

D R A F T

FOR DISCUSSION ONLY

UNIFORM COLLEGE ATHLETE NAME, IMAGE, and LIKENESS ISSUES ACT

NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS

February 6, 2021 Committee Video Meeting



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January 26, 2021

UNIFORM COLLEGE ATHLETE NAME, IMAGE, AND LIKENESS ISSUES ACT

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1 **Uniform College Athlete Name, Image, and Likeness Issues Act**

2 **Section 1. Short Title**

3 This [act] may be cited as the Uniform College Athlete Name, Image, and Likeness
4 Issues Act.

5 **Section 2. Definitions**

6 In this [act]:

7 (1) “Agency contract” means an agreement in which a student athlete authorizes a person
8 to negotiate or solicit on behalf of the athlete a professional-sports-services contract or NIL
9 agreement.

10 (2) “Athlete agent” means an individual, whether or not registered under this [act], who:

11 (A) directly or indirectly recruits or solicits a student athlete to enter into an
12 agency contract or, for compensation, procures employment or offers, promises, attempts, or
13 negotiates to obtain employment for a student athlete as a professional athlete or member of a
14 professional sports team or organization;

15 (B) for compensation or in anticipation of compensation related to a student
16 athlete’s participation in athletics:

17 (i) serves the athlete in an advisory capacity on a matter related to
18 finances, business pursuits, or career management decisions, unless the individual is an
19 employee of an educational institution acting exclusively as an employee of the institution for the
20 benefit of the institution; or

21 (ii) manages the business affairs of the athlete by providing assistance
22 with bills, payments, contracts, or taxes; or

23 (C) in anticipation of representing a student athlete for a purpose related to the

1 athlete's participation in athletics:

2 (i) gives consideration to the student athlete or another person;

3 (ii) serves the athlete in an advisory capacity on a matter related to
4 finances, business pursuits, or career management decisions; or

5 (iii) manages the business affairs of the athlete by providing assistance
6 with bills, payments, contracts, or taxes.

7 The term does not include an individual who:

8 (A) acts solely on behalf of a professional sports team or organization; or

9 (B) is a licensed, registered, or certified professional and offers or provides
10 services to a student athlete customarily provided by members of the profession, unless the
11 individual:

12 (i) also recruits or solicits the athlete to enter into an agency contract;

13 (ii) also, for compensation, procures employment or offers, promises,
14 attempts, or negotiates to obtain employment for the athlete as a professional athlete or member
15 of a professional sports team or organization; or

16 (iii) receives consideration for providing the services calculated using a
17 different method than for an individual who is not a student athlete.

18 (3) "Athletic association" means a national non-profit collegiate athletics governance
19 association that has at least 50 member institutions located in at least 25 states that conducts
20 athletic competition among its member institutions, sets playing rules for the competition,
21 regulates the eligibility of players and institutions to participate, and determines an annual
22 national champion in one or more sports in one or more competitive divisions or subdivisions
23 either by conducting a national championship it wholly owns or recognizing a collegiate national

1 championship conducted by a United States national sport governing body. The term includes the
2 National Collegiate Athletic Association, National Association of Intercollegiate Athletics, and
3 any successor organization.

4 (4) “Booster” means a representative of an institution’s athletic program including a
5 person that provides a donation to obtain a season ticket for a sport at the institution, participates
6 in or is a member of an organization promoting the institution’s athletic program, makes a
7 financial contribution to the athletic program or to an institution’s booster organization, arranges
8 for or provides employment for a college athlete enrolled at the institution, assists or is requested
9 by the institution’s staff to assist in inducement, assists in providing benefits to a college athlete
10 or the athlete’s family, or is otherwise involved in promoting an institution’s athletics. The term
11 also includes a person that has engaged in any of these activities in the past.

12 (5) “College athlete” means an individual who is eligible to attend an institution and
13 engages in, is eligible to engage in, or may be eligible in the future to engage in, an
14 intercollegiate sport. The term does not include, for a particular intercollegiate sport, an
15 individual permanently ineligible to participate in that sport.

