

D R A F T
FOR DISCUSSION ONLY

**COLLEGE ATHLETE NAME, IMAGE,
and LIKENESS ISSUES ACT**

NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS

DECEMBER 7–8, 2020 COMMITTEE VIDEO MEETING



Copyright © 2020
By
NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS

The ideas and conclusions set forth in this draft, including the proposed statutory language and any comments or reporter's notes, have not been passed upon by the National Conference of Commissioners on Uniform State Laws or the drafting committee. They do not necessarily reflect the views of the Conference and its commissioners and the drafting committee and its members and reporter. Proposed statutory language may not be used to ascertain the intent or meaning of any promulgated final statutory proposal.

December 2, 2020

COLLEGE ATHLETE NAME, IMAGE, AND LIKENESS ISSUES ACT

The Committee appointed by and representing the National Conference of Commissioners on Uniform State Laws in preparing this act consists of the following individuals:

DALE G. HIGER	Idaho, <i>Chair</i>
LEVI J. BENTON	Texas, <i>Vice Chair</i>
ROBERT G. BAILEY	Missouri
JERRY L. BASSETT	Alabama
TERRY J. CARE	Nevada
ALBERTO R. GONZALES	Tennessee
BECKY HARRIS	Nevada
LANE H. KNEEDLER	Virginia
HARVEY S. PERLMAN	Nebraska
MARTHA T. STARKEY	Indiana
ROBERT A. STEIN	Minnesota
TREGARRICK TAYLOR	Alaska
CARL H. LISMAN	Vermont, <i>President</i>
CAM WARD	Alabama, <i>Division Chair</i>

OTHER PARTICIPANTS

GABRIEL FELDMAN	Louisiana, <i>Reporter</i>
KARIN PAPARELLI	Tennessee, <i>American Bar Association 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

COLLEGE ATHLETE NAME, IMAGE, AND LIKENESS ISSUES ACT

TABLE OF CONTENTS

SECTION 1. SHORT TITLE.	1
SECTION 2. DEFINITIONS.....	1
SECTION 3. [SECRETARY OF STATE][COMMISSION]; AUTHORITY; PROCEDURE. ...	5
SECTION 4. NIL ACTIVITY; PERMITTED ACTIVITY FOR COLLEGE ATHLETES; PERMITTED ACTIVITY FOR INSTITUTIONS.	5
SECTION 5. LIMITS AND RESTRICTIONS ON NIL ACTIVITY.	6
SECTION 6. INSTITUTIONAL INVOLVEMENT; RESTRICTED ACTIVITY; PERMITTED ACTIVITY.....	7
SECTION 7. DISCLOSURE REQUIREMENTS; COLLEGE ATHLETES; INSTITUTIONS..	8
SECTION 8. THIRD PARTY PROFESSIONALS; DUTIES; REGISTRATION REQUIREMENTS.....	9
SECTION 9. THIRD PARTY ENTITIES; REGISTRATION REQUIREMENTS; VOID CONTRACT.....	10
SECTION 10. REGISTRATION AS THIRD PARTY ENTITY; APPLICATION; REQUIREMENTS; RECIPROCAL REGISTRATION.	10
SECTION 11. THIRD PARTY ENTITY CERTIFICATE OF REGISTRATION; ISSUANCE OR DENIAL; RENEWAL.	11
SECTION 12. SUSPENSION, REVOCATION, OR REFUSAL TO RENEW THIRD PARTY ENTITY REGISTRATION.....	12
SECTION 13. TEMPORARY REGISTRATION OF THIRD PARTY ENTITY.....	12
SECTION 14. THIRD PARTY ENTITY PROHIBITED CONDUCT.....	12
SECTION 15. GROUP LICENSING.....	13
SECTION 16. SCOPE OF ACT.....	13
SECTION 17. CIVIL REMEDY.....	13
SECTION 18. SEVERABILITY.....	14
SECTION 19. EFFECTIVE DATE.....	14

1 **COLLEGE ATHLETE NAME, IMAGE, AND LIKENESS ISSUES ACT**

2 **SECTION 1. SHORT TITLE.** This [act] may be cited as the College Athlete Name,
3 Image, and Likeness Issues Act.

