

DRAFT  
FOR DISCUSSION ONLY

**Uniform College Athlete Name, Image, ~~And~~and Likeness  
Issues Act**

**[Tentative new name: Uniform College Athlete Name,  
Image, or Likeness Act]**

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Uniform Law Commission

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~~May 13~~June 7, 2021 ~~Committee Video Meeting~~Informal Session

~~Clean Draft~~



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~~May 5~~June 1, 2021

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

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CARL H. LISMAN	Vermont, <i>President</i>

**Other Participants**

GABRIEL FELDMAN	Louisiana, <i>Reporter</i>
KARIN PAPARELLI	Tennessee, <i>American Bar Association</i> <i>Advisor</i>
STEVEN L. WILLBORN	Nebraska, <i>Style Liaison</i>
TIM SCHNABEL	Illinois, <i>Executive Director</i>

Copies of this act may be obtained from:

NATIONAL CONFERENCE OF COMMISSIONERS  
ON UNIFORM STATE LAWS  
111 N. Wabash Ave., Suite 1010  
Chicago, IL 60602  
(312) 450-6600  
[www.uniformlaws.org](http://www.uniformlaws.org)

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

**Table of Contents**

Section 1. Title.....	3
Section 2. Definitions.....	3
Section 3. Scope.....	6
Section 4. Rulemaking Authority .....	7
Section 5. Name, Image, or Likeness Compensation; Limit on Institution, Conference, and Athletic Association.....	7
Section 6. Limit on Name, Image, or Likeness Compensation and Activity.....	8
Section 7. Institution, Conference, and Athletic Association Involvement.....	10
Section 8. Required Disclosures .....	12
Section 9. Name, Image, or Likeness Agent; Duties; Registration .....	14
[Section 10. Third Party; Registration; Voidable Contract] .....	15
[Section 11. Registration as Third Party; Application].....	16
[Section 12. Third-Party Certificate of Registration] .....	18
[Section 13. Limitation, Suspension, Revocation, or Nonrenewal of Third-Party Registration] .	19
[Section 14. Temporary Registration of Third Party].....	20
[Section 15. Third Party Registration and Renewal Fees].....	20
Section 16. Third Party Prohibited Conduct.....	20
Section 17. Civil Remedy .....	21
Section 18. Civil Penalty.....	23
Section 19. Uniformity of Application and Construction.....	23
Section 20. Relation to Electronic Signatures in Global and National Commerce Act.....	23
[Section 21. Severability].....	23
Section 22. Effective Date .....	24

# Uniform College ~~Student~~ Athlete Name, Image, and Likeness Issues Act

## Prefatory Note

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. At the same time, there has been massive growth over the last several years in the opportunities for individuals to monetize the use of their name, image, or likeness. Although the traditional models of licensing name, image, or likeness through broadcast and media are still lucrative options for high-end celebrities and athletes, social media channels have created potential opportunities for a much broader set of individuals and created “social influencers” who are able to effectively reach mobile and social media audiences. Many of these influencers are college or high school students. Studies estimate that within five years—as key demographics continue to consume more of their content through social media channels rather than television—brands will spend between \$5 and \$10 billion globally on social influencer marketing per year.<sup>1</sup>

Despite the rapid escalation of the commercialization of intercollegiate sports and the increased opportunities for monetization of celebrity name, image, or likeness, the benefits provided to college athletes remain relatively limited and restricted by National College Athletic Association and other governing body rules. In an attempt to modernize the rules and provide greater rights for college athletes, 37 states have introduced or enacted legislation that would permit college athletes to received compensation from third parties for the use of their name, image, or likeness. Several members of Congress have also introduced federal name, image or likeness legislation. As of June 1, 2021, 18 states have enacted name, image, or likeness laws and 6 of those laws will take effect July 1, 2021, or sooner. Several additional states are expected to enact similar laws that will take effect in 2021. In April 2020, the National College Athletic Association (NCAA) Board of Governors approved a framework that would permit college athletes to receive compensation for their name, image, or likeness from third parties.

The lack of uniformity in the state laws presents significant challenges for the NCAA and other athletic associations. The importance of having a uniform set of rules governing intercollegiate athletic competitions is well established, as is the notion that intercollegiate athletic associations cannot effectively function as a national association of college sports if it is required to adopt conflicting or inconsistent rules from different states. The proliferation of inconsistent state laws also highlighted the risk of instability for the NCAA and other intercollegiate governing bodies. Even if the NCAA were to modify its rules to conform with the most permissive state law, a modification to an existing state law or the enactment of a new state law could dramatically change the name, image, or likeness rules by which institutions can compete and operate. 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 in other states and the entire NCAA or intercollegiate athletic association. A uniform law across all states would prevent this instability and ensure that schools in each state are playing under the same general rules.

The ULC agreed to draft a uniform act regarding college athlete name, image, or likeness compensation issues. The Drafting Committee met several times over a period of a years and

1 received valuable input from athlete agents, current and former college athletes, coaches, college  
2 athletic department administrators, representatives of the players associations of the National  
3 Football League, the National Hockey League, the NCAA, the National Federation of High  
4 Schools, the NAIA, and other stakeholders.

