

DRAFT
FOR DISCUSSION ONLY

College Athlete Name, Image, and Likeness Issues Act

**[Proposed new name: College Student Athlete Name, Image,
and Likeness Act]**

Uniform Law Commission

April 14, 2021 Video Committee Meeting



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College Athlete Name, Image, and Likeness Issues Act

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College Athlete Name, Image, and Likeness Issues Act

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

2 **Section 1. Title**

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

4 [Proposed new name: College Student Athlete Name, Image, and Likeness Act.]

5 **Section 2. Definitions**

6 In this [act]:

7 (1) "Athletic association" means a national nonprofit collegiate athletics
8 governance association that:

9 (A) has member institutions located in at least 2 states;

10 (B) conducts athletic competition among its member institutions;

11 (C) sets playing rules for the competition;

12 (D) regulates the eligibility of players and institutions to compete; and

13 (E) determines an annual national champion in a sport in a competitive
14 division or subdivision either by conducting a national championship it wholly owns or
15 recognizing a collegiate national championship conducted by a United States national sport
16 governing body.

17 The term includes the National Collegiate Athletic Association, National Association of
18 Intercollegiate Athletics, and any successor organization.

19 (2) "Booster" means a representative of an institution's athletic program,
20 including an individual that:

21 (A) provides a donation to obtain a season ticket for a sport at the
22 institution;

23 (B) participates in, is a member of, or makes a financial contribution to an

1 organization promoting the institution’s athletic program;

2 (C) assists or is requested by the institution’s staff to assist in inducement;

3 (D) assists in providing a benefit to an athlete or the athlete’s family; or

4 (E) is otherwise involved in promoting the institution’s athletic program.

5 The term includes a person that has engaged in any of these activities in
6 the past.

7 (3) “College student athlete” means an individual who is eligible to attend an
8 institution and engages in, is eligible to engage in, or may be eligible in the future to engage in
9 an intercollegiate sport. The term does not include an individual in elementary or secondary
10 school from kindergarten to grade twelve or an individual permanently ineligible to participate in
11 a particular intercollegiate sport.

12 (4) “Conference” means a person that governs the athletic programs of a
13 collection of institutions from more than one state. The term includes an employee, agent, or
14 independent contractor of the person.

15 (5) “Group license” means an agreement in which the name, image, and likeness
16 of a specified minimum number of college student athletes is used.

17 (6) “Inducement” means an attempt to influence the decision of a college student
18 athlete to attend, continue attending, or transfer to an institution or conference.

19 (7) “Institution” means a public or private institution of higher education within
20 this state, including a community college, college, and university.

21 (8) “Intercollegiate sport” means a sport played at the collegiate level for which
22 eligibility requirements for participation by a college student athlete are established by an
23 athletic association. The term does not include intramural or club sports.

1 (9) “Name, image, and likeness” means the name, image, or likeness of a college
2 student athlete. The term includes the athlete’s nickname, signature, social media account, and
3 any other readily identifiable personal characteristic.

Commented [04/07/21#1]: Sticky Note: Seems odd using name, image and likeness to define name, image and likeness and why limit to “personal” characteristic when a social media account is not a personal characteristic.

4 (10) “Name, image and likeness activity” means licensing or other use of a name,
5 image, and likeness for a commercial purpose.

6 (11) “Name, image, and likeness agent” means an individual who directly or
7 indirectly recruits or solicits a college student athlete to enter into an agency contract for name,
8 image, and likeness compensation or offers, promises, attempts, or negotiates to obtain a name,
9 image, and likeness agreement.

Commented [04/07/21#2]: Sticky Note: But does not apply if SA initiates the contact with the agent?

10 (12) “Name, image, and likeness agreement” means an agreement under which a
11 college student athlete receives compensation for use of the athlete’s name, image, and likeness.

12 (13) “Name, image, and likeness compensation” means money or other thing of
13 value provided to a college student athlete by a third-party entity in exchange for use of the
14 athlete’s name, image, and likeness. The term does not include a scholarship, grant, fellowship,
15 tuition assistance, or other form of financial aid from the institution at which the athlete is
16 enrolled.

17 (14) “Person” means an individual, estate, business or nonprofit entity, public
18 corporation, government or governmental subdivision, agency, or instrumentality, or other legal
19 entity. The term includes an employee, agent, or independent contractor of the person.