4 **SECTION 2. DEFINITIONS.** In this [act]:

5 (1) “Agency Contract” means an agreement in which a College Athlete authorizes a
6 person to negotiate or solicit Compensation for NIL Activity on behalf of a College Athlete. For
7 purposes of this Act, the term “Agency Contract” does not include a professional sports services
8 contract or an agreement with respect to a College Athlete’s participation in professional
9 athletics.

10 (2) “Athletic Association” means a national non-profit collegiate athletics governance
11 association that has at least 50 member institutions located in at least 25 states that conducts
12 athletic competition among its members, sets playing rules for that competition, regulates the
13 eligibility of players and institutions to participate, and annually determines a national champion
14 in one or more sports in one or more competitive divisions or subdivisions either by conducting a
15 national championship it wholly owns or recognizing a collegiate national championship
16 conducted by a United States national sport governing body. The terms includes, among others,
17 the National Collegiate Athletic Association, NAIA, and any successor organizations.

18 (3) “Athletic Director” means the individual responsible for administering the overall
19 athletic program of an Educational Institution.

20 (4) “Booster” means a representative of the Institution’s athletic interest, which includes
21 anyone who has provided a donation in order to obtain season tickets for any sport at the
22 Institution, participated in or has been a member of an organization promoting the Institution’s
23 athletics programs, made financial contributions to the Athletic Department or to an Institution’s

1 booster organization, arranged for or provided employment for enrolled College Athletes,
2 assisted or has been requested by Institution staff to assist in the recruitment of College Athletes,
3 assisted in providing benefits to College Athletes or their families, or been involved in otherwise
4 promoting an Institution’s athletics.

5 (5) “Championship Season” means from the beginning of team practice through the end
6 of the national championship in the College Athlete’s sport.

7 (6) “College Athlete” means an individual who is eligible to attend an Institution and
8 engages in, is eligible to engage in, or may be eligible in the future to engage in, any
9 Intercollegiate Sport. The term does not include an individual permanently ineligible to
10 participate in a particular Intercollegiate Sport for that sport.

11 (7) “Compensation” means money or other remuneration or thing of value given to a
12 College Athlete in exchange for the use of the College Athlete’s NIL. “Compensation” does not
13 include a scholarship, grant, fellowship, tuition assistance or other form of financial aid from the
14 institution at which a College Athlete is enrolled.

15 (8) “Conference” means an entity that governs a collection of Institutions. For purposes
16 of this Act, a Conference includes all employees, agents, or Independent Contractors of the
17 Conference.

18 (9) “Enrolled” means registered for courses and attending athletic practice or class.
19 “Enrolls” has a corresponding meaning.

20 (10) “Fair Market Value” means the price at which a transaction would occur between a
21 willing buyer and a willing seller, with no undue influence from outside forces and with neither
22 party being under any compulsion to act.

23 (11) “Game-Related NIL Use” means any use of College Athlete NIL that is part of the

1 audio, videocast, or any live or delayed broadcast, re-broadcast, or transmission of the College
2 Athlete’s performance in an Institution, Conference, or Association athletic event, any products
3 derived from the broadcast, re-broadcast or transmission of the athletic event (e.g., highlight
4 reels, historical footage, etc.), any promotion or advertisement of such athletic events or of the
5 College Athlete or his/her team, including (but not limited to) promotion of ticket sales,
6 publication and sale of event programs sold in conjunction with athletic events in which the
7 College Athlete or his/her team performs, and print and electronic publication of the College
8 Athlete’s historical athletic performance, and participation statistics and photographs of the
9 College Athlete’s athletic performance on its public website.

10 (12) “Institution” means a public or private institution of higher education, including any
11 community college, college, and university. For purposes of this Act, an Institution includes all
12 employees, agents, or Independent Contractors of the Institution.

13 (13) “Independent Contractor” means an entity or individual other than an employee who
14 provides services to an Institutions or Conference, such as, but not limited to, multimedia rights
15 holders that sell institutional or conference sponsorships or companies paid by the institution
16 and/or conference to manage and optimize its social media content. Companies that provide
17 products, not services, such as shoe and apparel companies, are not deemed to be Independent
18 Contractors.

