

**Government of the District of Columbia**  
UNIFORM LAW COMMISSION



October 19, 2021

The Honorable Phil Mendelson  
Chairman  
Council of the District of Columbia  
The John A. Wilson Building,  
1350 Pennsylvania Avenue, NW  
Washington, DC 20004

RE: Request for introduction of the Uniform College Athlete Name, Image or Likeness Act of 2021.

Dear Chairman Mendelson:

Pursuant to Rule 401(b)(1) of the Rules of Organization and Procedure for the Council, this is to request, on behalf of the District of Columbia Uniform Law Commission, that you introduce the proposed "Uniform College Athlete Name, Image or Likeness Act of 2021" ("UCANILA"). The National Conference of Commissioners on Uniform State Laws completed the UCANILA this year and has recommended it for enactment. A related uniform act, the Uniform Athletes Agents Act Amendment Act of 2021, also is being filed today with a letter requesting that you introduce it.

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, and are rapidly expanding to include mobile and social media audiences in addition to the traditional broadcast audiences. At the same time, the benefits provided to college athletes have remained relatively limited and restricted by the National College Athletic Association ("NCAA") and other governing body rules. A number of states have introduced legislation to address this problem but take different approaches. In addition, the regulatory landscape has been fragmented by the NCCA's interim policy of permitting institutions in states without a college athlete name, image, or likeness ("NIL") law to create their own NIL policies.

UCANILA provides a comprehensive, uniform framework for state-level regulation of NIL activities that will provide college athletes with robust protections for their NIL rights while also creating a level playing field for athletes and institutions competing across state lines. UCANILA corrects the competitive imbalances created by the patchwork of inconsistent state NIL laws. Thus, enactment of UCANILA in the District will benefit both college students and college-level educational institutions in the District.

A proposed Uniform College Athlete Name, Image or Likeness Act of 2021 is being filed at the same time as this letter. In addition, we have filed an attachment with (1) a short summary of UCANILA; (2) a statement as to why UCANILA should be adopted, and (3) the official version of the UCANILA with comments.


We would be pleased to answer any questions.

Sincerely,

A handwritten signature in blue ink that reads "James C. McKay, Jr." The signature is fluid and cursive, with the first name "James" being the most prominent part.

James C. McKay, Jr.  
Chair  
D.C. Uniform Law Commission

cc: Uniform Law Commissioners

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4 Chairman  at the request of the  
5 District of Columbia Uniform Law Commission  
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8  
9 A BILL  
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14 IN THE COUNCIL OF THE DISTRICT OF COLUMBIA  
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18 To amend Title 47 of the District of Columbia Code to enact the Uniform College Athlete,  
19 Name, Image, or Likeness Act, to establish a legal framework for permitting college  
20 athletes to receive compensation for their name, image, and likeness rights and to provide  
21 parameters on the types of activity the athletes may engage in; parameters on the  
22 compensation the athletes may receive; limitations on institution, conference, and athletic  
23 association involvement; a disclosure requirement for college athletes; a mechanism for  
24 certifying and regulating agents; a mechanism for certifying and regulating third parties  
25 who provide compensation to college athletes for the use of their name, image, and  
26 likeness rights; a right of action for college athletes if their name, image, and likeness  
27 rights are violated; and civil penalties for violations of the act.  
28

29 BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this  
30 act may be cited as the "Uniform College Athlete Name, Image, or Likeness Act of 2021."

31 Sec. 2. Chapter 28 of Title 47 of the District of Columbia Code is amended as follows:

32 (a) The table of contents is amended by adding the following after "§ 47-2888.08.

33 Rules.":

34 "Part G. College Athlete Name, Image, or Likeness; Uniform Act.

35 Sec.

36 "47-2889.01. Short title.

37 "47-2889.02. Definitions.

38 “47-2889.03. Scope.

39 “47-2889.04. Rulemaking authority.

40 “47-2889.05. Name, image, or likeness activity and compensation; limit on institution,

41 conference, and athletic association.

42 “47-2889.06. Limit on name, image, or likeness activity and compensation.

43 “47-2889.07. Institution, conference, and athletic association involvement.

44 “47-2889.08. Required disclosures.

45 “47-2889.09. Registration as a name, image, or likeness agent; duties; fee arrangements.

