

Concerns with HB 5217 Collegiate Student-Athlete Name, Image, Likeness (NIL) Compensation Bill

The mission of college athletics is to promote student academic and athletic achievement, drive personal and interpersonal growth, foster leadership, teach lifetime skills, create inclusive campuses, and promote student success through campus engagement.

U.S. Collegiate Athletics in Context: NCAA Statistics

- 1,102 Colleges and Universities
- 100 Athletic Conferences
- 40 Affiliated Sports Organizations
- Nearly half a million college student-athletes make up the 19,750 teams that send more than 52,500 participants to compete in 90 championships
- 24 sports across 3 divisions
- Division 1:
 - 351 schools
 - Median undergraduate enrollment: 9,629
 - 1 in 25 students are athletes
 - Division's share of all student-athletes: 36%
- Division 2:
 - 308 schools
 - Median undergraduate enrollment: 2,485
 - 1 in 11 students are athletes
 - Division's share of all student-athletes: 25%
- Division 3:
 - 443 schools
 - Median undergraduate enrollment: 1,748
 - 1 in 4 students are athletes
 - Division's share of all student-athletes: 39%
- Fewer than 2% of student athletes go on to play professional sports

A National Solution is Needed, Not a Multi-State Policy Patchwork

Compensation for college student-athletes' name, image or likeness (NIL) is a national issue that requires a national solution. Following California's passage of a bill allowing college student-athletes to enter into agreements for their NIL, 15 other states have followed suit by passing or introducing legislation with similar intentions, and that number is growing. Meanwhile, the NCAA Board of Governors has instructed all three of its divisions to develop new guidelines allowing student-athletes to profit from the use of their NIL. Simultaneously, a bipartisan congressional working group is facilitating ongoing discussions on student-athlete compensation. A patchwork of

up to 50 different state laws may make compliance impossible as student-athletes are recruited from and compete in different states. These state bills may also inherently violate interstate commerce regulations, as the federal government has oversight of commercial exchanges that span multiple states. Individual state legislation in this area will also exacerbate, not help to minimize, the recruiting inequities that are already experienced by universities, dependent upon the resources available to their athletic departments. Michigan stakeholders should instead provide input to the NCAA and Congress, the former of which is already happening extensively. A uniform NCAA and/or federal policy solution is needed to serve as an umbrella for the current state policy patchwork of NIL policies. Ensuring consistency and preserving fairness in the final policy framework is critical.

Vast Array of Unexplored Legal Issues that May Pose Significant Conflicts

This bill may create several major legal consequences that have not been adequately explored. Extensive review needs to be conducted to determine how rules or regulations on NIL related college student-athlete compensation will interplay with antitrust laws, workers compensation, employment law, Title IX, taxation, liability, federal trademark laws, and constitutional issues. It is particularly important to avoid an employee-employer relationship regarding NIL-related agreements, which brings about a whole new set of state and federal regulations. This is why a holistic, nationally uniform solution must come from NCAA and/or Congress, with state inputs. Most importantly, a patchwork of different state regulations has the potential to harm student-athletes as the onus will be on them to juggle federal and state law combined with obligations to their team and their academics.

Unrealistic Effective Date for Enactment

An effective date for HB 5217 of July 1 of this year is unrealistic, given the huge array of unresolved issues and potential conflicts associated with the legislation. Recognizing the complexity of this issue, California lawmakers, in passing that state's NIL college student-athlete legislation, set an enactment date of January 2023. College student-athlete compensation is a highly complex issue that deserves a thoughtful, well-researched examination of implications and consequences that affect all stakeholders. Speed should not trump quality in the policymaking process.

Potential Harm to Students

NIL opportunities must not interfere with students' academic obligations such as classes, tutoring sessions and studying; as well as their athletic obligations such as practice and competition. If NIL policies are eventually in place, it must be ensured that students are represented fairly and honestly; that they are not exploited, and not taken advantage of by nefarious talent agents, recruiters or corporations. Further, there is an entire additional set of implications of NIL related compensation for middle and high school students which must be explored.

Inequality Concerns at all Levels: Team, Campus, State, Conference, National

There are concerns about how NIL-related compensation will create inequities: within a team, on a campus, and among campuses. Done poorly, a NIL compensation framework could fracture team unity and equity in the name of benefitting a small proportion of elite student-athletes. At the same time, protection of the recruiting environment must be ensured, including a prohibition on inducements to select, remain at or transfer to a specific institution. The development of NIL rules must include transparency and must be focused and enforceable to facilitate fair and balanced competition among colleges and universities.

Reduced Financial Aid Eligibility and College Affordability for Students

Many student-athletes on university campuses do not receive athletics grant-in-aid, but instead receive federal and/or institutional need-based aid. Even those receiving athletics-based aid are eligible to receive federal Pell Grants. NIL-related compensation would have to be reported by students as income and would then be deducted from need-based financial aid packages according to federal rule. Many student-athletes are Pell Grant eligible; if they receive NIL compensation that income will diminish their Pell eligibility and, thus, would need to surpass the value of the Pell Grant (current maximum of \$6,196) plus institutional need-based financial aid, for them to benefit financially. The interplay of federal rules regarding student need-based aid, and income from using a student's NIL needs to be analyzed and resolved at the federal level.

Maintaining the Student-First Focus of the Collegiate Athletics Amateurism Model

Finally, in the process of discussing and formulating a consistent, uniform and transparent policy framework for college student-athlete NIL agreements, we must not lose focus on the prolific legacy and historical model of college athletics in America. The top priority must always be on the health, safety and welfare of students, with their education and personal and professional development being at the core. A high-quality education and student experience must be maintained. College student-athletes are *students first*. This must not be forgotten.

