

# LEGISLATIVE BILL 1393

Approved by the Governor April 16, 2024

Introduced by Hansen, 16; at the request of the Governor.

A BILL FOR AN ACT relating to labor; to amend sections 48-3602, 48-3603, 48-3604, and 48-3606, Revised Statutes Cumulative Supplement, 2022, and section 48-649.03, Revised Statutes Supplement, 2023; to change provisions relating to the combined tax rate under the Employment Security Law; to change provisions relating to the Nebraska Student-Athlete Name, Image, or Likeness Rights Act; to provide severability; to repeal the original sections; and to declare an emergency.

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

Section 1. Section 48-649.03, Revised Statutes Supplement, 2023, is amended to read:

48-649.03 (1) Once benefits have been payable from and chargeable to an employer's experience account throughout the preceding four calendar quarters and wages for employment have been paid by the employer in each of the two preceding four-calendar-quarter periods, the employer's combined tax rate shall be calculated according to this section. The combined tax rate shall be based upon the employer's experience rating record and determined from the employer's reserve ratio.

(2) The employer's reserve ratio is the percent obtained by dividing (a) the amount by which the employer's contributions credited from the time the employer first or most recently became an employer, whichever date is later, and up to and including September 30 of the year the rate computation is made, plus any part of the employer's contributions due for that year paid on or before October 31 of such year, exceed the employer's benefits charged during the same period, by (b) the employer's average annual taxable payroll for the sixteen-consecutive-calendar-quarter period ending September 30 of the year in which the rate computation is made. For an employer with less than sixteen consecutive calendar quarters of contribution experience, the employer's average taxable payroll shall be determined based upon the four-calendar-quarter periods for which contributions were payable.

(3) Each eligible experience rated employer shall be assigned to one of twenty rate categories with a corresponding experience factor as follows:

Category	Experience Factor
1	0.00
2	0.25
3	0.40
4	0.45
5	0.50
6	0.60
7	0.65
8	0.70
9	0.80
10	0.90
11	0.95
12	1.00
13	1.05
14	1.10
15	1.20
16	1.35
17	1.55
18	1.80

19	2.15
20	2.60

Eligible experience rated employers shall be assigned to rate categories from highest to lowest according to their experience reserve ratio, with category one assigned to accounts with the highest reserve ratios and category twenty assigned to accounts with the lowest reserve ratios. Each category shall be limited to no more than five percent of the state's total taxable payroll, except that:

(a) Any employer with a portion of its taxable wages falling into two consecutive categories shall be assigned to the lower category;

(b) No employer with a reserve ratio calculated to five decimal places equal to the similarly calculated reserve ratio of another employer shall be assigned to a higher rate than the employer to which it has the equal reserve ratio; and

(c) No employer with a positive experience account balance shall be assigned to category twenty.

(4) The state's reserve ratio shall be calculated annually by dividing the amount available to pay benefits in the Unemployment Trust Fund and the State Unemployment Insurance Trust Fund as of September 30, plus any amount of combined tax owed by employers eligible for and electing annual payment status for the four most recent quarters ending on September 30 in accordance with rules and regulations adopted by the commissioner, by the state's total wages from the four calendar quarters ending on September 30. For purposes of this section, total wages means all remuneration paid by an employer in employment. The state's reserve ratio shall be applied to the table in this subsection to determine the yield factor for the upcoming rate year.

State's Reserve Ratio	Yield Factor
<u>1.75 percent and above</u>	= 0.50
<u>1.60 percent up to but not including 1.75</u>	= 0.60
<u>1.45 percent up to but not including 1.60</u>	= 0.70
<del>1.45 percent and above</del>	= <del>0.70</del>
1.30 percent up to but not including 1.45	= 0.75
1.15 percent up to but not including 1.30	= 0.80
1.00 percent up to but not including 1.15	= 0.90
0.85 percent up to but not including 1.00	= 1.00
0.70 percent up to but not including 0.85	= 1.10
0.60 percent up to but not including 0.70	= 1.20
0.50 percent up to but not including 0.60	= 1.25
0.45 percent up to but not including 0.50	= 1.30
0.40 percent up to but not including 0.45	= 1.35
0.35 percent up to but not including 0.40	= 1.40
0.30 percent up to but not including 0.35	= 1.45
Below 0.30 percent	= 1.50

The commissioner may adjust the yield factor determined pursuant to the preceding table to a lower scheduled yield factor if the state's reserve ratio is 1.00 percent or greater. Once the yield factor for the upcoming rate year has been determined, it is multiplied by the amount of unemployment benefits paid from combined tax during the four calendar quarters ending September 30 of the preceding year. The resulting figure is the planned yield for the rate year. The planned yield is divided by the total taxable wages for the four calendar quarters ending September 30 of the previous year and carried to four decimal places to create the average combined tax rate for the rate year. Beginning January 1, 2025, through December 31, 2029, the final average combined tax rate shall be reduced by five percent.

(5) The average combined tax rate is assigned to rate category twelve as established in subsection (3) of this section. Rates for each of the remaining nineteen categories are determined by multiplying the average combined tax rate by the experience factor associated with each category and carried to four decimal places. Employers who are delinquent in filing their combined tax reports as of October 31 of any year shall be assigned to category twenty for the following calendar year unless the delinquency is corrected prior to December 31 of the year of rate calculation.