19 (14) “Institutional Sponsorship Deal” means any licensing, sponsorship, marketing or
20 other deal entered into by an Institution.

21 (15) “Intercollegiate Sport” means a sport played at the collegiate level for which
22 eligibility requirements for participation by a College Athlete are established by a national
23 association that promotes or regulates collegiate athletics.

1 (16) “NIL” or “Name, Image, and Likeness” is defined as an individual College Athlete’s
2 name, nick name(s), image, likeness, signature, social media accounts, and any other readily
3 identifiable personal characteristics or traits. These rights may be used in connection with, but
4 not limited to, athlete’s signatures/autographs, third-party endorsements, social media accounts,
5 advertising, marketing, promotion or sale of products and services, personal appearances,
6 employment, etc.

7 (17) “NIL Agreement” means an agreement under which a College Athlete receives
8 compensation for the use of his/her NIL.

9 (18) “Non-Game Related NIL Use” means any use of College Athlete NIL that is not
10 considered Game Related NIL. Non-Game Related NIL includes, but is not limited to
11 endorsements, product licensing, personal appearances, books, movies, television or radio shows,
12 social media content, and providing autographs “Recruit” or “Inducement” means attempt to
13 influence the decision of a College Athlete to attend, continue attending, or transfer to a
14 particular Educational Institution.

15 (19) “Professional Service Provider” means an individual who director or indirectly
16 serves a College Athlete in an advisory, legal, business, marketing, or other capacity related to
17 NIL Activity. For purposes of this Act, a “Professional Service Provider” does not include an
18 individual who represents a College Athlete for a professional sports services contract or in
19 anticipation of representing a College Athlete for a purpose related to their participation in
20 professional athletics.

21 (20) “State” means a state of the United States, the District of Columbia, Puerto Rico, the
22 United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of
23 the United States.

1 (21) “Student” means an individual who is enrolled at an Institution.

2 (22) “Team Contract” means a contract between an Institution and another entity that
3 relates to the activities of an athletic team of the Institution.

4 (23) “Third Party Entity” means any entity that enters into an NIL Agreement with a
5 College Athlete. “Third Party Entity” includes all employees, agents, officers, and Independent
6 Contractors of the entity.

7 **SECTION 3. [SECRETARY OF STATE][COMMISSION]; AUTHORITY;**
8 **PROCEDURE.**

9 (a) The [administrative procedure act] applies to this [act]. The [Secretary of State] may
10 adopt rules under the [administrative procedure act] to implement this [act].

11 **SECTION 4. NIL ACTIVITY; PERMITTED ACTIVITY FOR COLLEGE**
12 **ATHLETES; PERMITTED ACTIVITY FOR INSTITUTIONS.**

13 (a) All College Athletes shall have the right to earn Fair Market Value Compensation for
14 NIL Activity from Third Parties subject to the limitations in this Act.

15 (b) An Athletic Association shall not uphold any rule, requirement, standard, or other
16 limitation that prevents a College Athlete from earning compensation from NIL Activity nor that
17 prevents an Institution from participating in Intercollegiate Athletics because a College Athlete
18 receives Compensation for NIL Activity.

19 (c) No Institution may agree with any other Institution to uphold any rule, requirement,
20 standard, or other limitation that prevents a College Athlete from earning Compensation from
21 NIL Activity nor condition a College Athlete’s participation in Intercollegiate Athletics on
22 limitations on their NIL Activity inconsistent with the terms of this Act.

23 (d) The earning of Compensation for NIL Activity, as permitted under this Act, shall not

1 affect a College Athlete’s scholarship eligibility or the amount of the College Athlete’s
2 scholarship.

3 **SECTION 5. LIMITS AND RESTRICTIONS ON NIL ACTIVITY.**

4 (a) NIL Activity may not include an Institution or Conference’s name, trademarks and
5 service marks, logos, uniform designs and other identifiers athletic performances depicted or
6 included in any form of media broadcasts or related game footage. A College Athlete may
7 identify themselves as a team member or student at their Institution or Conference.