46 “47-2889.10. Registration as a third party.

47 “47-2889.11. Application for registration as third party.

48 “47-2889.12. Third-party certificate of registration.

49 “47-2889.13. Limitation, suspension, revocation, or nonrenewal.

50 “47-2889.14. Temporary registration of third party.

51 “47-2889.15. Fees.

52 “47-2889.16. Prohibited conduct by third party.

53 “47-2889.17. Civil remedy.

54 “47-2889.18. Civil penalty.

55 “47-2889.19. Uniformity of application and construction.

56 “47-2889.20. Relation to Electronic Signatures in Global and National Commerce Act.”

57 (b) Subchapter IV of Chapter 28 of Title 47 of the District of Columbia Official Code is

58 amended by adding a new part G to read as follows:

59 Section 1 “§ 47-2889.01. Title Short title.

“This [act] part may be cited as the Uniform College Athlete Name, Image, or Likeness Act.

“§ 47-2889.02. Definitions.

“In this part:

“(1) “Athletic association” means a nonprofit intercollegiate sport governance association that regulates the eligibility of players and institutions.

“(2) “College athlete” means an individual who attends or is eligible to attend an institution and engages in or is eligible to engage in an intercollegiate sport. The term does not include an individual:

“(A) Participating in a sport in kindergarten through grade 12 or at a youth, preparatory school, recreation, or similar level; or

“(B) Permanently ineligible to participate in a particular intercollegiate sport for that sport.

“(3) “Conference” means a person, other than an athletic association, with the primary purpose of governing the athletic programs of more than one institution.

“(4) “Department” means the Department of Consumer and Regulatory Affairs.

“(5) “Group license” means a name, image, or likeness agreement that covers the name, image, or likeness of more than one college athlete.

“(6) “Institution” means a public or private institution of higher education in the District, including a community college, junior college, college, and university.

“(7) “Intercollegiate sport” means a sport played at the collegiate level for which eligibility requirements for participation by a college athlete are established by an athletic association. The term does not include a recreational, intramural, or club sport.

“(8) “Name, image, or likeness” includes a symbol, word, name, or design that readily identifies a college athlete.

“(9) “Name, image, or likeness activity” means licensing, transferring, or other commercial use of a name, image, or likeness.

“(10) “Name, image, or likeness agent” means an individual who:

“(A) Directly or indirectly recruits or solicits a college athlete or, if the athlete is a minor, the athlete’s parent or guardian, to enter into an agency contract or name, image, or likeness agreement;

“(B) Enters into an agency contract with an athlete or, if the athlete is a minor, the athlete’s parent or guardian; or

“(C) Directly or indirectly offers, promises, attempts, or negotiates to obtain name, image, or likeness compensation or a name, image, or likeness agreement.

“(11) “Name, image, or likeness agreement” means an express or implied agreement, oral or in a record, under which a third party provides name, image, or likeness compensation.

“(12) “Name, image, or likeness compensation” means money or other thing of value provided by a third party in exchange for use of a college athlete’s name, image, or likeness.

“(13) “Person” means an individual, estate, business or nonprofit entity, public corporation, government or governmental subdivision, agency, or instrumentality, or other legal entity.

“(14) “Record” means information:

“(A) Inscribed on a tangible medium; or

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

“(15) “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.

“(16) “Student” means an individual enrolled at an institution under the rules of the institution.

“(17) “Third party” means a person, other than an institution, that offers, solicits, or enters into a name, image, or likeness agreement or offers or provides name, image, or likeness compensation.

“§ 47-2889.03. Scope.

“(a) This part applies only to college athletes and intercollegiate sports.

“(b) This part does not create an employment relationship between a college athlete and the athlete’s institution with respect to the athlete’s participation in an intercollegiate sport. This part may not be used as a factor in determining whether an employment relationship exists.

“§ 47-2889.04. Rulemaking authority.

“The Department may adopt rules under the District of Columbia Administrative Procedure Act, D.C. Code § 2-501 et seq., to administer and implement this part.

“§ 47-2889.05. Name, image, or likeness activity and compensation; limit on institution, conference, and athletic association.

“(a) Except as provided in “§ 47-2889.06, this part does not limit the ability of a college athlete to engage in name, image, or likeness activity to the extent permitted under other law of the District.