5 Many of the provisions in the Uniform College Athlete Name, Image, or Likeness Act  
6 are similar to provisions found in existing state name, image, or likeness laws. Like many of the  
7 individual state laws, the act creates a set of rules and restrictions to ensure that college athletes  
8 can benefit from the use of their name, image, or likeness without hurting their eligibility to  
9 compete as a college athlete and strikes a balance between providing more rights to college  
10 athletes while maintaining the integrity of intercollegiate sports. The Uniform Act provides (1) a  
11 mechanism for permitting college athletes to receive compensation for their NIL rights; (2)  
12 parameters on the types of activity athletes can engage in to protect institutions; (3) parameters  
13 on the compensation athletes can receive to protect college athletes and institutions from misuse  
14 or abuse of NIL deals; (4) limitations on institution, conference, and athletic association  
15 involvement; (5) a disclosure requirement for college athletes; (6) a mechanism for certifying  
16 and regulating agents; (7) a mechanism for certifying and regulating third parties who provide  
17 compensation to college athletes for the use of their name, image, or likeness; (8) a right of  
18 action for college athletes if their NIL rights are violated; (9) civil penalties for violations of the  
19 act.

# Uniform College Athlete Name, Image, and Likeness Issues Act

## Section 1. Title

This [act] may be cited as the Uniform College ~~Student~~ Athlete Name, Image, ~~and/or~~  
Likeness Act.

**Commented [LK1]:** What happened to “college student athlete”? From our early discussions, I thought it was important to continue the concept of the “student” athlete. When did we decide to delete the term in the title and throughout the act, and why?

## Section 2. Definitions

In this [act]:

(1) “Athletic association” means a national nonprofit ~~collegiate~~

~~athletics~~intercollegiate sport governance association that:

(A) conducts athletic competition among its member institutions;

(B) sets playing rules for the competition; and

(C) regulates the eligibility of players and institutions to compete; ~~and,~~

~~—— (2) “Booster” means a representative of an institution’s athletic program,  
including a person that:~~

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

~~(B) participates in, is a member of, or makes a financial contribution to the  
institution’s athletic program or to an organization promoting the institution’s athletic program;~~

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

~~(D) assists in providing a benefit, other than name, image and likeness  
compensation, to an athlete or the athlete’s family;~~

~~(E) arranged for or provided employment for enrolled student athletes; or~~

~~(F) is otherwise involved in promoting the institution’s athletic program.~~

~~The term includes a person that has engaged in any of these activities in~~

1 ~~the past.~~

2 (3) ~~“College student~~(2) ~~“College~~ athlete” means an individual who is eligible to

3 ~~attend~~be or is a student at an institution and engages in, is eligible to engage in, or may be

4 eligible in the future to engage in an intercollegiate sport. The term does not include an

5 individual in ~~elementary or secondary~~ school from kindergarten to grade ~~twelve~~12 or ~~for a~~

6 particular sport, an individual permanently ineligible to participate in ~~a particular intercollegiate~~

7 ~~sport for that~~ sport.

8 (4) “Conference” means a person, other than an athletic association, that governs

9 the ~~athletic~~intercollegiate sports programs of more than one institution.

10 (5) “Group license” means ~~an a name, image, or likeness~~ agreement ~~in which that~~

11 includes the name, image, ~~and~~or likeness of more than one college ~~student-athlete is used.~~

12 (6) “Inducement” means ~~an any~~ attempt to influence the decision of a college

13 ~~student~~ athlete to attend, continue attending, or transfer to an institution or conference.

14 (7) “Institution” means a public or private institution of higher education

15 ~~within~~ this state, including a community college, junior college, college, and university.

16 (8) “Intercollegiate sport” means a sport played at the collegiate-institutional

17 level for which eligibility requirements for participation by a college ~~student~~ athlete are

18 established by an athletic association. The term does not include a recreational, intramural, or

19 club ~~sports~~sport.

20 (9) “Name, image, ~~and likeness~~” means ~~the name, image, or likeness or any~~

21 ~~combination thereof of a college student athlete. The term-~~ means a word, phrase, symbol,

22 representation, or design, or any combination of the foregoing, that reasonably identifies a

23 college athlete and includes the college athlete’s nickname, signature, and social media account,

**Commented [LK2]:** See definition of “student”. Use of the term here avoids the need to define “attend” (or, later, enrolled”).

**Commented [LK3]:** The proposed language seems clearer than the current language.

**Commented [LK4]:** “Athletic” programs could include intramural sports, etc.

**Commented [LK5]:** “Collegiate” is a new term. Use of “institutional” here makes it clear that the sport is one played at the higher education level and does not introduce a new term.

**Commented [LK6]:** What “NIL” means, not just what it “includes”, should be identified.

1 ~~and any other symbol, name, or design that readily identifies the college athlete.~~

2 (109) “Name, image, ~~and, or~~ likeness activity” means licensing or other

3 ~~commercial~~ use of a name, image, ~~and/or~~ likeness.

**Commented [LK7]:** I thought we agreed to delete “commercial” because of NIL use by nonprofits as well as for- profits.

4 (110) “Name, image, ~~and/or~~ likeness agent” means ~~an individual who~~ a person,

5 ~~other than a college athlete but including a marketing company or the like, that:~~

**Commented [LK8]:** This addresses a problem that recently was raised by another Commissioner.

6 (A) directly or indirectly recruits or solicits a college ~~student~~ athlete ~~or~~

7 ~~other person with the athlete’s consent,~~ or, if the athlete is a minor, ~~recruits or solicits~~ the

**Commented [LK9]:** This covers the family member or other person whom the athlete might permit, for example, to obtain part or all of the compensation the athlete could obtain.

