

SESSION OF 2021

SUPPLEMENTAL NOTE ON HOUSE BILL NO. 2264

As Recommended by House Committee on
Judiciary

Brief*

HB 2264 would create law related to postsecondary student athletes and compensation for the use of student athletes' names, images, likeness rights, or athletic reputation (NIL).

Obligations on Postsecondary Educational Institutions

Postsecondary educational institutions (institutions) would be prohibited from preventing a student athlete (athlete) from earning compensation for the use of the athlete's NIL or restricting an athlete's scholarship eligibility based on compensation for the use of the athlete's NIL, except for need-based awards related to income received.

Institutions would also be prohibited from compensating an athlete or prospective student athlete for the use of the athlete's NIL. Scholarships and athletics grants-in-aid would not be considered as compensation for the use of an athlete's NIL.

Institutions would be prohibited from preventing an athlete from obtaining professional representation in relation to contracts or legal matters or preventing an athlete from fully participating in athletics as a result of such representation.

*Supplemental notes are prepared by the Legislative Research Department and do not express legislative intent. The supplemental note and fiscal note for this bill may be accessed on the Internet at <http://www.kslegislature.org>

Institutions would also be prohibited from entering into contracts that prevent athletes from being compensated for the use of the the athlete's NIL when the athlete is not engaged in official team activities.

Obligations on Athletic Associations

Athletic associations, including, but not limited to, the National Collegiate Athletic Association, would be prohibited from restricting participation or imposing any penalty on an athlete or institution as a result of an athlete earning compensation from the use of the athlete's NIL.

Athletic associations would also be prohibited from preventing an athlete from obtaining professional representation in relation to contracts or legal matters or preventing an athlete from fully participating in athletics as a result of such representation.

Athletic associations would also be prohibited from compensating an athlete or prospective student athlete for the use of the athlete's NIL.

Obligations on Student Athletes

Athletes would be deemed to have granted royalty-free rights without compensation to the athlete's institution for the use of the athlete's NIL for the institution's promotional interests, to the extent determined by the institution. Any contractual provision otherwise would be declared null and void.

Athletes would also be required to disclose to their institutions any contracts providing compensation for use of the athlete's NIL within five business days of the date of the signature of the contract by the athlete. An athlete would not be permitted to enter into contracts providing compensation for the use of the athlete's NIL if such contract conflicts with a

contract entered into by the athlete's institution, including, but not limited to, contracts related to athletic apparel or advertisements during official team activities, and the institution asserting such a conflict would be required to make certain disclosures to the athlete and athlete's professional representative.

Obligations on Professional Representatives

The bill would require athlete agents and attorneys providing representation to athletes to be licensed by Kansas or hold certificates of registration as provided by applicable Kansas law. Such representatives would be required to comply with the Kansas Uniform Athlete Agents Act and the federal Sports Agent Responsibility and Trust Act.

Other Provisions

The bill would define, for purposes of the bill, terms including "athlete agent," "postsecondary educational institution," and "student athlete."

The bill would state it would not authorize prospective student athletes to negotiate, discuss, or receive compensation for use of NIL prior to the the earlier of the first day of class or a semester, session, or term in which the student is registered full-time at an institution or the first practice or competition in intercollegiate athletics.

The bill would not apply to contracts entered into by athletes prior to the effective date of the provisions of the bill. Additionally, legal settlements arising under the bill would not be permitted to allow noncompliance with provisions of the bill.

The bill would allow accredited not-for-profit institutions with a physical presence in Kansas who are exempted from the Kansas Private and Out-of-State Postsecondary

Educational Institution Act to opt out of the provisions of the bill.

The bill would be in effect from and after January 1, 2022.

Background

The bill was introduced by the House Committee on Judiciary at the request of Representative Patton on behalf of Kansas State University and the University of Kansas.

House Committee on Judiciary

In the House Committee hearing on February 18, 2021, the president of Emporia State University and the athletic directors of Kansas State University and the University of Kansas testified as **proponents** of the bill, stating other states are enacting similar legislation and the bill would keep Kansas institutions on a level playing field until federal legislation is adopted.

A representative of the Kansas Independent College Association provided written-only **proponent** testimony. No neutral or opponent testimony was provided.

Fiscal Information

According to the fiscal note prepared by the Division of the Budget, the Kansas Board of Regents (Board) indicates enactment of the bill could have a fiscal effect on student athletes at universities and colleges in Kansas, but would have no fiscal effect on the Board or any postsecondary educational institution.

The Office of the Attorney General (OAG) indicates enactment of the bill would result in more athlete agents operating in Kansas, which would increase costs associated

with prosecuting violations of the Uniform Athlete Agent Act; however, potential costs cannot be estimated as it is uncertain how many additional cases may be referred. The OAG also indicates the bill could increase revenues from registration fees to the Office of the Secretary of State from additional athlete agents to do business in Kansas. Any fiscal effect associated with enactment of the bill is not reflected in *The FY 2022 Governor's Budget Report*.

Student athletes; postsecondary educational institutions; compensation