“(b) Except as provided in “§ 47-2889.06:

“(1) An institution, conference, or athletic association may not:

“(A) Prevent or restrict a college athlete from:

- “(i) Receiving name, image, or likeness compensation;
- “(ii) Entering into a name, image, or likeness agreement;
- “(iii) Engaging in name, image, or likeness activity;
- “(iv) Obtaining the services of a name, image, or likeness agent; or
- “(v) Creating or participating in a group license; or

“(B) Interfere with the formation or recognition of a collective representative to facilitate or provide representation to negotiate a group license;

“(2) An athletic association may not prevent or restrict an institution or college athlete from participating in an intercollegiate sport because the athlete receives name, image, or likeness compensation, enters into a name, image, or likeness agreement, engages in name, image, or likeness activity, or obtains the services of a name, image, or likeness agent; and

“(3) Receipt of name, image, or likeness compensation may not affect eligibility of a college athlete or the duration, amount, or renewal of an athletic scholarship.

“§ 47-2889.06. Limit on name, image, or likeness activity and compensation.

“(a) Unless the use is permitted under intellectual property law, a college athlete may not include in name, image, or likeness activity an institution, conference, or athletic association name, trademark, service mark, logo, uniform design, or other identifier of athletic performance depicted or included in a media broadcast or related game footage.

“(b) Name, image, or likeness compensation or an offer, promise, or solicitation of compensation:

- “(1) May not attempt to influence the decision of a college athlete to attend, continue attending, or transfer to an institution or an institution in a conference;

“(2) Must represent only compensation for use of the athlete’s name, image, or likeness; and

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

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

“(d) An institution may adopt a policy to prevent a college athlete from engaging in name, image, or likeness activity that is illegal or, if the institution complies with the same policy with respect to the institution’s sponsorships and similar commercial activity, the institution determines has an adverse impact on its reputation. An institution that adopts a policy under this subsection shall disclose the policy and the institution’s rationale in a record maintained on the institution’s website that is accessible by the public and electronically searchable.

“(e) An institution may adopt and enforce rules of conduct relating to name, image, or likeness activity that apply when the college athlete is engaged in an official team activity. An official team activity includes a competition, practice, supervised workout, and community service activity done at the direction of, or supervised by, a member of the institution’s coaching or sport staff.

“(f) An institution, conference, or athletic association may require a college athlete to waive a name, image, or likeness right associated with promotion, display, broadcast, or rebroadcast of an intercollegiate sport.

“§ 47-2889.07. Institution, conference, and athletic association involvement.

“(a) An institution, conference, or athletic association may:

“(1) Assist a college athlete:

174 “(A) In evaluating the permissibility of name, image, or likeness activity,  
175 including compliance with law and institution, conference, and association rules;

176 “(B) With the disclosure requirements of Section 8; and

177 “(C) By providing a good-faith evaluation of a name, image, or likeness  
178 agent or third party; and

179 “(2) Educate the college athlete about name, image, or likeness compensation,  
180 agreements, and activity.

181 “(b) An institution may permit a college athlete to use the institution’s facilities for name,  
182 image, or likeness activity under the same terms and conditions as other students at the  
183 institution.

184 “(c) Except as provided in subsection (a) of this section, an institution or conference and  
185 its employees, agents, and independent contractors may not:

186 “(1) Provide compensation to a college athlete for the athlete’s name, image, or  
187 likeness;

188 “(2) Assist, identify, arrange, facilitate, develop, operate, secure, or promote  
189 name, image, or likeness activity;

190 “(3) Assist with selecting, arranging for, or providing payment to a name, image,  
191 or likeness agent;

192 “(4) Assist with selecting, arranging for, or collecting payment from a third party;

193 “(5) License, transfer, or otherwise convey to a college athlete the right to use the  
194 intellectual property of the institution, conference, or athletic association in name, image, or  
195 likeness activity; or

““(6) Except as provided in § 47-2889.06(f) or permitted by other law, use, license, or otherwise convey a college athlete’s name, image, or likeness for a commercial purpose.

“§ 47-2889.08. Required disclosures.