16 (6) “Compensation” means money or other thing of value given to a college athlete by a
17 third-party entity in exchange for use of the athlete’s NIL. The term does not include a
18 scholarship, grant, fellowship, tuition assistance, or other form of financial aid from the
19 institution at which the athlete is enrolled.

20 (7) “Conference” means a person that governs a collection of institutions and their
21 athletic programs. The term includes an employee, agent, or independent contractor of the
22 conference.

23 (8) “Enrolled” means registered for courses and attending athletic practice or class.

1 “Enrollment” has a corresponding meaning.

2 (9) “Fair market value” means the price at which a transaction would occur between a
3 willing buyer and a willing seller, with no undue influence from an outside force, and with
4 neither party being under compulsion to act.

5 (10) “Game-related NIL use” means a use of NIL that is part of:

6 (A) a live or delayed audio or video broadcast, re-broadcast, or other transmission
7 of the athlete’s performance in an athletic event of an institution, conference, or athletic
8 association;

9 (B) a product derived from the broadcast, re-broadcast, or transmission of the
10 event, such as a highlight reel or historical footage;

11 (C) a promotion or advertisement of an athletic event, the athlete, or the athlete’s
12 team, including a promotion of ticket sales or an event program sold at an athletic event in which
13 the athlete or the athlete’s team performs; and

14 (D) a print or electronic publication on the institution’s website of the athlete’s
15 historical athletic performance, participation statistics, or a photograph of the athlete’s athletic
16 performance.

17 (11) “Independent contractor” means a person other than an employee that provides a
18 service to an institution or conference related to college athletics, including a multimedia-rights
19 holder that sells an institutional or conference sponsorship or a person paid by the institution or
20 conference to manage and optimize social media content. The term does not include a person that
21 provides a product to an institution or conference, such as a shoe or apparel company.

22 (12) “Inducement” means an attempt to influence the decision of a college athlete to
23 attend, continue attending, or transfer to an institution.

1 (13) “Institution” means a public or private institution of higher education within a
2 particular state, including a community college, college, and university. The term includes an
3 employee, agent, or independent contractor of the institution.

4 (14) “Institutional-sponsorship agreement means a licensing, sponsorship, marketing, or
5 similar deal entered into by an institution.

6 (15) “Intercollegiate sport” means a sport played at the collegiate level for which
7 eligibility requirements for participation by a college athlete are established by an athletic
8 association.

9 (16) “NIL” means the name, image, and likeness of a college athlete. The term includes
10 the athlete’s nick name, signature, social media account, and any other readily identifiable
11 personal characteristic or trait.

12 (17) “NIL activity” means licensing or other disposition of a college athlete’s NIL for a
13 commercial purpose.

14 (18) “NIL agreement” means an agreement under which a college athlete receives
15 compensation for the athlete’s NIL.

16 (19) “Non-game-related NIL use” means commercial use of a college athlete’s NIL that
17 is not game-related NIL. The term includes NIL activity for product licensing, a personal
18 appearance, a book, movie, television or radio show, social media content, or autographs.

19 (20) “Person” means an individual, estate, business or nonprofit entity, public
20 corporation, government or governmental subdivision, agency, or instrumentality, or other legal
21 entity.

22 (21) “Record” means information:

23 (A) inscribed on a tangible medium; or

1 (B) stored in an electronic or other medium and retrievable in perceivable form.

2 (22) “State” means a state of the United States, the District of Columbia, Puerto Rico, the
3 United States Virgin Islands, or any other territory or possession subject to the jurisdiction of the
4 United States. The term includes an agency or instrumentality of the state.

5 (23) “Student” means an individual who is enrolled at an institution.

6 (24) “Team contract” means a contract between an institution and another person that
7 relates to the activities of an athletic team of the institution.

8 (25) “Third-party entity” means a person, other than the institution, that enters into an
9 NIL agreement with a college athlete. The term includes an employee, agent, officer, or
10 independent contractor of the entity.

11 **Section 3. Scope**

12 (a) This [act] applies only to intercollegiate sports.

13 (b) Except as provided in Section XX, this [act] does not apply to individuals
14 participating in athletics at the high school, youth, recreation, and other similar levels.

15 (c) This (act) does not affect an employment relationship between a college athlete and
16 the institution with respect to the athlete’s participation in an intercollegiate sport.