8 (b) NIL Compensation may not exceed fair market value of the College Athlete’s NIL
9 and must represent genuine compensation for use of a College Athlete’s NIL and not constitute
10 compensation for athletics participation, performance, or services.

11 (c) A College Athlete must be a full-time student and eligible athlete receive
12 Compensation for NIL Activity in a given academic year.

13 (d) A College Athlete may not receive compensation for athletics performance or
14 participation.

15 (e) Payment or any benefits received from NIL Activity must not be contingent on a
16 prospective College athlete’s enrollment at a particular Institution or within a particular
17 Conference, nor otherwise used as an Inducement by an Institution, Conference, or Third Party.

18 (f) A College Athlete may not make any express or implied endorsement on behalf of the
19 Institution, Conference, or Association.

20 (g) A College Athlete may not engage in NIL Activity that is illegal, in conflict with rules
21 or regulations of the Institution, Conference, or Organization, or deemed by the respective entity
22 to be immoral, unsafe, or to adversely affect the reputation of the Institution, Conference, or
23 Organization.

1 **[or]** An Institution may prohibit, at its discretion, College Athlete NIL Activity that
2 conflicts with existing institutional sponsorship arrangements or is deemed by the Institution to
3 be immoral, in conflict with the Institutions values, unsafe, or to adversely affect the reputation
4 of the Institution.

5 (h) A College Athlete shall not enter into an NIL Agreement if the NIL Agreement
6 conflicts with a Team Contract or any Institutional Sponsorship Deal. An Institution asserting a
7 conflict with a Team Contract or Institutional Sponsorship Deal shall disclose to the College
8 Athlete or their Third Party Professional the relevant contractual provisions that are in conflict.

9 **[or]** An Institution may not prevent a College Athlete from using their NIL when the
10 College Athlete is not engaged in Official Team Activities.

11 **[or]** An Institution may not prevent a College Athlete from using their NIL outside of the
12 Championship Season.

13 **[or]** An Institution may individually impose restrictions, at their discretion, on College
14 Athlete NIL Activity, including prohibiting NIL Agreements that conflict with Team Contracts
15 and Institutional Sponsorship Deals.

16 **SECTION 6. INSTITUTIONAL INVOLVEMENT; RESTRICTED ACTIVITY;**
17 **PERMITTED ACTIVITY.**

18 (a) Except as provided for in Section 6(b) of this Act, Institutions and Conferences shall
19 have no involvement in College Athlete NIL Activity. Institutions and Conferences shall not:

20 (1) Pay for or provide any Compensation to a College Athlete for their NIL
21 Activity.

22 (2) Assist or otherwise play any role in identifying, arranging, facilitating,
23 securing, managing, promoting College Athlete NIL Activity.

1 (3) Permit a College Athlete to use the intellectual property of the Institution or
2 Conference in College Athlete NIL Activity.

3 (4) Develop, operate, promote or otherwise be involved in College Athlete NIL
4 Activity.

5 (5) Permit a College Athlete to use an Institution's facilities for NIL Activity.

6 (6) Sell, use, or otherwise convey College Athlete NIL for any Non-Game Related
7 NIL Use.

8 (7) Make any express or implied endorsement on behalf of the College Athlete.

9 (b) An Institution may engage in the following related to NIL Activity:

10 (1) Assist in evaluating the permissibility of NIL Activity (e.g., compliance with
11 Institution, Association, or legal requirements)

12 (2) Provide education to College Athletes related to NIL Activity.

13 (3) Assist with disclosure requirements

14 (4) Assist in evaluating Third Party Professionals.

15 **SECTION 7. DISCLOSURE REQUIREMENTS; COLLEGE ATHLETES;**
16 **INSTITUTIONS.**

17 (a) College Athletes must report and disclose any non de minimis Compensation received
18 from NIL Activity, information relevant to their NIL Activity, and must submit a copy of any
19 NIL Agreement. The report and disclosure must be made to an official of the Institution, to be
20 designated by the Institution. The required disclosures include, but are not limited to:

21 (1) Compensation arrangements;

22 (2) Details of relationship(s) with any third party;

23 (3) Details of relationship(s) with any Professional Service Providers;

1 (b) College Athletes shall provide the required disclosures in advance of any NIL
2 Activity and shall provide updates within 14 days if any relevant information changes.