“(a) A college athlete shall provide or disclose to the individual or office designated under subsection (b) of this section:

“(1) A copy of a name, image, or likeness agreement that provides name, image, or likeness compensation to the athlete or the athlete’s designee in an amount more than \$300 or, if a record of the agreement does not exist, the amount of name, image, or likeness compensation provided or to be provided, if the amount is more than \$300;

“(2) The amount of name, image, or likeness compensation provided to the athlete or the athlete’s designee if the aggregate amount is more than \$2,000 in a calendar year and a copy of each name, image, or likeness agreement if a record of the agreement exists;

“(3) For each agreement or amount that must be provided:

“(A) The arrangement for providing compensation;

“(B) The amount of compensation;

“(C) The identity of and a description of the relationship with the third party;

“(D) The activity required or authorized; and

“(E) If the athlete is represented by a name, image, or likeness agent, the name of and a description of the agreement with the agent;

“(4) A copy of each agreement entered into by the athlete with a name, image, or likeness agent; and

“(5) Other information required by the Department.

219 “(b) An institution shall designate an individual or office to receive the information  
220 required by subsection (a) of this section.

221 “(c) A college athlete shall provide:

222 “(1) The information required by subsection (a) of this section before the earlier  
223 of:

224 “(A) Receiving name, image, or likeness compensation required to be  
225 disclosed; or

226 “(B) Engaging in a name, image, or likeness activity required to be  
227 disclosed; and

228 “(2) An update after a change in any of the information, not later than 10 days  
229 after the earlier of the change or the next scheduled athletic event in which the athlete may  
230 participate.

231 “(d) If an institution, conference, or athletic association voluntarily, or as required by this  
232 part, adopts a limitation affecting a college athlete’s ability to engage in name, image, or likeness  
233 activity, the institution shall provide in a record a copy of the limitation on its website that is  
234 accessible by the public and electronically searchable and to each athlete the institution expects  
235 to participate in an intercollegiate sport:

236 “(1) At or before the time an offer of admission or financial aid is made,  
237 whichever is earlier; or

238 “(2) If the limitation is adopted after the athlete is a student at the institution, as  
239 soon as practicable after adoption.

240 “(e) A name, image, or likeness agreement must contain a statement that the agreement is  
241 the sole, complete, and final agreement between the parties. The statement must be made by:

“ (1) The college athlete or, if the athlete is a minor, the parent or [guardian]  
guardian of the athlete;

“ (2) The third party; and

“ (3) If a name, image, or likeness agent provided service in connection with the  
agreement, the agent.

“ § 47-2889.09. Registration as a name, image, or likeness agent; duties; fee  
arrangements.

“ (a) A name, image, or likeness agent shall register in the District as an athlete agent  
under Part E of this Subchapter before engaging in conduct under this part.

“ (b) An agreement between a college athlete and a name, image, or likeness agent must  
have a fee arrangement consistent with the customary practice of the agent’s industry and  
otherwise complying with Part E of this Subchapter.

“ § 47-2889.10. Registration as a third party.

“ (a) A person shall apply to register as a third party under “ § 47-2889.11 if in a calendar  
year the person provides or agrees to provide:

“ (1) More than \$300 for a name, image, or likeness agreement; or

“ (2) More than \$2,000 in the aggregate to college athletes for name, image, or  
likeness agreements.

“ (b) For each student who is a college athlete at an institution, a third party shall provide  
or disclose to the individual or office designated under “ § 47-2889.08(b) the name, image, or  
likeness compensation and agreements described in subsection (a) of this section.

“ (c) A college athlete or, if the athlete is a minor, the parent or guardian of the athlete, may void a name, image, or likeness agreement with a third party if the party fails to comply with subsection (a) or (b) of this section.

“§ 47-2889.11. Application for registration as third party.

“(a) Except as provided in subsection (b) of this subsection, a person applying for registration as a third party shall submit an application for registration to the Department in a form prescribed by the Department. The application must be signed under penalty of perjury by an authorized representative of the applicant and include:

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

“(2) The address of the applicant’s principal place of business;

“(3) Identification of each social-media account with which the applicant is affiliated;

“(4) A brief description of the type of business and business activity of the applicant;

“(5) The name and address of each person that:

“(A) Is a partner, member, officer, director, manager, or associate of the applicant,

“(B) Is entitled to a share of profits, income, receipts, or other funds of the applicant; or

“(C) Directly or indirectly holds an equity interest of at least 5 percent in the applicant;