(6) In addition to required contributions, an employer may make voluntary contributions to the fund to be credited to his or her account. Voluntary contributions by employers may be made up to the amount necessary to qualify for one rate category reduction. Voluntary contributions received after February 28 shall not be used in rate calculations for the same calendar year.

(7) As used in sections 48-648 to 48-654, the term payroll means the total amount of wages during a calendar year, except as otherwise provided in section 48-654, by which the combined tax was measured.

Sec. 2. Section 48-3602, Revised Statutes Cumulative Supplement, 2022, is amended to read:

48-3602 For purposes of the Nebraska Student-Athlete Name, Image, or Likeness Rights 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) Name, image, or likeness activity means an activity that involves the use of an individual's name, image, or likeness for commercial or promotional purposes;

~~(6)~~ (5) Postsecondary institution has the same meaning as in section 85-2403;

~~(7)~~ (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;

~~(8)~~ (7) Sponsor means an individual or organization that pays money or provides goods or services in exchange for advertising rights;

~~(9)~~ (8) Student-athlete has the same meaning as in section 48-2602; and

~~(10)~~ (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, Revised Statutes Cumulative Supplement, 2022, 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 or intends to earn 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 or intends to earn 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 or intends to earn compensation for the use of such student-athlete's name, image, or likeness rights or athletic reputation.

(4) No postsecondary institution shall be prohibited from:

(a) Creating, identifying, facilitating, enabling, or supporting student-athlete name, image, or likeness activities; or

(b) Entering into agreements with a third-party entity to create, identify, facilitate, enable, or support name, image, or likeness activities.

(5) No third-party entity or individual shall be prohibited from:

(a) Communicating with a student-athlete to create, identify, facilitate, enable, or support name, image, or likeness activities;

(b) Compensating a student-athlete for the use of such student-athlete's name, image, or likeness rights or athletic reputation; or

(c) Compensating student-athletes for promoting:

(i) An athletics event in which the student-athlete may participate, if the third-party entity or individual has an agreement to promote the athletics event; or

(ii) The postsecondary institution which the student-athlete attends.

~~(6)~~ (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.

~~(7)(a) (5)~~ The compensation a student-athlete earns for the use of the student-athlete's name, image, or likeness rights or athletic reputation must be for services actually performed. Student-athletes shall not be paid for contracts that ~~(i) (a)~~ extend beyond the student-athlete's participation in an athletic program at a postsecondary institution, ~~(ii) (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 ~~(iii) (d)~~ provide compensation for work not performed.

~~(b)~~ A postsecondary institution shall not compensate a student-athlete for the use of the student-athlete's name, image, or likeness rights or athletic reputation unless otherwise permitted or authorized by:

~~(i)~~ A collegiate athletic association and postsecondary institution policy;

~~(ii)~~ A court order; or

~~(iii)~~ A settlement agreement.

~~(8) (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 rights or athletic reputation or engaging in name, image, or likeness activities for products, services, entities, or activities reasonably deemed to be inconsistent with the educational mission of the postsecondary institution by such postsecondary institution.

~~(9) (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.

~~(10) (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 rights or athletic reputation.

~~(11)~~ Nothing in the Nebraska Student-Athlete Name, Image, or Likeness Rights Act shall be construed to qualify a student-athlete as an employee of a postsecondary institution based solely on the fact that the student-athlete earns compensation for the use of the student-athlete's name, image, or likeness rights or athletic reputation, or is engaged in name, image, or likeness activities pursuant to the act.

Sec. 4. Section 48-3604, Revised Statutes Cumulative Supplement, 2022, is amended to read:

48-3604 ~~(1)~~ 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. Except as provided in subsection (2) of this section, or unless ~~Unless~~ otherwise required by law, each postsecondary institution shall be prohibited from disclosing any information written, produced, collected, assembled, or maintained by such postsecondary institution that includes or reveals any term of a contract or agreement or proposed contract or agreement for the use of a student-athlete's name, image, or likeness rights or athletic reputation 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.

~~(2)~~ If any contract or agreement is entered into by an entity subject to sections 84-712 to 84-712.09 for the use of a student-athlete's name, image, or likeness rights or athletic reputation, such contract or agreement shall be considered a public record subject to sections 84-712 to 84-712.09.

Sec. 5. Section 48-3606, Revised Statutes Cumulative Supplement, 2022, 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 rights or athletic reputation.

(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 rights or athletic reputation.

(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 rights or athletic reputation, including education in the areas of networking and communication, brand-building and management, financial literacy, and compliance.

Sec. 6. If any section in this act or any part of any section is declared

invalid or unconstitutional, the declaration shall not affect the validity or constitutionality of the remaining portions.

Sec. 7. Original sections 48-3602, 48-3603, 48-3604, and 48-3606, Revised Statutes Cumulative Supplement, 2022, and section 48-649.03, Revised Statutes Supplement, 2023, are repealed.

Sec. 8. Since an emergency exists, this act takes effect when passed and approved according to law.