



**NEUTRAL Testimony on SB 474
For the Senate Commerce Committee
March 4, 2020
Matt Lindsey
President, Kansas Independent College Association**

Chair Lynn and members of the committee, thank you for the opportunity to come before you to provide neutral testimony related to Senate Bill 474.

Kansas' Independent Colleges:

KICA represents the twenty independent colleges of Kansas, all of which are not-for-profit institutions of higher education, all of which offer undergraduate degrees, all of which have their principal campus in Kansas, all of whom are regionally accredited by the Higher Learning Commission, and all of whom maintain an open enrollment policy consistent with Kansas statutes.

The state of Kansas, via the Kansas Board of Regents, has specific obligations governing “private and out-of-state” educational institutions, per the Private and Out-of-State Post-Secondary Educational Institutions Act. All twenty KICA institutions are exempt from that statute. Thus, for the independent members of KICA, KBOR has no governing role (as it does for the six 4-year Regents universities), coordinating role (as it does for the community colleges, technical colleges, and Washburn University) nor regulatory role (as it does for any for-profit college or college based outside of Kansas that wishes to operate here). Furthermore, KICA institutions do not receive any direct funding from the state of Kansas, as befits our independent status.

Student Athletes at Kansas' Private Colleges:

KICA institutions represent a broad set of intercollegiate athletic experiences. As noted below, no KICA institutions compete at the “highest” level of the sport – NCAA Division I – and only one institution even competes in the NCAA at all. All others are engaged either in the NAIA, the National Christian College Athletic Association (NCCAA) or the National Junior College Athletic Association (NJCAA).

- NCAA Division II – 1 institution (Newman University)
- NAIA Division I – 4 institutions (Baker University, Benedictine College, Central Christian College of Kansas*, MidAmerica Nazarene University)
- NAIA Division II – 10 institutions (Bethany College, Bethel College, Friends University, Kansas Wesleyan University, McPherson College, Ottawa University, Southwestern College, Sterling College, Tabor College, University of Saint Mary)
- NCCAA Division I – 1 institution (Central Christian College of Kansas*)
- NCCAA Division II – 2 institutions (Barclay College, Manhattan Christian College)
- NJCAA – 1 institution (Hesston College)
- No Intercollegiate Athletics – 2 institutions (Cleveland University-Kansas City, Donnelly College)

* CCCKS plays some sports in NAIA and some in NCCAA

In the 2018-2019 academic year, 6,770 students participating in intercollegiate athletics among all KICA institutions, with an average of 376 students per institution. Thus, on our main residential campuses in Kansas, 46.4% of our students participate in some form of intercollegiate sports.

Comment on SB 474:

KICA generally supports the intent of SB 474 to allow student athletes the ability to receive third-party compensation for use of their name, image, and/or likeness. At the same time, the KICA colleges and institutions all offer intercollegiate athletics as a component of a broader mission to provide our students with a valuable, holistic education that leads them to a degree, a productive career, and a life of purpose and service.

SB 474 is a satisfactory stopgap measure. We appreciate the trigger mechanism that the bill implements so that Kansas is neither on the vanguard of this new intercollegiate landscape nor is it falling behind when other states move ahead. By implementing the 15-state trigger, it also gives Kansas and its colleges the time to watch, learn, and adapt based on lessons learned elsewhere.

We do note several concerns and would appreciate the committee's attention and consideration of amendments.

Potential Conflicts with Institutional Values & Missions:

Most of Kansas' non-profit colleges were founded with ties to a Christian denomination and most have mission and values that remain reflective of those faith-based roots. All KICA institutions are "open enrollment" in accordance with Kansas law and thus do not consider a prospective student's religion or religiosity in making admissions decisions. However, most KICA institutions do expect students to adhere to a student code of conduct that reflects our values.

Therefore, we have concerns that the bill would not allow our institutions to prevent a student-athlete from partnering with a third-party which directly contradicts the institution's values and mission. To illustrate this in overly simplistic examples:

- Some KICA institutions' have clearly expressed values against premarital sexual intercourse. Yet under the language currently in SB 474, the institution would be unable to prevent a student from sharing his/her NIL with a company whose advertising campaign does not share those values.
- Some KICA institutions' faith traditions have clear statements against consumption of alcohol and prohibit alcoholic beverages from being consumed on campus, even by students over 21 years old. Under SB 474, a student athlete could share his or her likeness with a beer company and the institution would have no power to limit such a contract.

Thus, we believe the bill would be improved through addition of language allowing the institution to have limited veto power over the student's third-party contractual agreements. We believe this could be done through a statement that requires the student-athlete to only use his/her NIL in accordance with the institution's student code of conduct and give the institution the authority to veto third-party NIL contracts that violate that code of conduct.

Opt-In vs. Mandate:

KICA institutions are smaller than the Regents universities who are most concerned about the emerging landscape around student-athlete NIL issues. However, a much higher percentage of our student population participate in intercollegiate athletics and would be affected by SB 474. While most NAIA, NCCAA, and NJCAA institutions may only have a few students seen as attractive candidates from third parties for NIL endorsement contracts, the market for local contract and smaller scale deals will be immense.

We have significant concerns about the administrative burden this may place on smaller schools who do not have the staff capacity to manage a raft of reviews nor the financial wherewithal to cover the new oversight expenses that may come along with this change.

However, we also recognize that some institutions, even among the smaller KICA members, may view the competitive landscape as requiring them to allow student athletes to receive NIL compensation for fear of losing ground to others in the region or athletic conference.

Because of those concerns, we believe SB 474 would be improved through the addition of an opt-in clause for non-public institutions. The state has direct governance authority – through the Board of Regents – over the six Regents universities. Further Washburn University and the community colleges are all governed by publicly elected or appointed boards. KICA institutions do not fit this governance model. Moreover, those other institutions all receive significant direct tax-payer support, where KICA institutions do not.

Put another way, SB 474 seeks to regulate both public entities and private entities similarly. However, Kansas usually has chosen policy mechanisms on other issues that honor the rights and liberties of private entities separately from those of public/taxpayer governed and supported entities.

Thus, we propose that SB 474 be amended to include an opt-in clause for private non-profit colleges. Such a clause would allow those private non-profit colleges who either can or want to allow students to receive NIL compensation to do so, while simultaneously allowing those institutions who feel the financial and staff capacity burdens outweigh the benefits or recognize the limited likelihood of their student-athletes being sought after for NIL endorsement contracts.

Thank you for the opportunity to request these improvements to a bill we otherwise support. I am happy to answer any questions you may have or provide additional data as you request.