8 ~~college student~~ athlete’s parent or ~~[guardian,]~~ to enter into an agency contract ~~for~~ ~~or for the agent~~

9 ~~to obtain name, image, or likeness compensation or a~~ name, image, ~~and/or~~ likeness

**Commented [LK10]:** “Obtaining” emphasizes that this is an agency contract in which the agent agrees to try to obtain something for the person. In addition, obtaining “compensation” is a separate concept from obtaining an NIL “agreement”.

10 ~~compensation agreement;~~

11 (B) enters into an agency contract with ~~a college student~~ ~~an athlete for~~

12 ~~name, image, and likeness compensation, or, if the athlete is a minor, the athlete’s parent or~~

13 ~~[guardian]~~ a person included in paragraph (a); or

14 (C) ~~directly or indirectly~~ offers, promises, attempts, or negotiates to obtain

15 ~~name, image, or likeness compensation or~~ a name, image, ~~and/or~~ likeness agreement.

16 (111) “Name, image, ~~and/or~~ likeness agreement” means an agreement under

17 which a third party provides name, image, ~~and/or~~ likeness compensation.

18 (112) “Name, image, ~~and/or~~ likeness compensation” means money or other thing

19 of value provided by a third party in exchange for use of a college ~~student~~ athlete’s name, image,

20 ~~and/or~~ likeness.

21 (113) “Person” means an individual, estate, business or nonprofit entity, public

22 corporation, government or governmental subdivision, agency, or instrumentality, or other legal

23 entity.



(1514) “Record” means information:

(A) inscribed on a tangible medium; or

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

(1615) “State” means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any other territory or possession subject to the jurisdiction of the United States.

(1716) “Student” means an individual ~~who is~~ enrolled at an institution under the rules of ~~that~~the institution.

(1817) “Third party” means a person, other than ~~the~~an institution ~~attended by the college student athlete~~, that offers, solicits, or enters into a name, image, ~~and~~or likeness agreement ~~agreement~~ or offers or provides name, image, ~~and~~or likeness compensation. ~~The~~

*Legislative Note: If a state uses a different term includes an employee, agent, or independent contractor to describe the relationship of guardian, the person. The bracketed term does not include an entity designated by “guardian” in paragraph (10) should be changed to the institution, conference, or association under Section 8(a) term used.*

### Comment

The definition of name, image, ~~and~~or likeness compensation does not include a scholarship, grant, fellowship, tuition assistance, or other forms of financial aid related to educational expenses.

### Section 3. Scope

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

(b) This [act] does not apply to an individual participating in ~~athletics at the sport in~~ grades kindergarten to grade ~~twelve~~12 or at a youth preparatory school, recreation, intramural, club, or similar level.

[(c) This [act] does not apply to a United States service academy or ~~another~~other

1 institution subject to federal regulation that conflicts with this [act].]

2 (d) This [act] does not create an employment relationship between a college ~~student~~  
3 athlete and the athlete's institution with respect to the athlete's participation in an intercollegiate  
4 sport, ~~nor can it. This [act] may not~~ be used as a factor in determining whether ~~such an~~  
5 employment relationship exists.

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

#### 8 9 **Section 4. Rulemaking Authority**

10 The [agency responsible for implementing and administering the Uniform Athlete Agents  
11 Act, Revised Uniform Athlete Agents Act, or ~~other~~ comparable law, or other appropriate agency]  
12 ~~shall implement and administer this [act] and~~ shall administer this [ac] and [may adopt rules  
13 under [cite to state administrative procedure act] to ~~do so. implement and administer this [act] do~~  
14 so.

**Commented [LK11]:** There should be an explicit grant of authority to the agency, rather than relying indirectly on the authority for the agency to adopt regulations.

#### 15 **Section 5. Name, Image, ~~and~~ Likeness Compensation; Limit on Institution,** 16 **Conference, and Athletic Association ~~and Institution~~**

17 (a) Except as provided in Sections 6 and 7 or otherwise proscribed by [state] law, Section  
18 6, a college student athlete may receive name, image, and/or likeness compensation to the extent  
19 permitted under other law of this state. This [act] does not diminish, enlarge, or modify the right  
20 of publicity or related rights provided by other law of this state.

21 (b) Except as provided in Section 6, an institution, conference, or athletic association,  
22 ~~conference, or institution~~ may not:

**Commented [LK12]:** We have tried several versions of this subsection, and each time, at least from my perspective, it has led to more confusion than clarity. I think it is inevitable that our Act may diminish, enlarge, or modify, the right of publicity, and we therefore should delete this subsection.

23 (1) ~~adopt or enforce a rule, requirement, standard, or other limitation that prevents~~  
24 ~~or restricts~~ prevent or restrict within this state;

**Commented [LK13]:** Will this help avoid a dormant Commerce Clause constitutional argument?

25 (A) a college ~~student~~ athlete from receiving name, image, ~~and/or~~ likeness

1 compensation, entering into a name, image ~~and, or~~ likeness agreement, engaging in name, image  
2 ~~and, or~~ likeness activity, or ~~from~~ obtaining the services of a name, image ~~and, or~~ likeness agent;  
3 ~~or~~;

4 (B) a college athlete from creating or participating in a group license or  
5 interfere with the formation or recognition of a collective representative to facilitate or provide  
6 representation to negotiate a group license; or

7 (C) an institution or a college ~~student~~-athlete from participating in an  
8 intercollegiate sport because an athlete receives name, image, ~~and or~~ likeness compensation,  
9 enters into a name, image ~~and or~~ likeness agreement, engages in name, image, ~~and or~~ likeness  
10 activity, or obtains the services of a name, image ~~and, or~~ likeness agent;

Commented [LK14]: "Any" college athlete at the institution, or this ("the") athlete?

