority over intercollegiate athletics to use the individual's name,

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image, or likeness for advertising and marketing purposes without paying additional compensation to the individual.

(g) That neither the board nor an institution prevents a student athlete or student organization member from obtaining professional representation in relation to a name, image, or likeness contract or legal matter.

(h) That each institution create a written policy for how the institution will respond to a situation in which a student athlete or student organization member at the institution violates the prohibition under sub. (4) (a).

(3) ATTORNEY AND AGENT REQUIREMENTS. (a) An attorney obtained by a student athlete or student organization member seeking legal representation relating to that student's name, image, or likeness must be licensed to practice law in this state.

(b) An agent obtained by a student athlete shall comply with 15 USC 7801 et seq. with regard to the agent's relationship with the student athlete.

(4) STUDENT REQUIREMENTS. (a) A student athlete or student organization member may not earn compensation as a result of the student's name, image, or likeness in connection with any person related to or associated with the development, production, distribution, wholesaling, or retailing of any of the following:

1. Adult entertainment products and services.
2. Alcohol products.
3. Casinos, sports betting, lotteries, betting in connection with video games, online games, or mobile devices, and other gambling entities.

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4. Tobacco.
5. Electronic smoking products and devices.
6. Prescription pharmaceuticals.
7. Controlled dangerous substances.
8. Weapons, firearms, or ammunition.

(b) A student athlete or student organization member may not enter into a contract providing compensation to the student for use of the student's name, image, or likeness if a provision of the contract conflicts with a portion of the student's team contract, student organization contract, or contract with, or student policy at, the institution at which the student is enrolled. If an institution asserts that a student athlete's or student organization member's contract providing compensation for use of the student's name, image, or likeness conflicts with a portion of the student's team contract, student organization contract, or contract with, or student policy at, the institution at which the student is enrolled, the institution shall disclose to the student and, if applicable, to the student's professional representation the relevant contractual provisions that it asserts are in conflict.

(c) A student athlete or student organization member who has entered into a contract providing compensation to the student for use of the student's name, image, or likeness shall disclose the contract to an official of the institution at which the student athlete is enrolled, as designated by the institution.

SECTION 2. 38.25 of the statutes is created to read:

38.25 Name, image, and likeness compensation. (1) DEFINITIONS. In this section:

(a) “Intercollegiate sport” means a sport played at the collegiate level for which eligibility requirements for participation are established by an athletic organization. “Intercollegiate sport” does not include a recreational, intramural, or club sport.

(b) “Prospective student athlete” means an individual who is not yet a student athlete but who is considering whether to become a student athlete.

(c) “Student athlete” means a student at a technical college who participates in an intercollegiate sport.

(d) “Student organization member” means a student at a technical college who participates in a technical college-affiliated student organization.

(2) BOARD, DISTRICT BOARD, AND TECHNICAL COLLEGE REQUIREMENTS. The board shall ensure all of the following:

(a) Subject to the requirements of this section, that no board, district board, or technical college rule, requirement, standard, or other limitation prevents a student athlete or a student organization member from receiving compensation, or entering into a contract to receive compensation, on the basis of the student’s name, image, or likeness.

(b) That if a student athlete or student organization member receives money or an item of value on the basis of the student’s name, image, or likeness, the money or item of value is considered compensation for the purposes of this section, and

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that the compensation does not affect the student's receipt of a scholarship from the board, a district board, or a technical college.

(c) That neither the board, a district board, a technical college, nor an entity whose purpose includes supporting or benefiting the board, a district board, or a technical college's athletic programs, nor any person related to the board, a district board, a technical college, or such an entity, compensates or causes compensation to be directed for use of a prospective student athlete's name, image, or likeness or promises that, if a prospective student athlete attends a technical college, the prospective student athlete will receive future compensation based on name, image, or likeness.

(d) That neither the board, a district board, nor a technical college compensates or causes compensation to be directed to a student athlete or student organization member for the use of the student's name, image, or likeness.

(e) That any contract between the board, a district board, or a technical college and a prospective student athlete or a student athlete does not prevent that individual from using the individual's name, image, or likeness for a commercial purpose when the individual is not engaged in an official team activity.

(f) That any contract between the board, a district board, or a technical college and a prospective student athlete or a student athlete allows the board, district board, or technical college and any organization with relevant authority over intercollegiate athletics to use the individual's name, image, or likeness for advertising and marketing purposes without paying additional compensation to the individual.

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(g) That neither the board, a district board, nor a technical college prevents a student athlete or student organization member from obtaining professional representation in relation to a name, image, or likeness contract or legal matter.

(h) That each technical college create a written policy for how the technical college will respond to a situation in which a student athlete or student organization member at the technical college violates the prohibition under sub. (4) (a).

(3) ATTORNEY AND AGENT REQUIREMENTS. (a) An attorney obtained by a student athlete or student organization member seeking legal representation relating to that student's name, image, or likeness must be licensed to practice law in this state.

(b) An agent obtained by a student athlete shall comply with 15 USC 7801 et seq. with regard to the agent's relationship with the student athlete.

(4) STUDENT REQUIREMENTS. (a) A student athlete or student organization member may not earn compensation as a result of the student's name, image, or likeness in connection with any person related to or associated with the development, production, distribution, wholesaling, or retailing of any of the following:

1. Adult entertainment products and services.
2. Alcohol products.
3. Casinos, sports betting, lotteries, betting in connection with video games, online games, or mobile devices, and other gambling entities.
4. Tobacco.