3 (c) All disclosures under this Section shall be made publicly available.

4 (d) Institutions must have written policies that set forth the NIL Activity in which College
5 Athletes at that Institution may or may not engage.

6 (e) Institutions shall provide such policies to Prospective College Athletes by the point in
7 which an offer of admission and/or financial aid is provided.

8 (f) For all NIL Agreements, the College Athlete, Institution, Professional Service
9 Provider, and Third Party Entity must certify that there are no side agreements or understandings
10 of any kind.

11 **SECTION 8. THIRD PARTY PROFESSIONALS; DUTIES; REGISTRATION**
12 **REQUIREMENTS.**

13 (a) Third Party Professionals must be registered and licensed by the State and must
14 comply with all requirements and regulations contained in the Revised Uniform Athlete Agents
15 Act.

16 (b) An Institution, Conference, or Association may not prevent, punish, or otherwise
17 deter a College Athlete from obtaining professional representation from a Professional Service
18 Provider in relation to NIL Activity, including representation provided by athlete advisors and
19 legal representation provided by attorneys.

20 (c) A Third Party Professional, as defined in this Act, may not provide representation or
21 advice regarding professional sports opportunities

22 (d) Institutions may assist College Athletes with vetting Third Party Professionals.
23 Institutions shall not otherwise assist with selecting, arranging, or providing payment for Third

1 Party Professionals.

2 (e) Any contract or agreement between a College Athlete and Third Party Professional
3 must have a fee arrangement that is consistent with norms for the service provider's industry.

4 (f) College Athletes must disclose any relationships and agreements with Third Party
5 Professionals. Such disclosure must be made to an official of the Institution, to be designated by
6 the Institution.

7 **SECTION 9. THIRD PARTY ENTITIES; REGISTRATION REQUIREMENTS;**
8 **VOID CONTRACT.**

9 (a) An entity may not act as a Third Party Entity without holding a certificate of
10 registration under this [act].

11 (b) An NIL Agreement resulting from conduct in violation of this section is void.

12 **SECTION 10. REGISTRATION AS THIRD PARTY ENTITY; APPLICATION;**
13 **REQUIREMENTS; RECIPROCAL REGISTRATION.**

14 (a) An applicant for registration as Third Party Entity shall submit an application for
15 registration to the [Secretary of State] in a form prescribed by the [Secretary of State]. The
16 application must be signed by a duly authorized representative of the Third Party Entity under
17 penalty of perjury. The application must contain at least the following regarding the Third Party
18 Entity, where applicable:

19 (1) Address of principal place of business;

20 (2) State of registration.

21 (3) Name and contact information of registered agent.

22 (4) Telephone number.

23 (5) Any means of communicating electronically, including an electronic-mail

1 address, and any websites related to the entity;

2 (6) All social-media accounts with which the applicant is affiliated;

3 (7) Brief description of type of business and business activities.

4 (8) The name and address of each person that is a partner, member, officer,
5 manager, associate, or profit sharer or directly or indirectly holds an equity interest of five
6 percent or greater of the entity.

7 (9) Whether the applicant or any person listed under paragraph (8) has been a
8 defendant or respondent in a civil or criminal proceeding, and, if so, the date and a full
9 explanation of each proceeding;

10 (10) Whether the applicant, or any person named under paragraph (8), was
11 adjudicated or bankrupt or declared bankruptcy;

12 (11) Each instance in which conduct of the applicant, or any person named under
13 paragraph (8), resulted in the imposition of a sanction, suspension, or declaration of ineligibility
14 to participate in an intercollegiate event on a student athlete or a sanction on an Institution;

15 (12) Whether there has been a denial of an application for, suspension or
16 revocation of, refusal to renew, or abandonment of, the registration of the applicant, or any
17 person named under paragraph (8), as a Third Party Entity in any state;

18 (13) Each state in which the applicant currently is registered as a Third Party
19 Entity or has applied to be registered as a Third Party Entity.

20 (b) Boosters may be subject to additional disclosure and attestation requirements.