11 (2) consider name, image, ~~and or~~ likeness compensation in determining a college  
12 ~~student~~-athlete's eligibility for or amount of an athletic scholarship ~~or the amount of the athlete's~~  
13 ~~athletic scholarship~~;

14 ~~———— (3) enact or enforce a rule, requirement, standard, or other limitation, or engage in~~  
15 ~~conduct that prevents or restricts college student athlete from creating or participating in a group~~  
16 ~~license or interferes with the formation or recognition of, a collective representative to facilitate a~~  
17 ~~group license or provide representation for an athlete to negotiate a group license.~~

#### 18 ~~Comment~~

19 ~~———— Section 5(a) is not intended to diminish, enlarge, or otherwise modify the right of~~  
20 ~~publicity or related rights provided by individual states.~~

### 21 **Section 6. ~~Restrictions~~Limit on Name, Image, ~~and or~~ Likeness Compensation and**

#### 22 **Activity**

23 (a) A college ~~student~~-athlete only may ~~only~~ include in name, image, ~~and or~~ likeness  
24 activity an institution, conference, or ~~associations~~athletic association name, trademark, service  
25

Commented [LK15]: Moved back here for emphasis, so the reader realizes at the outset that this use is limited.

mark, logo, uniform design, or other identifier of athletic performance depicted or included in  
any form of a media broadcast or related game footage only if the use is not likely to cause  
confusion about the affiliation, connection, or association of the institution, conference, or  
association to the activity or otherwise imply sponsorship or endorsement by the institution,  
conference or association, not likely to cause confusion about the affiliation, connection, or  
relationship with the activity, or imply sponsorship or endorsement of the activity by, the  
institution, conference or association, and is otherwise consistent with, permitted under  
intellectual property law.

**Commented [LK16]:** Why was this deleted? It would seem to be helpful to the reader to have several common examples available.

(b) Name, image, and/or likeness compensation, or offers, promises, or solicitations  
offer, promise, or solicitation of compensation, must:

(1) may not be an inducement;

(2) must represent only consideration for use of name, image, and/or likeness; and

must

(3) may not include compensation for performance, participation, or service in an  
intercollegiate sport.

(c) A college ~~student~~ athlete may not express or imply that an institution, conference, or  
athletic association endorses or is otherwise affiliated with the athlete's name, image, and/or  
likeness activity.

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

~~—(e) An institution may adopt and enforce a policy, or otherwise determine after~~  
reasonable notice to the affected college athlete or athletes, to prohibit name, image, and/or  
likeness activity by a college athlete or athletes that is illegal or that ~~is determined by~~ the

**Commented [LK17]:** To be parallel with the next subsection.

**Commented [LK18]:** The earlier version did not require a "policy", simply a "determination". I am concerned about game-playing here – namely, if the activity is not specifically included in the policy, then it is not prohibited. On the other hand, I can understand the concern about a determination being made without reasonable notice to the affected athlete or athletes. The proposed language therefore includes a "reasonable notice" requirement before a determination may be made outside a policy.

1 institution ~~to be immoral, in conflict with the institution's values, unsafe, or determines~~ is  
2 immoral, in conflict with its values, unsafe, or has or will ~~to adversely affect~~ have an adverse  
3 impact on the reputation of the institution, if the institution does not engage in the same  
4 ~~commercial~~ activity. An institution ~~making such a determination that prohibits name, image, and~~  
5 likeness activity either through a policy adopted under this subsection or by a separate  
6 determination shall disclose in a record to the ~~college student~~ athlete ~~or and, if the athlete has one,~~  
7 to the athlete's name, image, ~~and/or~~ likeness agent the prohibition and the underlying  
8 basis for ~~that determination~~ the prohibition.

Commented [LK19]: Why what's this deleted?

Commented [LK20]: Added so the institution won't simply say the basis for the determination was the policy, although that was not the "underlying" basis.

9 (f) An institution may adopt and enforce rules of conduct relating to name, image, ~~and/or~~  
10 likeness activity that apply when the college athlete is engaged in an official team activity,  
11 including a competition, practice, supervised workout, community service, or other activity ~~that~~  
12 ~~involves an athlete and is,~~ at the direction of, or supervised by, a member of the institution's  
13 coaching or ~~athletic department~~ intercollegiate sport staff.

14 (g) An institution, conference, or athletic association may require a college ~~student~~  
15 athlete to waive ~~any~~ name, image, or likeness ~~rights~~ right associated with ~~the~~ promotion, display,  
16 broadcast, or rebroadcast of an intercollegiate sport.

#### Comment

17  
18  
19 ~~Section~~ Sections 6(a) and 6(c) are intended to be consistent with ~~federal~~ intellectual  
20 property law.

21  
22 Section 6(ed) is intended to prevent an institution from prohibiting a college athlete from  
23 engaging in name, image, or likeness activity with a third party or a category of third parties  
24 (e.g., sports gambling) if the institution engages in any sponsorship or endorsement activity with  
25 that third party or category of third parties.