17 **Section 4. Rulemaking Authority**

18 The [Secretary of State] may adopt rules under [cite to state administrative procedure act]
19 to implement this [act].

20 **Section 5. Right to Earn Compensation; Limits on Athletic Association and**
21 **Institution**

22 **Option 1**

23 (a) Except as otherwise provided in Section XX, a college athlete may earn compensation

1 at fair market value from a third-party entity for use of the athlete’s non-game-related NIL.

2 **Option 2**

3 (a) Except as otherwise provided in Section XX, a college athlete may earn compensation
4 from a third-party entity for use of the athlete’s NIL.

5 **End of Options**

6 (b) An athletic association shall not adopt or enforce a rule, requirement, standard, or
7 other limitation that prevents a college athlete from earning compensation or an institution from
8 participating in an intercollegiate sport because the athlete receives compensation.

9 (c) An institution may not adopt or enforce a rule, requirement, standard, or other
10 limitation that prevents a college athlete from earning compensation or condition an athlete’s
11 participation in an intercollegiate sport on a limit on the athlete’s right to earn compensation.

12 (d) An institution may not consider compensation in determining a college athlete’s
13 eligibility for an athletic scholarship or the amount of the athlete’s scholarship.

14 **Section 6. Limits and Restrictions on NIL Activity**

15 **Option 1 for (a)**

16 (a) NIL activity may not include an institution or conference’s name, trademark, service
17 mark, logo, uniform design, or other identifier of athletic performance depicted or included in
18 any form of media broadcast or related game footage. In NIL activity, a college athlete may
19 identify the athlete’s team, institution, and conference to the extent necessary to describe the
20 athlete’s identity¹

21 **Option 2 for (a)**

22 (a) A college athlete may use an institution or conference’s name, trademark, service

¹ This subsection is intended to be consistent with federal intellectual property law.

1 mark, logo, uniform design, or other identifier of athletic performance depicted or included in
2 any form of media broadcast or related game footage in NIL activity, as long as the use is
3 consistent with the use permitted by all students at the institution.

4 **Option 3 for (a)**

5 (a) *(the act would contain no restrictions on use of marks and logos)*

6 **End of Options**

7 **Option 1 for (b)**

8 (b) Compensation may not exceed fair market value and must represent only value for
9 use of a college athlete’s NIL. A college athlete may not receive compensation for performance,
10 participation, or service in an intercollegiate sport.

11 **Option 2 for (b)**

12 (b) Compensation must represent only value for use of a college athlete’s NIL. A college
13 athlete may not receive compensation for performance, participation, or service in an
14 intercollegiate sport.

15 **End of Options**

16 (c) A college athlete must be a full-time student and eligible athlete to receive
17 compensation in an academic year.

18 (d) Compensation or offers, promises, or solicitations of compensation must not be
19 contingent on a college athlete’s enrollment at an institution or within a conference or otherwise
20 used as an inducement by an institution, conference, or third-party entity.

21 (e) A college athlete may not make any express or implied endorsement on behalf of an
22 institution, conference, or athletic association.

23 **Option 1 for (f)**

1 (f) A college athlete may not engage in NIL activity that:
2 (1) is illegal;
3 (2) is in conflict with rules of the athlete’s institution, conference, or athletic
4 association:
5 (3) is determined by the athlete’s institution, conference, or athletic association to
6 be immoral or unsafe; or
7 (4) adversely affects the reputation of the institution, conference, or athletic
8 association.

9 **Option 2 for (f)**

10 (f) An institution may prohibit, at its discretion, NIL activity that conflicts with existing
11 institutional sponsorship arrangements or is determined by the institution to be immoral, in
12 conflict with the institution’s values, unsafe, or to adversely affect the reputation of the
13 institution.

14 **Option 3 for (f)**

15 (f) An institution may prohibit NIL activity if such activity would be prohibited under the
16 general policies of the institution that apply to all students at the institution.

17 **Option 4 for (f)**

18 (f) If an activity would be prohibited under the general policies of the institution that
19 apply to all students and the institution is also prohibited from engaging in the activity, an
20 institution may prohibit NIL activity if it is determined by the institution to be immoral, in
21 conflict with the institution’s values, unsafe, or to adversely affect the reputation of the
22 institution.