“(6) Whether the applicant or a person named under paragraph (5) of this subsection has been a defendant in a criminal proceeding or respondent in a civil proceeding and, if so, the date of filing and a brief explanation of each proceeding;

“(7) Whether the applicant or a person named under paragraph (5) of this subsection has been adjudicated as bankrupt or has filed for bankruptcy;

“(8) Whether conduct of the applicant or a person named under paragraph (5) of this subsection has caused:

“(A) A college athlete to be sanctioned, suspended, or declared ineligible to participate in an intercollegiate sport; or

“(B) An institution to be sanctioned;

“(9) Whether a registration as a third party by the applicant or a person named under paragraph (5) of this subsection has been denied, suspended, abandoned, or not renewed;

“(10) Each state in which the applicant currently is registered or has applied to be registered as a third party; and

“(11) Other information required by the Department.

“(b) A person registered as a third party in another state may apply for registration as a third party in the District by submitting to the Department:

“(1) A copy of the application for registration in the other state;

“(2) A statement that identifies any material change in the information on the application or verifies there is no material change in the information, signed under penalty of perjury; and

“(3) A copy of the certificate of registration from the other state.

307 “(c) Subject to “§ 47-2889.12(b), the Department shall issue a certificate of registration to  
308 a person that applies for registration under subsection (b) of this section if the Department  
309 determines:

310 “(1) The application and registration requirements of the other state are  
311 substantially similar to or more restrictive than this part; and

312 “(2) The registration has not been revoked or suspended and no action involving  
313 the person’s conduct as a third party is pending against the person or the person’s registration in  
314 any state.

315 “(d) In implementing subsection (c) of this section, the Department shall:

316 “(1) Cooperate with agencies in other states that register third parties to develop a  
317 common registration form;

318 “(2) Determine which states have laws that are substantially similar to or more  
319 restrictive than this part; and

320 “(3) Exchange information, including information related to actions taken against  
321 third parties or their registrations, with those agencies.

322 “§ 47-2889.12. Third-party certificate of registration.

323 “(a) Except as provided in subsection (b) of this section, the Department shall issue a  
324 certificate of registration to a person that applies for registration under and complies with “§ 47-  
325 2889.11(a).

326 “(b) The Department may refuse to issue a certificate of registration to an applicant under  
327 “§ 47-2889.11(a) if the Department determines that the applicant has engaged in conduct that has  
328 a significant adverse impact on the reputation of a college athlete or the athlete’s institution,

conference, or athletic association. In making the determination, the Department shall consider whether the applicant has:

“(1) Pleaded guilty or no contest to, has been convicted of, or has charges pending for a crime that, if committed in the District, would involve moral turpitude or be a felony;

“(2) Made a materially false, misleading, deceptive, or fraudulent representation in the application or as a third party;

“(3) Engaged in conduct prohibited by “§ 47-2889.16;

“(4) Engaged in conduct that has caused:

“(A) A college athlete to be sanctioned, suspended, or declared ineligible to participate in an intercollegiate sport; or

“(B) An institution to be sanctioned; or

“(5) Engaged in conduct that reflects adversely on the applicant’s credibility, honesty, or integrity.

“(c) A third party registered under subsection (a) of this section may apply to renew the registration by submitting an application for renewal in a form prescribed by the Department. An authorized representative of the applicant must sign the application under penalty of perjury and include updated information on all matters required in an initial application for registration.

“§ 47-2889.13. Limitation, suspension, revocation, or nonrenewal.

“The Department may suspend, revoke, or refuse to renew a registration under “§ 47-2889.12(c) for a reason that would justify refusal to issue a certificate of registration under “§ 47-2889.12(b).

“§ 47-2889.14. Temporary registration of third party.

351 “The Department may issue a temporary certificate of registration as a third party while  
352 an application for registration or renewal of registration is pending.]

353 “§ 47-2889.15. Fees.

354 “(a) An application for registration or renewal of registration as a third party must be  
355 accompanied by a fee of:

356 “(1) \$200 for an initial application for registration;

357 “(2) \$100 for registration based on a certificate of registration issued by another  
358 state; or

359 “(3) \$50 for an application for renewal of registration.

360 “(b) The Department by rule under “§ 47-2889.04 may modify the fees under subsection  
361 (a) of this subsection.

362 “§ 47-2889.16. Prohibited conduct by third party.