20 (15) “Record” means information:

21 (A) inscribed on a tangible medium; or

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

1 (16) “State” means a state of the United States, the District of Columbia, Puerto
2 Rico, the United States Virgin Islands, or any other territory or possession subject to the
3 jurisdiction of the United States.

4 (17) “Student” means an individual who is enrolled at an institution.

5 (18) “Third-party entity” means a person, other than the institution attended by
6 the college student athlete, that offers, solicits, or enters into a name, image, and likeness
7 agreement. The term includes an employee, agent, or independent contractor of the person.

8 **Section 3. Scope**

9 (a) This [act] applies only to college student athletes and intercollegiate sports.

10 (b) This [act] does not apply to an individual participating in athletics at the high school,
11 youth, recreation, intramural, club, or similar level.

12 [(c)This [act] does not apply to a United States service academy or another institution
13 subject to federal regulation that conflicts with this [act].]

14 (d) This [act] does not affect or create an employment relationship between a
15 college student athlete and the athlete’s institution with respect to the athlete’s participation in an
16 intercollegiate sport.

Commented [LS3]: Don't think you want to use affect. That assumes there may be an employment relationship to be affected.

17 **Legislative Note:** Section 3(c) should be included in a state that has a United States service
18 academy or another institution subject to federal regulation that conflicts with this act.

19 20 **Section 4. Rulemaking Authority**

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

23 **Section 5. Name, Image, and Likeness Compensation; Limit on Athletic Association** 24 **and Institution**

25 (a) Except as provided in Section 6, a college student athlete may receive name, image,

1 and likeness compensation.

2 (b) Except as provided in Section 6, an athletic association, conference, or institution may
3 not:

4 (1) adopt or enforce a rule, requirement, standard, or other limitation that prevents
5 a college student athlete from receiving name, image, and likeness compensation or an
6 institution from participating in an intercollegiate sport because an athlete receives
7 compensation;

8 (2) consider name, image, and likeness compensation in determining an athlete's
9 eligibility for an athletic scholarship or the amount of the athlete's scholarship;

10 (3) enact or enforce a rule, requirement, standard, or other limitation, or engage in
11 conduct that prevents, an athlete from forming or recognizing, or interferes with the formation or
12 recognition of, a collective representative to facilitate a group license or provide representation
13 for a college student athlete to negotiate a group license.

14 (c) This section does not apply to the use of name, image, and likeness in the broadcast or
15 rebroadcast of an intercollegiate athletic event.

16 **Section 6. Restrictions on Name, Image, and Likeness Activity**

17 (a) A college student athlete may include in name, image, and likeness activity an
18 institution or conference's name, trademark, service mark, logo, uniform design, or other
19 identifier of athletic performance depicted or included in any form of media broadcast or related
20 game footage if the use is not likely to cause confusion about the affiliation, connection, or
21 association of the institution or conference to the activity or otherwise imply sponsorship or
22 endorsement by the institution or conference.

23 (b) Name, image, and likeness compensation, or offers, promises, or solicitations of

Commented [LS4]: This is way too broad. Only if state law provides protection. And (c) is far too limited to outline areas where they may not receive compensation.

1 compensation, must not be an inducement and must represent only consideration for use of
2 name, image, and likeness. A college student athlete may not receive compensation for
3 performance, participation, or service in an intercollegiate sport.

4 (c) A college student athlete may not make an express or implied endorsement on behalf
5 of an institution, conference, or athletic association for name, image, and likeness compensation
6 or as part of a name, image, and likeness activity.

7 (d) A college student athlete may not engage in a name, image, and likeness activity that
8 is illegal.

9 (e) An institution may prohibit name, image, and likeness activity that is determined by
10 the institution to be immoral, in conflict with the institution's values, unsafe, or to adversely
11 affect the reputation of the institution, if the institution does not engage in the same commercial
12 activity.

13 (f) An institution may prevent a college student athlete from engaging in a name, image,
14 and likeness activity when the athlete is engaged in an official team activity, including a
15 competition, practice, supervised workout, and community service that involves an athlete and is
16 at the direction of, or supervised by, a member of the institution's coaching staff.

17 **Comment**

18 Section 6(a) is intended to be consistent with federal intellectual property law.

19 **Section 7. Institution and Conference Involvement**

20 (a) An institution or conference may:

21 (1) assist a college student athlete:

22 (A) in evaluating the permissibility of name, image, and likeness activity,
23 including compliance with law and institution, conference, and athletic association rules;

Commented [04/02/21#5]: *Sticky Note:* First, this doesn't track with the definitions. NIL compensation and NIL activity are defined as stuff involving a "third party entity" which expressly does not include the institution. So I don't know what this means. Second, compensation is "anything of value" so if the Big Ten wants to have an awards ceremony for its "all big ten volleyball team", can they pay the SA's to come to Chicago? It would be an "implied endorsement", particularly if one of them said "its really special playing for the Big Ten."