23 **End of Options for (f)**

1 **Option 1 for (g)**

2 **Please note that these options are not mutually exclusive.**

3 **Parts of each of the options below can be combined.**

4 (g) A college athlete may not enter into an NIL agreement if it conflicts with a team
5 contract or an institutional sponsorship deal. An institution claiming that an NIL agreement
6 conflicts with a contract or deal shall disclose to the college athlete or the athlete's athlete agent
7 the provision of the NIL agreement that conflicts with a contract or deal.

8 **Option 2 for (g)**

9 (g) An institution may not prevent a college athlete from non-game related NIL use when
10 the athlete is not engaged in official team activities.

11 **Option 3 for (g)**

12 (g) An institution may not prevent a college athlete from non-game related NIL use
13 outside of the athlete's championship season that begins with the first team practice in an
14 academic year and continues to the end of the national championship in the college athlete's
15 sport.

16 **Option 4 for (g)**

17 (g) An institution may impose restrictions, at its discretion, on NIL activity, including
18 prohibiting an NIL agreement that conflicts with a team contract or institutional sponsorship
19 deal.

20 **End of Options for (g)**

21 **Section 7. Institutional and Conference Involvement**

22 (a) Except as provided in subsection (b), an institutions or conference shall not:

23 (1) provide compensation to a college athlete;

- 1 (2) play any role in assisting, identifying, arranging, facilitating, securing, or
2 promoting NIL activity;
- 3 (3) permit a college athlete to use the intellectual property of the institution or
4 conference in NIL activity;
- 5 (4) develop, operate, promote, or otherwise be involved in NIL activity;
- 6 (5) use, license, or otherwise convey NIL for a non-game-related NIL use; or
- 7 (6) make an express or implied endorsement on behalf of the college athlete in
8 non-game-related NIL use.

9 (b) An institution or conference may:

- 10 (1) assist in evaluating the permissibility of NIL activity, such as compliance with
11 institution, conference, or athletic association rules or legal requirements;
- 12 (2) except as prohibited in subsection (a), provide education to a college athlete
13 related to NIL activity, non-game-related NIL use, and agency contracts;
- 14 (3) assist with the disclosure requirements of Section XX;
- 15 (4) assist in evaluating an athlete agent regarding NIL activity;
- 16 (5) assist in evaluating the fitness of a third-party entity; and
- 17 (6) permit a college athlete to use an institution's facilities for NIL activity under
18 the same terms and conditions as all other students at the institution.

19 **Section 8. Disclosure Requirements of College Athletes and Institutions**

20 (a) A college athlete shall disclose to the athlete's institution compensation to the athlete
21 greater than a combined aggregate of \$500 during an academic year, each offer, solicitation, or
22 promise made to the athlete by a third-party entity for NIL activity; and other information
23 relevant to the athlete's NIL activity. The athlete shall provide to the institution a copy of each

1 NIL agreement entered into by the athlete. The institution shall designate an official to receive
2 this information. The information required by this subsection includes:

- 3 (1) the arrangements for providing compensation;
- 4 (2) details of the relationship with each third-party entity; and
- 5 (3) details of the relationship with each athlete agent.

6 (b) A college athlete shall provide the information required by subsection (a) before
7 engaging in NIL activity and provide updates not later than [14] days after a relevant change in
8 the information.

9 (c) An institution shall have policies in a record that describe permissible and
10 impermissible NIL activity.

11 (d) An institution shall provide the policies in subsection (c) to a college athlete in a
12 record by the earlier of the time when an offer of admission or financial aid is made.

13 (e) For each NIL agreement, the college athlete, institution, third-party entity, and any
14 athlete agent that assisted with the agreement shall certify that there is no side agreement or
15 understanding.

16 **Section 9. Athlete Agent; Duties; Registration**

17 (a) An athlete agent shall register in and be licensed by this state and comply with [cite to
18 Revised Uniform Athlete Agents Act].

19 (b) An institution, conference, or athletic association may not prevent, punish, or
20 otherwise deter a college athlete from obtaining representation from an athlete agent.