21 **SECTION 11. THIRD PARTY ENTITY CERTIFICATE OF REGISTRATION;**
22 **ISSUANCE OR DENIAL; RENEWAL.**

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

1 certificate of registration to an applicant for registration who complies with Section ____

2 (b) The [Secretary of State] may refuse to issue a certificate of registration to an applicant
3 for registration under Section __ if the [Secretary of State] determines that the applicant would
4 adversely impact the reputation of the College Athlete, Institution, Conference or Association or
5 would otherwise not be fit to serve as a Third Party Entity.

6 (c) A Third Party Entity registered under subsection (a) may apply to renew the
7 registration by submitting an application for renewal in a form prescribed by the [Secretary of
8 State]. The applicant shall sign the application for renewal under penalty of perjury and include
9 current information on all matters required in an original application for registration.

10 **SECTION 12. SUSPENSION, REVOCATION, OR REFUSAL TO RENEW**
11 **THIRD PARTY ENTITY REGISTRATION.**

12 (a) The [Secretary of State] may limit, suspend, revoke, or refuse to renew a registration
13 of an entity registered under Section 6(a) for reasons that would have justified refusal to issue a
14 certificate of registration under Section 6(b).

15 **SECTION 13. TEMPORARY REGISTRATION OF THIRD PARTY ENTITY.**

16 The [Secretary of State] may issue a temporary certificate of registration as an athlete agent
17 while an application for registration or renewal of registration is pending.

18 **SECTION 14. THIRD PARTY ENTITY PROHIBITED CONDUCT.** A Third Party
19 Entity may not intentionally:

20 (1) Give a College Athlete or, if the College Athlete is a minor, a parent or guardian of
21 the College Athlete materially false or misleading information or make a materially false
22 promise or representation with the intent to influence the College Athlete, parent, or guardian to
23 enter into an NIL Agreement;

1 (2) Furnish anything of value to a College Athlete or another individual except as
2 permitted under this [act], if to do so may result in loss of the athlete’s eligibility to participate in
3 the athlete’s sport;

4 (3) Initiate contact, directly or indirectly, with a College Athlete or, if the athlete is a
5 minor, a parent or guardian of the athlete, to recruit or solicit the College Athlete, parent, or
6 guardian to enter an NIL Agreement unless registered under this [act];

7 (4) Fail to register when required by Section ___;

8 (5) Provide materially false or misleading information in an application for registration or
9 renewal of registration;

10 (6) Predate or postdate an NIL Agreement;

11 **SECTION 15. GROUP LICENSING.**

12 (a) College Athletes may grant non-exclusive Non-Game NIL Use rights to the
13 Association for Group Licensing purposes only.

14 **SECTION 16. SCOPE OF ACT.**

15 (a) This [act] shall not apply to High School, youth, recreation, and other non-
16 intercollegiate sports unless otherwise specified.

17 (b) Nothing in this (act) shall be construed as impacting the employment status of College
18 Athletes.

19 **SECTION 17. CIVIL REMEDY.**

20 (a) An Institution or College Athlete may bring an action for damages against a Third
21 Party Professional or a Third Party Entity if the Institution or College Athlete is adversely
22 affected by an act or omission of the Third Party Professional or Third Party Entity in violation
23 of this [act]. An educational institution or student athlete is adversely affected by an act or

1 omission of the agent only if, because of the act or omission, the Institution or an individual who
2 was a College Athlete at the time of the act or omission and enrolled in the institution:

3 (1) is suspended or disqualified from participation in Intercollegiate Sports event;

4 or

5 (2) suffers financial damage.

6 (b) A plaintiff that prevails in an action under this section may recover [actual damages]
7 [treble damages] [,] [punitive damages,] [and] costs[, and reasonable attorney’s fees].

8 **SECTION 18. SEVERABILITY.** If any provision of this [act] or its application to any
9 person or circumstance is held invalid, the invalidity does not affect other provisions or
10 applications of this [act] which can be given effect without the invalid provision or application,
11 and to this end the provisions of this [act] are severable.]

12 **SECTION 19. EFFECTIVE DATE.** This [act] takes effect