Commented [04/02/21#6]: *Sticky Note:* travel? And I don't understand what this is about. It almost suggests that the player is dribbling down the court, stops, faces the camera, and says "I always eat at Burger King". But what if the kid is working with his social media account while on the plane traveling to an away game?

1 (B) with the disclosure requirements of Section 11; and
2 (C) in providing a good-faith evaluation of a name, image, and likeness
3 agent or a third-party entity;
4 (2) provide education to a college student athlete about name, image, and likeness
5 activity; and
6 (3) permit a college student athlete to use the institution's facilities for name,
7 image, and likeness activity under the same terms and conditions as other students at the
8 institution.

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

Commented [04/02/21#7]: Sticky Note: or association?

10 (1) provide name, image, and likeness compensation to a college student athlete;

11 (2) play a role in assisting, identifying, arranging, facilitating, developing,
12 operating, securing, or promoting name, image, and likeness activity;

13 (3) assist with selecting, arranging, or providing payment to a name, image, and
14 likeness agent;

15 (4) assist with selecting, arranging, or collecting payment from a third-party
16 entity;

17 (5) except as provided in Sections 6(a), permit a college student athlete to use the
18 intellectual property of the institution or conference in name, image, and likeness activity; or

19 (6) use, license, or otherwise convey a name, image, and likeness for a

20 commercial purpose except as provided in Section 5(c).

Commented [04/02/21#8]: Sticky Note: This is not workable and does not reflect existing law. University's rights are far broader than broadcast and rebroadcasting. What about programs at games? What about "Football's greatest moments/" What about charging for entry into a "Football Hall of Fame"?

21 Section 8. Disclosure by College Student Athlete and Institution

22 (a) A college student athlete shall disclose to the official designated under subsection (b)
23 by the institution at which the athlete is enrolled:

1 (1) the amount of name, image, and likeness compensation received by the athlete
2 greater than (\$500);

3 (2) a copy of each name, image, and likeness agreement entered into by the
4 athlete;

5 (3) for each agreement:

6 (A) the arrangements for providing compensation;

7 (B) the amount of compensation;

8 (C) a description of the relationship with the third-party entity;

9 (D) activities required by the agreement; and

10 (E) if a name, image, and likeness agent was used to arrange the

11 agreement, the name of and a description of the relationship with the agent.

12 (4) each offer, solicitation, or promise made to the athlete by a third-party entity;

13 (5) a copy of each agreement entered into by the athlete with a name, image, and
14 likeness agent; and

15 (6) other information relevant to the athlete's name, image, and likeness activity.

16 (b) An institution at which college student athletes are enrolled shall designate an official
17 to receive the information under subsection (a).

18 (c) A college student athlete shall provide the information required by subsection (a)
19 before engaging in name, image, and likeness activity and provide an update after a change in the
20 information not later than [10] days after the earlier of the change or the next scheduled athletic
21 event in which the student athlete may participate.

22 (d) An institution shall adopt policies that describe permissible and impermissible name,
23 image, and likeness activity, including prohibited activity under Section 6(e).

1 (e) An institution shall provide in a record a copy of the policies adopted under
2 subsection (d) to a college student athlete by the earlier of the time an offer of admission or
3 financial aid is made.

4 (f) When a name, image, and likeness agreement is entered into, the college student
5 athlete, third-party entity, and, if a name, image, and likeness agent assisted with the agreement,
6 the agent shall certify to the official designated in subsection (b) at the institution at which the
7 athlete is enrolled that the athlete does not have a side agreement or understanding with the third-
8 party entity.

Commented [LS9]: This is so broad as to have no meaning. An agreement of any kind has a number of understandings or "terms" that are perfectly appropriate. Or does this mean a separate agreement? I assume you may mean no terms or understanding not disclosed in the agreement.

9 **Comment**

10 A college student athlete would be required to disclose to a designated third party under
11 Section 8(a) if a third party is designated by the institution, conference, association, or pursuant
12 to federal law.