21 (c) An institution may assist a college athlete with vetting an athlete agent. An institution
22 may not otherwise assist with selecting, arranging, or providing payment to an agent.

23 (d) An agency contract or agreement between a college athlete and an athlete agent must

1 have a fee arrangement that is consistent with norms for the agent’s industry and comply with the
2 [cite to Revised Uniform Athlete Agents Act].

3 (e) A college athlete shall disclose any relationship and agreement with an athlete agent.
4 The disclosure must be made to the official of the institution designated by the institution under
5 Section 8(a).

6 *Legislative Note: In subsection (a), cite to the state’s version of the uniform act or other*
7 *comparable state law.*

8
9

Option 1

10 **Section 10. Disclosure Requirements of Third-Party Entity {Note: if Option 1 is**
11 **selected, Sections 11-14 will be deleted}**

12 (a) A third-party entity shall disclose to the official designated in Section 8(a) any
13 compensation provided to a college athlete at the institution for NIL activity and submit a copy
14 of each NIL agreement with an athlete at the institution.

15 (b) A third-party entity shall certify that there is no side agreement or understanding of
16 any kind related to an NIL agreement disclosed under subsection (a).

17 (c) An NIL agreement that has not been disclosed under subsection (a) is void.

18

Option 2

19 **Section 10. Third Party Entity; Registration; Void Contract**

20 (a) Only a person registered under this [act] can be a valid third-party entity.

21 (b) An NIL Agreement with a person not registered under this [act] is void.

22

End of Options

23 **Section 11. Registration as Third-Party Entity; Application; Reciprocal Registration**

24 (a) An applicant for registration as a third-party entity shall submit an application for
25 registration to the [Secretary of State] in a form prescribed by the [Secretary of State]. The

1 application must be signed by an authorized representative of the third-party entity under penalty
2 of perjury. The application must include the following:

3 (1) address of principal place of business;

4 (2) state of registration;

5 (3) name and contact information of the agent seeking registration;

6 (4) telephone number;

7 (5) means of communicating electronically, including an email address and, if
8 available, a website related to the entity;

9 (6) social-media accounts of the applicant and entity;

10 (7) brief description of type of business and business activity;

11 (8) name and address of each individual that is a partner, member, officer,
12 manager, associate, or profit sharer or directly or indirectly holds an equity interest of five
13 percent of more in the entity;

14 (9) whether the applicant or an individual named under paragraph (8) has been a
15 defendant or respondent in a civil or criminal proceeding and, if so, the date and a full
16 explanation of each proceeding;

17 (10) whether the applicant, or an individual named under paragraph (8), was
18 adjudicated as bankrupt or has declared bankruptcy;

19 (11) whether conduct of the applicant, or an individual named under paragraph
20 (8), has caused a college athlete to be sanctioned, suspended, or declared ineligible to participate
21 in an intercollegiate sport or an institution to be sanctioned;

22 (12) whether an application by the applicant, or any individual named under
23 paragraph (8), to be a third-party entity in a state has been denied, suspended, non-renewed, or

1 abandoned; and

2 (13) each state in which the applicant is currently registered or has applied to be
3 registered as a third-party entity.

4 (b) A booster may be subject to additional disclosure requirements.

5 **Section 12. Third-Party Entity Certificate of Registration**

6 (a) Except as otherwise provided in subsection (b), the [Secretary of State] shall issue a
7 certificate of registration to a person that applies for registration and complies with Section ____

8 (b) The [Secretary of State] may refuse to issue a certificate of registration to a person
9 that applies for registration under Section 11 if the [Secretary of State] determines that the person
10 would adversely impact the reputation of the college athlete, institution, conference, or athletic
11 association or would otherwise not be fit to serve as a third-party entity.

12 (c) A third-party entity registered under subsection (a) may apply to renew the
13 registration by submitting an application for renewal in a form prescribed by the [Secretary of
14 State]. The entity shall sign the application for renewal under penalty of perjury and include
15 current information on all matters required in an original application for registration.