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5. Electronic smoking products and devices.
6. Prescription pharmaceuticals.
7. Controlled dangerous substances.
8. Weapons, firearms, or ammunition.

(b) A student athlete or student organization member may not enter into a contract providing compensation to the student for use of the student's name, image, or likeness if a provision of the contract conflicts with a portion of the student's team contract, student organization contract, or contract with, or student policy at, the technical college at which the student is enrolled. If a technical college asserts that a student athlete's or student organization member's contract providing compensation for use of the student's name, image, or likeness conflicts with a portion of the student's team contract, student organization contract, or contract with, or student policy at, the technical college at which the student is enrolled, the technical college shall disclose to the student and, if applicable, to the student's professional representation the relevant contractual provisions that it asserts are in conflict.

(c) A student athlete or student organization member who has entered into a contract providing compensation to the student for use of the student's name, image, or likeness shall disclose the contract to an official of the technical college at which the student athlete is enrolled, as designated by the technical college.

SECTION 3. 39.43 of the statutes is created to read:

39.43 Name, image, and likeness compensation. (1) **DEFINITIONS.** In this section:

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(a) “Institution” means a private, nonprofit institution of higher education that is a member of the Wisconsin Association of Independent Colleges and Universities.

(b) “Intercollegiate sport” means a sport played at the collegiate level for which eligibility requirements for participation are established by an athletic organization. “Intercollegiate sport” does not include a recreational, intramural, or club sport.

(c) “Prospective student athlete” means an individual who is not yet a student athlete but who is considering whether to become a student athlete.

(d) “Student athlete” means a student at an institution who participates in an intercollegiate sport.

(e) “Student organization member” means a student at an institution who participates in an institution-affiliated student organization.

(2) INSTITUTION REQUIREMENTS. Institutions shall ensure all of the following:

(a) Subject to the requirements of this section, that no institution rule, requirement, standard, or other limitation prevents a student athlete or a student organization member from receiving compensation, or entering into a contract to receive compensation, on the basis of the student’s name, image, or likeness.

(b) That if a student athlete or student organization member receives money or an item of value on the basis of the student’s name, image, or likeness, the money or item of value is considered compensation for the purposes of this section, and that the compensation does not affect the student’s receipt of a scholarship from the institution at which the student is enrolled.

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(c) That neither an institution nor an entity whose purpose includes supporting or benefiting the institution, or an institution's athletic programs, nor any person related to an institution or such an entity, compensates or causes compensation to be directed for use of a prospective student athlete's name, image, or likeness or promises that, if a prospective student athlete attends an institution, the prospective student athlete will receive future compensation based on name, image, or likeness.

(d) That an institution does not compensate or cause compensation to be directed to a student athlete or student organization member for the use of the student's name, image, or likeness.

(e) That any contract between an institution and a prospective student athlete or a student athlete does not prevent that individual from using the individual's name, image, or likeness for a commercial purpose when the individual is not engaged in an official team activity.

(f) That any contract between an institution and a prospective student athlete or a student athlete allows the institution and any organization with relevant authority over intercollegiate athletics to use the individual's name, image, or likeness for advertising and marketing purposes without paying additional compensation to the individual.

(g) That an institution does not prevent a student athlete or student organization member from obtaining professional representation in relation to a name, image, or likeness contract or legal matter.

(h) That each institution create a written policy for how the institution will

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respond to a situation in which a student athlete or student organization member at the institution violates the prohibition under sub. (4) (a).

(3) ATTORNEY AND AGENT REQUIREMENTS. (a) An attorney obtained by a student athlete or student organization member seeking legal representation relating to that student's name, image, or likeness must be licensed to practice law in this state.

(b) An agent obtained by a student athlete shall comply with 15 USC 7801 et seq. with regard to the agent's relationship with the student athlete.

(4) STUDENT REQUIREMENTS. (a) A student athlete or student organization member may not earn compensation as a result of the student's name, image, or likeness in connection with any person related to or associated with the development, production, distribution, wholesaling, or retailing of any of the following:

1. Adult entertainment products and services.
2. Alcohol products.
3. Casinos, sports betting, lotteries, betting in connection with video games, online games, or mobile devices, and other gambling entities.
4. Tobacco.
5. Electronic smoking products and devices.
6. Prescription pharmaceuticals.
7. Controlled dangerous substances.
8. Weapons, firearms, or ammunition.

(b) A student athlete or student organization member may not enter into a

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contract providing compensation to the student for use of the student's name, image, or likeness if a provision of the contract conflicts with a portion of the student's team contract, student organization contract, or contract with, or student policy at, the institution at which the student is enrolled. If an institution asserts that a student athlete's or student organization member's contract providing compensation for use of the student's name, image, or likeness conflicts with a portion of the student's team contract, student organization contract, or contract with, or student policy at, the institution at which the student is enrolled, the institution shall disclose to the student and, if applicable, to the student's professional representation the relevant contractual provisions that it asserts are in conflict.

(c) A student athlete or student organization member who has entered into a contract providing compensation to the student for use of the student's name, image, or likeness shall disclose the contract to an official of the institution at which the student athlete is enrolled, as designated by the institution.

SECTION 4. Initial applicability.

(1) This act first applies to the Board of Regents of the University of Wisconsin System, institutions, as defined under s. 36.05 (9), the Technical College System Board, district boards, as defined under s. 38.01 (6), technical colleges, private, nonprofit institutions of higher education that are members of the Wisconsin Association of Independent Colleges and Universities, student athletes, student

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organization members, and students' professional representatives in the 5th fall semester commencing after the effective date of this subsection.

(END)