#### Section 7. Institution, Conference, and Athletic Association Involvement

26  
27  
28 (a) An institution ~~shall adopt a policy describing permissible and impermissible name,~~

1 ~~image, and likeness activity.~~

2 ~~(b) An institution~~, conference or athletic association may:

3 (1) assist a college ~~student~~-athlete:

4 (A) in evaluating the permissibility of name, image, ~~and~~or likeness  
5 activity, including compliance with law and institution, conference, and ~~athletic~~-association  
6 rules;

7 (B) with the disclosure requirements of Section ~~44~~8; and

8 (C) in providing a good-faith evaluation of a name, image, ~~and~~or likeness  
9 agent or ~~a~~-third party;

10 (2) ~~provide education to educate~~ a college ~~student~~-athlete about name, image,  
11 ~~and~~or likeness compensation, agreements, and activity; and

12 (3) permit a college ~~student~~-athlete to use the institution's facilities for name,  
13 image, ~~and~~or likeness activity under the same terms and conditions as other students at the  
14 institution.

15 (b) Except as provided in subsection (a), an institution or conference ~~or~~and its respective  
16 employees, agents, and independent contractors ~~shall~~may not:

17 (1) provide ~~name, image, and likeness~~ compensation to a college ~~student~~-athlete  
18 for the athlete's name, image, or likeness;

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

21 (3) assist with selecting, arranging, or providing payment to a name, image, ~~and~~or  
22 likeness agent;

23 (4) assist with selecting, arranging, or collecting payment from a third party;

(5) except as provided in Section 6(a), permit a college ~~student~~-athlete to use the intellectual property of the institution, conference or athletic association in name, image, ~~and~~or likeness activity; or

(6) use, license, or otherwise convey ~~a~~ name, image, ~~and~~or likeness for a commercial purpose except as provided in Section ~~5(e)(6)(ef)~~ or ~~otherwise~~ permitted by ~~law~~ other ~~than this [act]]law~~.

### Section 8. Required Disclosures

(a) A college ~~student~~-athlete shall ~~disclose~~provide to the ~~official individual or office~~person designated under subsection (b) ~~by the institution at which the athlete is enrolled~~;

**Commented [LK21]:** Could be a person outside the institution, or a person who is not an individual.

(1) a copy in a record of ~~any~~a name, image, ~~and~~or likeness ~~agreements~~agreement that provides name, image, ~~and~~or likeness compensation ~~is greater~~to the athlete in an amount more greater than \$[300], or, if ~~no such copy exists~~a record of the agreement does not exist or there was no agreement, the amount of name, image, ~~and~~or likeness compensation provided ~~or to be provided~~ if ~~greater~~the amount is more than ~~[\$[300]]~~;

(2) ~~a copy~~the amount of ~~all~~ name, image, ~~and~~or likeness ~~agreements~~compensation ~~provided if to the athlete after and when~~ the aggregate amount ~~of name, image, and likeness compensation exceeds~~ provided is more than \$[2,000] in a calendar year, ~~or, if no such copies exist, the amount and a copy in a record of each~~ name, image, ~~and~~or likeness ~~compensation provided in excess~~agreement providing all or any part of that compensation if a record of ~~[\$2,000] in a calendar year~~the agreement exists;

**Commented [LK22]:** We do you mean "after", don't we?

(3) for each agreement or amount that must be ~~disclosed~~provided:

(A) ~~the each~~ arrangementsarrangement for providing compensation;

**Commented [LK23]:** There maybe more than one arrangement.

(B) the amount of compensation;

1 (C) ~~the identity of and~~ a description of the relationship with the third  
2 party;

3 (D) ~~activities~~the activity required ~~by the agreement~~or authorized; and

4 (E) if the athlete is represented by a name, image, ~~and~~or likeness agent  
5 ~~was used to arrange the agreement~~, the name of and a description of the ~~relationship~~agreement  
6 with the agent.

7 (4) each offer, solicitation, or promise made to the athlete by a third party that has  
8 not previously been disclosed under this Section;

**Commented [LK24]:** Do we mean to require the submission of something that was submitted previously?

9 (5) a copy of each agreement entered into by the athlete with a name, image,  
10 ~~and~~or likeness agent that has not previously been disclosed under this Section; and

**Commented [LK25]:** See prior comment.

11 (6) other information ~~deemed~~required by regulation by the [agency designated in  
12 ~~section~~Section 4 ~~to be relevant to the athlete's name, image, and likeness activity.~~].

**Commented [LK26]:** Will require the agency to go through a formal APA process to require more information.

13 (b) An institution ~~at which college student athletes are enrolled~~ shall designate ~~an~~  
14 ~~official~~individual or office a person to receive the information required by subsection (a).

15 (c) A college ~~student~~ athlete shall provide:

16 (1) the information required by subsection (a) before:

17 (A) receiving name, image, or likeness compensation required to be  
18 disclosed; or

19 (B) engaging in a name, image, and ~~and~~or likeness activity ~~and~~  
20 provided required to be disclosed; and

21 (2) an update after a change in the information not later than [10] days after the  
22 earlier of the change or the next scheduled ~~athletic~~intercollegiate sport event in which the  
23 student athlete may participate.