16 **Section 13. Limitation, Suspension, Revocation, Non-Renewal of Third-Party**
17 **Registration**

18 The [Secretary of State] may limit, suspend, revoke, or refuse to renew a registration of a
19 person registered under Section 12(a) for a reason that would have justified refusal to issue a
20 certificate of registration under Section 12(b).

21 **Section 14. Temporary Registration of Third-Party Entity**

22 The [Secretary of State] may issue a temporary certificate of registration as a third-party
23 entity while an application for registration or renewal of registration is pending.

1 **Section 15. Third-Party Entity Prohibited Conduct**

2 A third-party entity may not intentionally:

3 (1) give a college athlete or, if the college athlete is a minor, a parent or guardian of the
4 college athlete, materially false or misleading information or make a materially false promise or
5 representation with the intent to influence the college athlete, parent, or guardian to enter into an
6 NIL agreement;

7 (2) furnish anything of value to a college athlete or another individual except as permitted
8 under this [act], if to do so may result in loss of the athlete’s eligibility to participate in the
9 athlete’s sport;

10 (3) unless registered under this [act], initiate contact, directly or indirectly, with a college
11 athlete or, if the athlete is a minor, a parent or guardian of the athlete, to recruit or solicit the
12 college athlete, parent, or guardian to enter an NIL agreement;

13 (4) if required by Section __, fail to register under Section X [or disclose under Section
14 Y];

15 (5) provide materially false or misleading information in an application for registration or
16 renewal of registration [or disclosure]; or

17 (6) predate or postdate an NIL agreement.

18 **Section 16. Civil Remedy**

19 (a) An institution or college athlete has a cause of action for damages against an athlete
20 agent or third-party entity if the institution or college athlete is adversely affected by an act or
21 omission of the provider or entity in violation of this [act]. An institution or college athlete is
22 adversely affected by an act or omission of the provider or entity only if, because of the act or
23 omission, the institution or college athlete:

- 1 (1) is suspended or disqualified from participating in an intercollegiate sport; or
2 (2) suffers financial damage.

3 (b) A college athlete has a cause of action under this section only if the athlete was
4 enrolled in an institution at the time of the act or omission.

5 (c) In an action under this section, a prevailing plaintiff may recover [actual][treble]
6 damages[, punitive damages,] and reasonable attorney’s fees, court costs, and other reasonable
7 litigation expenses.

8 [(d) A violation of this [act] is an [unfair trade or deceptive practice] for purposes of
9 [insert reference to state’s unfair trade practices law].]

10 **Legislative Note:** *If a state has a law that prohibits unfair or deceptive trade practices and*
11 *provides for civil enforcement by a state agency or persons, including competitors, injured by the*
12 *practice, the appropriate name for the practice and statutory citation to the applicable law*
13 *should replace the bracketed language. The drafting rules in some states prohibit what is an*
14 *amendment by reference and may require the unfair or deceptive trade practices act be*
15 *amended. In that case, the bill should contain an appropriate amendment of the specific law and*
16 *subsection (c) should be deleted. Similarly, if a state does not have an unfair or deceptive trade*
17 *practices law, subsection (c) should be deleted or substantially expanded to provide for civil*
18 *enforcement by a state agency, affected members of the public, and competitors.*

19
20 **Section 17. Uniformity of Application and Construction**

21 In applying and construing this uniform act, a court shall consider the promotion of
22 uniformity of the law among jurisdictions that enact it.

23 **Section 18. Relation to Electronic Signatures in Global and National Commerce Act**

24 This [act] modifies, limits, or supersedes the Electronic Signatures in Global and National
25 Commerce Act, 15 U.S.C. Section 7001 et seq.[, as amended][, as in effect on [the effective date
26 of this [act]]], but does not modify, limit, or supersede 15 U.S.C. Section 7001(c), or authorize
27 electronic delivery of any of the notices described in 15 U.S.C. Section 7003(b).

1 **[Section 19. Severability**

2 If any provision of this [act] or its application to any person or circumstance is held
3 invalid, the invalidity does not affect other provisions or applications of this [act] which can be
4 given effect without the invalid provision or application, and to this end the provisions of this
5 [act] are severable.]

6 **Section 20. Repeals and Conforming Amendments**

7 **Section 21. Effective Date**

8 This [act] takes effect