



THE UNIFORM COLLEGE ATHLETE NAME, IMAGE, OR LIKENESS ACT (2021)

– A Summary –

Intercollegiate sports have grown into a billion-dollar industry, with massive television deals, multi-million-dollar coaching contracts, extravagant facilities, and lucrative commercial licensing agreements, all of which have historically provided huge sums of money to *almost* everyone involved. Coaches, universities, television networks, and brands have been financially benefitting from an industry built on the backs of college athletes who, until recently, were prohibited from earning compensation for the use of their name, image, or likeness. This all changed in 2019 when California enacted a first in the nation bill to give college athletes a right to earn money from the use of their name, image, or likeness (“NIL”). Since that time an additional 25 states have enacted NIL legislation and three states have expanded college athletes’ rights via executive order. In addition, the NCAA announced a new interim NIL policy on June 30, 2021, that permits college athletes “to engage in NIL activities that are consistent with the law of the state where the school is located,” and allows “[c]ollege athletes who attend a school in a state without a NIL law to engage in NIL activity without violating NCAA rules relating to NIL.”

The lack of uniformity in the state laws presents significant challenges for educational institutions, athletic associations, conferences, coaches, administrators, college athletes, and high school athletes attempting to select which university to attend. As one of many examples, the Athletic Coast Conference encompasses four states with disparate NIL state laws, two states with differing NIL executive orders, and four states with no NIL state legislation at all. The importance of having a uniform set of rules governing intercollegiate athletic competitions is well established, as is the notion that intercollegiate sports cannot effectively function with conflicting or inconsistent rules from state to state. Given the interdependence of the institutions across the country, the impact of a change in one state’s laws could have a ripple effect on schools and athletes in other states.

A uniform law across all states would prevent this instability and ensure that schools in each state are playing under the same general rules. Although existing state NIL laws share many similarities, there are significant differences among the laws that create inconsistent and conflicting NIL regulation across the states. Since the NCAA announced its interim NIL policy, athletes in states without NIL laws have been able to engage in a wide variety of NIL activity that is prohibited under most state laws. The patchwork of state laws has thus led to disparate NIL benefits and opportunities for college athletes dictated almost entirely by the state law (if any) that governs their institution. These differences may become even more magnified during the upcoming recruiting cycle and influence the enrollment decisions of prospective college athletes.

The Uniform College Athlete Name, Image, or Likeness Act will provide a uniform framework for state-level NIL regulation that will provide college athletes with robust protections for their NIL rights while also creating a level playing field for athletes and institutions across state lines. Specifically, the Act does the following:

- **Protects college athlete NIL rights** by prohibiting educational institutions, conferences, and athletic associations from preventing or restricting college athletes from receiving NIL compensation, entering into NIL agreements, engaging in NIL activity, obtaining the services of a NIL agent, or creating or participating in a group license. The Act also prohibits educational institutions, conferences, and

athletic associations from interfering with the formation or recognition of a collective representative to facilitate or provide representation to negotiate a group license.

- **Prohibits the use of logos/trademarks in NIL activity** by stating that a college athlete may not include in NIL activity an institution, conference, or athletic association name, trademark, service mark, logo, uniform design, or other identifier of athletic performance depicted or included in a media broadcast or related game footage. In addition, the Act states that a college athlete may not express or imply that an institution, conference, or athletic association endorses or is otherwise affiliated with the athlete's NIL activity.
- **Allows educational institutions to prohibit NIL activity** in certain circumstances. The Act states that an institution may only adopt policies to prevent college athletes from engaging in NIL activity that is illegal or, if the institution complies with the same policy, that the institution determines has an adverse impact on its reputation.
- **Clarifies institutional involvement in NIL activity** by stating that institutions, conferences, or athletic associations may provide education about NIL compensation, agreements, and activity to college athletes. In addition, institutions, conferences, or athletic associations may: assist a college athlete in evaluating the permissibility of NIL activities, including compliance with state law and institution, conference, and association rules; with the disclosure requirements included in the Act; and by providing a good-faith evaluation of a NIL agent or third party.
- **Creates a framework for college athlete disclosure to university athletic departments** for all NIL agreements that meet a certain threshold that is determined by the enacting state. Only college athletes who engage in NIL activity that, for example, amounts to more than \$300 for one NIL agreement or more than \$2,000 in aggregate in a calendar year must be disclosed. These thresholds, which are set by the enacting state, can ease the compliance burden on college athletes who only engage in small dollar NIL deals or who enter NIL agreements infrequently.
- **Harnesses existing state laws on athlete agent registration** for registration and regulation of NIL agents. Under the Act, all NIL agents are athlete agents and would be subject to the registration provisions of the Uniform Athlete Agents Act (2000), Revised Uniform Athlete Agents Act (2015), or other comparable state law governing registration of athlete agents.
- **Includes optional provisions on registration of third parties** that follows the same framework created by the Uniform Athlete Agents Act. A state that wishes to have oversight of third parties may enact these sections which would require third parties to register with the same agency in the state that oversees athlete agent registration.
- **Provides institutions and college athletes with a cause of action for damages** against a NIL agent or third party if the institution or athlete is adversely affected by an act or omission of the agent or third party in violation of the Act.

For further information about the Uniform College Athlete Name, Image, or Likeness Act, please contact ULC Legislative Counsel Libby Snyder at (312) 450-6619 or lsnyder@uniformlaws.org.