(d) If an institution, conference, or athletic association, either voluntarily or as required by this [act], adopts a ~~policy, rule, requirement, standard, or other~~ limitation affecting a college ~~student~~ athlete's ability to engage in ~~conduct affecting the athlete's~~ name, image, ~~and~~ or likeness ~~activity~~, the institution shall provide in a record a copy of ~~each such policy, rule, requirement, standard, or other~~ the limitation to each ~~of its athletes~~ athlete by the time an offer of admission or financial aid is made, whichever is earlier, or, if the ~~policy, rule, requirement, standard, or other~~ limitation is not adopted until after the athlete is a student at the institution, ~~then~~ as soon as practicable after adoption.

(e) When a name, image, ~~and~~ or likeness agreement is entered into, ~~the college student athlete, or, if the athlete is a minor, the parent or [guardian] of the minor entity, third party~~ each party to the agreement, and, if ~~a~~ one or more name, image, ~~and~~ or likeness agents assisted with the agreement, ~~the~~ each agent shall certify to the ~~official individual or office~~ person designated ~~in~~ under subsection (b) ~~at by the institution at which the athlete is enrolled~~ that the agreement contains the sole, complete, and final agreement between the parties.

**Commented [LK27]:** Added in the event there is more than one agent.

#### Comment

A college ~~student~~ athlete would be required to disclose to a designated third party under Section 8(a) if a third party is designated under subsection (b) by the institution, conference, association, or pursuant to federal law. Disclosures made under this section must be made available to the ~~Secretary of State or designated~~ [agency designated in Section 4] or other state agency or representative for inspection or review.

#### Section 9. Name, Image, ~~and~~ or Likeness Agent; ~~Duties;~~ and Registration

(a) A name, image, and ~~or~~ or likeness agent shall ~~be registered~~ register in this state as an athlete agent under [cite to Uniform Athlete Agents Act, ~~or~~ Revised Uniform Athlete Agents Act, or other comparable law] before engaging in conduct under this [act].

(b) An institution, conference, or athletic association may not prevent or ~~deter~~ restrict a

college ~~student~~-athlete from obtaining ~~representation by the services of~~ a name, image, ~~and or~~ likeness agent.

~~[(c) ]~~ ~~[A~~ An agreement between a college athlete and a name, image, ~~and or~~ likeness agent must have a fee arrangement ~~that is~~ consistent with ~~norms for the customary~~ practice of the agent's industry and otherwise ~~comply~~ be in compliance with [cite to Uniform Athlete Agents Act, ~~or~~ Revised Uniform Athlete Agents Act, or other comparable law]].

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

#### **[Section 10. Third Party; Registration and Disclosure; Voidable Contract**

(a) A person ~~that shall register as a third party if in a calendar year the person~~ provides ~~or~~ agrees to provide:

(1) to a college athlete in this state more than \$[300] in name, image, or compensation in or separate from a ~~for an individual a~~ name, image, ~~and or~~ likeness agreement ~~or;~~

(2) to college athletes in this state more than \$[2,000] in the aggregate ~~in a~~ calendar year to college athletes in name, image, or likeness compensation in or separate from ~~for~~ name, image, and ~~(a)-~~ likeness agreements ~~is required to register under this act as a third party.~~

(b) A third party shall ~~disclose~~ provide to the ~~official individual or office person~~ designated ~~in under~~ section 8(b) the name, image, ~~and or~~ likeness compensation and a record of each agreements ~~as specified described~~ in subsection ~~(a-)~~ for which a record exists.

(c) A college ~~student~~-athlete or, if the athlete is a minor, the parent or [guardian] of the athlete, may void a name image ~~and or~~ likeness agreement ~~that was required to be registered or disclosed by with~~ a third party ~~under this section but was if the party failed to comply with~~ subsection (a) or (b).

**Commented [LK28]:** I thought we agreed not to include this. That may be why the subsection is bracketed. But we do want to include the "in compliance" language, don't we?

**Commented [LK29]:** Do been anywhere or in the state?

**Commented [LK30]:** See prior comment.

***Legislative Note:** A state should omit Sections 10 through 15 if it decides not properly registered or disclosed to require registration of third parties.*

**[Section 11. Application for Registration as Third partyParty; Application]**

(a) ~~An applicant~~A person applying for registration as a third party shall submit an application for registration to the ~~[insert name of]~~agency designated in ~~section~~Section 4] in a form prescribed by ~~the~~that ~~[insert name of]~~agency ~~designated in section~~Section 4]. The application must be signed by an authorized representative of the applicant under penalty of perjury and ~~must~~include:

~~\_\_\_\_\_ (1) the name and contact information of the applicant, including telephone number, email address, and, if available, a website;~~

~~\_\_\_\_\_ (2) the address of the applicant's principal place of business;~~

~~\_\_\_\_\_ (2) if registered in another state, the state of registration;~~

~~\_\_\_\_\_ (3) the name and contact information of the applicant seeking registration;~~

~~\_\_\_\_\_ (4) telephone number;~~

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

~~\_\_\_\_\_ (6) (3) each social-media account with which the applicant is affiliated;~~

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

~~(8) the~~ name and address of each person that is a partner, member, officer, manager, associate, or ~~profit share~~entitled to share profits, or directly or indirectly holds an equity interest of at least [five] percent in the ~~entity~~applicant;

~~(9) whether the applicant or a person named under paragraph (8)~~ has been a

defendant ~~or respondent in a criminal proceeding~~ or ~~respondent in a civil or criminal~~ proceeding  
and, if so, the date and a brief explanation of each proceeding;