13 **Section 9. Name, Image, and Likeness Agent; Duties; Registration**

14 (a) A name, image, and likeness agent shall register as an athlete agent under [cite to
15 Uniform Athlete Agents Act or Revised Uniform Athlete Agents Act].

16 (b) An institution, conference, or athletic association may not prevent or deter a college
17 student athlete from obtaining representation by a name, image, and likeness agent.

18 (c) An agreement between a college student athlete and a name, image, and likeness
19 agent must have a fee arrangement that is consistent with norms for the agent's industry and
20 comply with [cite to Uniform Athlete Agents Act or Revised Uniform Athlete Agents Act].

21 **Legislative Note:** In subsections (a) and (c), cite to the state's version of the uniform act or other
22 comparable state law.

23 **Option 1**

24 **Section 10. Disclosure Requirements by Third-Party Entity**

Commented [LS10]: I am opposed to any third party registration. It is unenforceable and would create traps for the unwary. The burden should be on the SA.

25 (a) A third-party entity shall disclose to the official designated in Section 8(a) any name,
26
27

1 image, and likeness compensation provided to a college student athlete at the institution and
2 provide a copy of each name, image, and likeness agreement with an athlete at the institution.

3 (b) A name, image, and likeness agreement that has not been disclosed under subsection
4 (a) is voidable and is a violation of this [act].

Commented [LS11]: I doubt this is workable. What is the enforcement. And if the agreement is voidable it means the SA will get screwed?

5 **Option 2**

6 **Section 10. Third-Party Entity; Registration; Void Contract**

7 (a) Except as provided in subsection (b), a person must be registered under this act to be a
8 third-party entity.

9 (b) A person that provides less than \$[1,000] in name, image, and likeness compensation
10 in a calendar year does not need to register under this [act].

11 (c) A name, image, and likeness agreement with a person that is required to register under
12 this section but has not registered is voidable.

13 **End of Options**

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

15 (a) An applicant for registration as a third-party entity shall submit an application for
16 registration to the [Secretary of State] in a form prescribed by the [Secretary of State]. The
17 application must be signed by an authorized representative of the applicant under penalty of
18 perjury. The application must include:

- 19 (1) the address of the applicant's principal place of business;
- 20 (2) if registered in another state, the state of registration;
- 21 (3) the name and contact information of the applicant seeking registration;
- 22 (4) telephone number;
- 23 (5) means of communicating electronically, including an email address and, if

1 available, a website related to the entity;

2 (6) each social-media account with which the applicant is affiliated;

3 (7) a brief description of type of business and business activity of the applicant;

4 (8) name and address of each person that is a partner, member, officer, manager,
5 associate, or profit sharer or directly or indirectly holds an equity interest of at least [five]
6 percent in the entity;

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

10 (10) whether the applicant or an individual named under paragraph (8) has been
11 adjudicated as bankrupt or has declared bankruptcy;

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

15 (12) whether an application by the applicant or any individual named under
16 paragraph (8) to be a third-party entity in a state has been denied, suspended, abandoned, or not
17 renewed; and

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

20 (b) The [Secretary of State] may require a booster to comply with additional disclosure
21 requirements.

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

23 (a) Except as provided in subsection (b), the [Secretary of State] shall issue a certificate

1 of registration to an applicant for registration who complies with Section 11.

2 (b) The [Secretary of State] may refuse to issue a certificate of registration to an applicant
3 for registration under Section 11 if the [Secretary of State] determines that the applicant has
4 engaged in conduct that significantly adversely impacts the reputation of the college student
5 athlete or the athlete's institution, conference, or athletic association. In making this
6 determination, the [Secretary of State] should consider whether the applicant has:

7 (1) pleaded guilty or no contest to, has been convicted of, or has charges pending
8 for, a crime that would involve moral turpitude or be a felony if committed in this state;

9 (2) made a materially false, misleading, deceptive, or fraudulent representation in
10 the application or as a third-party entity;

11 (3) engaged in conduct prohibited by Section 15;

12 (4) engaged in conduct resulting in imposition of a sanction, suspension, or
13 declaration of ineligibility to participate in an intercollegiate event on a college student athlete or
14 a sanction on an institution; or

15 (5) engaged in conduct that adversely reflects on the applicant's credibility,
16 honesty, or integrity.

17 (c) A third-party entity registered under subsection (a) may apply to renew the
18 registration by submitting an application for renewal in a form prescribed by the [Secretary of
19 State]. The application must be signed by an authorized representative of the applicant under
20 penalty of perjury and include current information on all matters required in an original
21 application for registration.