(107) whether the applicant or a person named under paragraph (86) has been  
adjudicated as bankrupt or has declared bankruptcy;

(118) whether conduct of the applicant or a person named under paragraph (86)  
has caused a college ~~student~~ athlete to be sanctioned, suspended, or declared ineligible to  
participate in an intercollegiate sport or an institution to be sanctioned;

(129) whether an application ~~to be a third party or its equivalent~~ by the applicant  
or ~~any~~ person named under paragraph (8) ~~to be a third party in a state~~ (6) has been denied,  
suspended, abandoned, or not renewed ~~in another state; and~~

(1310) each state in which the applicant is currently registered or has applied to be  
registered as a third party ~~or its equivalent; and~~

(14) ~~any~~ (11) other information ~~deemed required~~ by regulation promulgated by the  
~~[the [insert name of] agency designated in Section 4] to be relevant to applications by ]~~.

~~(b) Instead of proceeding under subsection (a), a~~ ~~A person registered as a third party; or~~  
~~its equivalent in another state may apply for registration as a third party in this state by~~  
~~submitting under penalty of perjury to the [insert name of agency designated in Section 4]:~~

~~(b1) a copy of the application for registration in the other state and any other~~  
~~information required by subsection (a) not required to be included in the other state's application;~~

~~(2) a statement that identifies any material change in the information on the other~~  
~~state's application or verifies there is no material change in the that information, signed under~~  
~~penalty of perjury; and~~

~~(3) a copy of the certificate of registration from the other state.~~

1 (c) The ~~[insert name of agency designated in section~~under Section 4] ~~may require a~~  
2 ~~booster~~shall issue a certificate of registration to ~~comply with additional disclosure~~an individual  
3 who applies for registration under subsection (b) if ~~the~~that ~~[insert name of agency designated~~  
4 ~~under Section 4]~~ determines:  
5 (1) the application and registration requirements ~~of the other state are~~  
6 substantially similar to or more restrictive than ~~those of this [act]; and~~  
7 (2) the registration has not been revoked or suspended and no action involving the  
8 ~~individual's~~person's conduct as a third party ~~or its equivalent~~ is pending against the person or  
9 the person's registration in any state.  
10 (d) For purposes of implementing subsection (c), the ~~[insert name of agency designated in~~  
11 ~~Section 4]~~ shall:  
12 (1) cooperate with agencies in other states ~~which that~~ register third parties ~~or their~~  
13 ~~equivalent~~ to develop a common registration form and determine which states have laws that are  
14 substantially similar or more restrictive than this [act]; and  
15 (2) exchange information, including information related to actions taken against  
16 ~~third parties or their equivalent or against their registrations, with those agencies.]~~  
17 **[Section 12. Third-Party Certificate of Registration**  
18 (a) Except as provided in subsection (b), the ~~[insert name of~~agency designated in  
19 ~~section~~Section 4] shall issue a certificate of registration to ~~an applicant~~a person that applies for  
20 registration ~~who~~under and complies with Section 11.  
21 (b) The ~~[insert name of~~agency designated in ~~section~~Section 4] may refuse to issue a  
22 certificate of registration to an applicant ~~for registration~~ under Section 11 if ~~the~~that ~~[insert name~~  
23 ~~of agency designated in Section 4]~~ determines that the applicant has engaged in conduct that

1 ~~significantly adversely impacts~~has a significant adverse impact on the reputation of ~~the~~a college  
2 ~~student~~ athlete or the athlete's institution, conference, or athletic association. In making ~~this~~the  
3 determination, the ~~[agency]~~may insert name of agency designated in Section 4 ~~shall~~ consider  
4 whether the applicant has:

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

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

10 (3) engaged in conduct prohibited by Section ~~4516~~;

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

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

16 (c) A third party registered under subsection (a) may apply to renew ~~the~~its registration by  
17 submitting an application for renewal in a form prescribed by the insert name of agency  
18 designated in ~~section~~Section 4]. The application must be signed by an authorized representative  
19 of the applicant under penalty of perjury and include current information on all matters required  
20 in an original application for registration ~~-.]~~

21 **[Section 13. Limitation, Suspension, Revocation, or Nonrenewal of Third-Party**  
22 **Registration**

23 The insert name of agency designated in ~~section~~Section 4] may ~~limit~~, suspend, revoke,

1 or refuse to renew ~~a the~~ registration of a third ~~person entity party registered under Section 12(a)~~  
2 for a reason that would ~~have justified~~ justify refusal to issue a certificate of registration under  
3 Section 12(b-).]

#### 4 **[Section 14. Temporary Registration of Third Party**

5 The ~~[insert name of]~~ agency designated in ~~section~~ Section 4] may issue a temporary  
6 certificate of registration as a third party ~~while~~ for the period an application for registration or  
7 renewal of registration is pending-.]

**Commented [LK31]:** This clarifies that the temporary license may be issued, not when the application is pending, but for the period it is pending.

#### 8 **[Section 15. Third Party Registration and Renewal Fees**

**Commented [LK32]:** This Section probably should be relocated as Section 13, with Sections 13 and 14 being renumbered as 14 and 15.

9 An application for registration or renewal of registration as a third party must be  
10 accompanied by a fee of established by regulation promulgated by the [agency designated in  
11 Section 4]:

12 (1) \$[200] for an initial application for registration;

13 (2) \$[100] for registration based on a certificate of registration issued by another state;

14 (3) \$[50] for an application for renewal of registration; or

15 (4) \$[25] for renewal of registration based on a renewal of registration in another state. ]

**Commented [LK33]:** This probably will be more palatable to the agency designated to administer our Act.

#### 16 **Section 16. Third Party Prohibited Conduct**

17 A third party may not intentionally:

18 (1) give materially false or misleading information or make a materially false  
19 promise or representation with the intent to influence ~~the a college student athlete, parent, or~~  
20 ~~[guardian] or another~~ any person to exercise or transfer a college athlete's non-exclusive use of  
21 the athlete's person to enter into a name, image, and/or likeness, or the exclusive such authority  
22 that has not already been transferred agreement, receive name, image, and/or likeness  
23 compensation, or engage in name, image, and/or likeness activity;

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

(3) ~~unless registered under this [act];~~initiate contact, directly or indirectly, with a any person ~~college student athlete or, if the athlete is a minor, a parent or [guardian] of the athlete,~~ to recruit or solicit ~~the athlete, parent, or [guardian]~~ that person to exercise or transfer a college athlete's non-exclusive use of the athlete's name, image, or likeness, or the exclusive such authority that has not already been transferred ~~enter a name, image, and/or likeness agreement, receive name, image, and/or likeness compensation, or engage in name, image, and/or likeness activity];~~ or

(4) ~~predate or postdate a name, image, or likeness agreement;~~

~~[(5) fail to ~~register~~apply for registration register or disclose under Section 11];~~ or

~~(5) provide materially false or misleading information in an application for registration or renewal of registration-~~for disclosure]; or in a disclosure.]

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

**Legislative Note:** ~~If a state used a different term to describe the relationship of guardian, should include the bracketed term "guardian" should be changed to the term used~~ language in the state paragraph (3) and paragraphs (5) and (6) only if they include the optional Sections 11 through 15 that provide for third-party registration.

#### **Section ~~16~~17. Civil Remedyies**

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



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

(2) suffers financial damage.

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

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

(d) In addition to any other civil remedy authorized by this [act] or law other than this [act], the [Attorney General] [and] [the agency designated in Section 4] may, pursuant to the [cite to the state administrative procedures act, assess a civil penalty against a name, image, or likeness agent or third party not to exceed \$[50,000] for a violation of this [act], and may seek injunctive or other appropriate relief.

(de) A violation of this [act] is a violation of ~~and enforceable under the [cite to state consumer protection, or unfair trade or deceptive practice law] and the enforcement provisions of those laws]~~ apply to a violation of this [act].]

**Legislative Note:** ~~If a~~ A state may authorize the Attorney General or the agency designated in Section 4, or both, to enforce subsection (d).

*A state that permits amendment by reference and has an unfair trade ~~practices~~practice or consumer protection law that provides for civil enforcement by a state agency or person, including a competitor, ~~the appropriate name for the practice and statutory citation to the applicable law~~ should replace the bracketed language in subsection (d). Some states ~~prohibit~~with the name of the state agency or person. A state that has an amendment by reference ~~and may require the unfair trade practices~~practice or consumer protection law ~~to be amended. In that case, the bill should contain an appropriate-but does not permit~~ amendment of the ~~specific law and by reference should delete~~ subsection (d) ~~should be deleted. If a~~and make appropriate amendments to its unfair trade practice or consumer protection law. A state that does not have an unfair trade ~~practices~~practice or consumer protection law ~~should delete~~ subsection (d) ~~should be deleted or amended to provide~~and substitute language providing for civil enforcement by a state agency, ~~an~~ affected member of the public, ~~and/or~~ a competitor.*

**Commented [LK34]:** Why was this deleted? Don't we need a formal process for imposing this civil penalty?

**Commented [LK35]:** This subsection has been moved from Section 18 and placed here because this is another civil remedy. In addition, the authority to seek injunctive or other appropriate relief has been added.

**Commented [LK36]:** Moved from the Comment to Section 18.

1 A state may authorize the Attorney General or another state official to enforce this  
2 Section, or the agency designated in Section 4, or both.

3  
4 **Section 1718. Civil Penalty**

5 The ~~[Attorney General or]~~ [and] [insert name of the agency designated in section  
6 4, or both] may, pursuant to ~~[cite to the state administrative procedures act]~~ assess a civil penalty  
7 against a name, image, and or likeness agent or third party not to exceed \$[50,000] for a violation  
8 of this ~~[act]~~.

9 ~~Section 18.~~ **Legislative Note:** A state may authorize the Attorney General or another state  
10 official to enforce this Section, or the agency designated in Section 4, or both.

11  
12 **Section 19. Uniformity of Application and Construction**

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

15 **Section 1920. Relation to Electronic Signatures in Global and National Commerce**

16 **Act**

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

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

26  
27 **[Section 2021. Severability**

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

invalid provision.]

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

~~**[Section 21. Repeals; Conforming Amendments]**~~

~~(a) . . .~~

~~(b) . . .~~

~~**Legislative Note:** A state should examine its statutes to determine whether conforming revisions are required by provisions of this act relating to ( ). See Section ( ).~~

**Section 22. Effective Date**

This [act] takes effect . . . .

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<sup>1</sup> <https://mediakix.com/blog/influencer-marketing-industry-ad-spend-chart/>