22 **Section 13. Limitation, Suspension, Revocation, Nonrenewal of Third-Party**
23 **Registration**

1 The [Secretary of State] may limit, suspend, revoke, or refuse to renew a registration of a
2 third-person entity registered under Section 12(a) for a reason that would have justified refusal to
3 issue a certificate of registration under Section 12(b).

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

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

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

8 A third-party entity may not intentionally:

9 (1) give a college student athlete or, if the athlete is a minor, a parent or
10 [guardian] of the athlete, materially false or misleading information or make a materially false
11 promise or representation with the intent to influence the athlete, parent, or [guardian] to enter
12 into a name, image, and likeness agreement;

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

16 (3) [unless registered under this [act], initiate contact, directly or indirectly, with a
17 college student athlete or, if the athlete is a minor, a parent or [guardian] of the athlete, to recruit
18 or solicit the athlete, parent, or [guardian] to enter an name, image, and likeness agreement];

19 (4) [if required by Section 10, fail to register under Section 11 [or disclose under
20 Section 10]];

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

23 (6) predate or postdate a name, image, and likeness agreement.

1 **Legislative Note:** If a state used a different term to describe the relationship of guardian, the
2 bracketed term “guardian” should be changed to the term used in the state.

3
4 **Section 16. Civil Remedy**

5 (a) An institution or college student athlete has a cause of action for damages against a
6 name, image, and likeness agent or third-party entity if the institution or athlete is adversely
7 affected by an act or omission of the agent or entity in violation of this [act]. An institution or
8 athlete is adversely affected by an act or omission of the agent or entity only if, because of the
9 act or omission, the institution or athlete:

10 (1) is suspended or disqualified from participating in an intercollegiate sport; or

11 (2) suffers financial damage.

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

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

17 [(d) A violation of this [act] is an [unfair trade or deceptive practice] for the purpose of
18 [cite to state unfair trade practices or consumer protection law].]

19 **Legislative Note:** If a state has an unfair trade practices or consumer protection law that
20 provides for civil enforcement by a state agency or person, including a competitor, the
21 appropriate name for the practice and statutory citation to the applicable law should replace the
22 bracketed language in subsection (d). Some states prohibit an amendment by reference and may
23 require the unfair trade practices or consumer protection law to be amended. In that case, the
24 bill should contain an appropriate amendment of the specific law and subsection (d) should be
25 deleted. If a state does not have an unfair trade practices or consumer protection law, subsection
26 (d) should be deleted or amended to provide for civil enforcement by a state agency, an affected
27 member of the public, and a competitor.

28
29 **Section 17. Civil Penalty**

30 The [Secretary of State] may assess a civil penalty against a name, image, and likeness

Commented [04/02/21#12]: Sticky Note: Do secretaries of state have this authority? Do they need to follow any procedure? Due process?

1 agent or third-party entity not to exceed \$[50,000] for a violation of this [act].

2 **Section 18. Uniformity of Application and Construction**

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

5 **Section 19. Relation to Electronic Signatures in Global and National Commerce Act**

6 This [act] modifies, limits, or supersedes the Electronic Signatures in Global and National
7 Commerce Act, 15 U.S.C. Section 7001 et seq.[as amended], but does not modify, limit, or
8 supersede 15 U.S.C. Section 7001(c), or authorize electronic delivery of any of the notices
9 described in 15 U.S.C. Section 7003(b).

10 *Legislative Note: It is the intent of this act to incorporate future amendments to the cited federal*
11 *law. A state in which the constitution or other law does not permit incorporation of future*
12 *amendments when a federal statute is incorporated into state law should omit the phrase “, as*
13 *amended”. A state in which, in the absence of a legislative declaration, future amendments are*
14 *incorporated into state law also should omit the phrase.*

15
16 **[Section 20. Severability**

17 If a provision of this [act] or its application to a person or circumstance is held invalid,
18 the invalidity does not affect another provision or application that can be given effect without the
19 invalid provision.]

20 *Legislative Note: Include this section only if the state lacks a general severability statute*
21 *or a decision by the highest court of the state adopting a general rule of severability.*

22
23 **[Section 21. Repeals; Conforming Amendments**

24 (a) . . .

25 (b) . . .]

26 *Legislative Note: A state should examine its statutes to determine whether conforming*
27 *revisions are required by provisions of this act relating to { }. See Section { }.*

28
29 **Section 22. Effective Date**

1 This [act] takes effect