363 “ A third party may not intentionally:

364 “(1) Give materially false or misleading information or make a materially false promise  
365 or representation with the intent to influence a college athlete, parent or guardian of the athlete,  
366 or another person to enter into a name, image, or likeness agreement, receive name, image, or  
367 likeness compensation, or engage in name, image, or likeness activity;

368 “(2) Provide anything of value to a college athlete or another person except as permitted  
369 under this part, if to do so may result in loss of the athlete’s eligibility to participate in the  
370 athlete’s sport; or

371 “(3) Predate or postdate a name, image, or likeness agreement:

372 “(4) Unless registered under this part, initiate contact, directly or indirectly, with a  
373 college athlete or, if the athlete is a minor, a parent or guardian of the athlete, to recruit or solicit

the athlete, parent, or guardian to enter a name, image, or likeness agreement, receive name, image, or likeness compensation, or engage in name, image, or likeness activity;

“(5) Fail to apply for registration under “§ 47-2889.11; or

“(6) Provide materially false or misleading information in an application for registration or renewal of registration.

“§ 47-2889.17. Civil remedy.

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

“(1) Is sanctioned, suspended, or declared ineligible to participate in an intercollegiate sport; or

“(2) Suffers financial damage.

“(b) A college athlete has a cause of action under this section only if the athlete was 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 damages, reasonable attorney’s fees, and court costs.

(d) A violation of this part is a violation of and enforceable under Chapter 39 of Title 28.

“§ 47-2889.18. Civil penalty.

“The Superior Court of the District of Columbia, pursuant to an action by the Attorney General for the District of Columbia, may assess a civil penalty against a name, image, or likeness agent or third party not to exceed \$50,000 for a violation of this part.

397 “§ 47-2889.19. Uniformity of application and construction.

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

400 “§ 47-2889.20. Relation to Electronic Signatures in Global and National Commerce Act.

401 “This part modifies, limits, or supersedes the Electronic Signatures in Global and  
402 National Commerce Act, 15 U.S.C. § 7001 et seq., but does not modify, limit, or supersede 15  
403 U.S.C. § 7001(c), or authorize electronic delivery of any of the notices described in 15 U.S.C. §  
404 7003(b).”

405 Sec. 3. Fiscal impact statement.

406 The Council adopts the attached fiscal impact statement as the fiscal impact statement  
407 required by section 602(c)(3) of the District of Columbia Home Rule Act, approved December  
408 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(3)).

409 Sec. 4. Effective date.

410 This act shall take effect following approval by the Mayor (or in the event of veto by the  
411 Mayor, action by the Council to override the veto), a 30-day period of Congressional review as  
412 provided in section 602(c)(1) of the District of Columbia Home Rule Act, approved December  
413 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(1)), and publication in the District of  
414 Columbia Register.



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

### – A Summary –

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

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

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

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

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

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

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

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



## WHY YOUR STATE SHOULD ADOPT THE UNIFORM COLLEGE ATHLETE NAME, IMAGE, OR LIKENESS ACT (2021)

The Uniform College Athlete Name, Image, or Likeness Act provides states with a comprehensive, uniform framework for state-level regulation of college athlete name, image, or likeness (NIL) activities that will provide college athletes with robust protections for their NIL rights while also creating a level playing field for athletes and institutions competing across state lines. This Act seeks to correct the competitive imbalances created by the patchwork of inconsistent state NIL laws and exacerbated by the NCAA's interim NIL policy that allows college athletes to engage in NIL activities that are consistent with the law of the state where the school is located and allows college athletes who attend school in a state without a NIL law to engage in NIL activity without violating NCAA rules relating to NIL. The specific provisions built into the Act to correct the competitive imbalances include:

- ***Prohibiting the use of school logos in NIL activity.*** The Act states that a college athlete may not include in NIL activity an institution, conference, or athletic association name, trademark, service mark, logo, uniform design, etc. Because some university logos are inherently more valuable to advertisers than others, the use of university logos in NIL activity could lead to discrepancies in the amount of NIL compensation offered to college athletes based solely on the school the college athlete attends and not the value of the college athlete's NIL.
- ***Prohibits educational institutions from limiting NIL activities*** based on the institution's own sponsorships or advertising deals. Many state NIL laws allow an institution to prohibit NIL activity that conflicts with the sponsorships or advertising deals of the institution or its athletic department (i.e., a Nike school prohibiting college athletes from entering NIL agreements with Adidas). The drafting committee felt that college athletes' NIL rights should not be limited by the existing sponsorships of their educational institution.
- ***Prohibits educational institutions from limiting specific types of NIL activities*** that the institution determines has an adverse impact on its reputation *unless* the institution complies with the same policy with respect to its sponsorships and advertising deals. Some state laws list categories of NIL activity that are prohibited (alcohol, tobacco, marijuana, gambling, etc.) while others allow the institution to ban any NIL activity that it determines has an adverse impact on its reputation. The Uniform Act's approach has the effect of allowing an institution to prohibit college athletes from entering NIL deals with, for example, an alcohol company, only if the institution refrains from engaging in sponsorships or similar commercial activity with alcohol companies.
- ***Does not expressly require NIL activity to be commensurate with the fair market value*** of the college athlete's NIL. Many of the existing state NIL laws contain some sort of "fair market value" requirement, with a smaller subset allows institutions to require, and establish procedures for ascertaining, that a college athlete's NIL use is commensurate with the fair market value. The drafting committee felt that any such requirement would be nearly impossible to measure given the ever-evolving landscape and myriad factors including differences in value based on the student's state, city, and region, sport(s) played, existing social media following, etc.

- ***Permits institutional, conference, and athletic association involvement*** in NIL activity. Under the Act, educational institutions, conferences, or athletic associations may educate college athletes about NIL compensation, agreements, and activity, and assist college athletes in evaluating the permissibility of NIL activities, including compliance with state law and institution, conference, and association rules, assist with the disclosure requirements under the Act, and assist by providing good-faith evaluations of NIL agents or third parties. Some existing state laws expressly prohibit institutional involvement in college athlete NIL activity, while other states implicitly permit institutions to arrange or facilitate NIL opportunities for college athletes.
- ***Provides remedies for college athletes and educational institutions*** by giving college athletes and educational institutions the right to sue NIL agents or third parties for damages caused by violation of the act.

For more information on the Uniform College Athlete Name, Image, or Likeness Act, please contact ULC Legislative Counsel Libby Snyder at (312) 450-6619 or [lsnyder@uniformlaws.org](mailto:lsnyder@uniformlaws.org).

# Uniform College Athlete Name, Image, or Likeness Act

drafted by the

NATIONAL CONFERENCE OF COMMISSIONERS  
ON UNIFORM STATE LAWS

and by it

APPROVED AND RECOMMENDED FOR ENACTMENT  
IN ALL THE STATES

at its

ANNUAL CONFERENCE  
MEETING IN ITS ONE-HUNDRED-AND-THIRTIETH YEAR  
JULY 10–15, 2021



*WITH PREFATORY NOTE AND COMMENTS*

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By

NATIONAL CONFERENCE OF COMMISSIONERS  
ON UNIFORM STATE LAWS

October 8, 2021

## ABOUT ULC

The **Uniform Law Commission** (ULC), also known as National Conference of Commissioners on Uniform State Laws (NCCUSL), now in its 130th year, provides states with non-partisan, well-conceived and well-drafted legislation that brings clarity and stability to critical areas of state statutory law.

ULC members must be lawyers, qualified to practice law. They are practicing lawyers, judges, legislators and legislative staff and law professors, who have been appointed by state governments as well as the District of Columbia, Puerto Rico and the U.S. Virgin Islands to research, draft and promote enactment of uniform state laws in areas of state law where uniformity is desirable and practical.

- ULC strengthens the federal system by providing rules and procedures that are consistent from state to state but that also reflect the diverse experience of the states.
- ULC statutes are representative of state experience, because the organization is made up of representatives from each state, appointed by state government.
- ULC keeps state law up-to-date by addressing important and timely legal issues.
- ULC's efforts reduce the need for individuals and businesses to deal with different laws as they move and do business in different states.
- ULC's work facilitates economic development and provides a legal platform for foreign entities to deal with U.S. citizens and businesses.
- Uniform Law Commissioners donate thousands of hours of their time and legal and drafting expertise every year as a public service, and receive no salary or compensation for their work.
- ULC's deliberative and uniquely open drafting process draws on the expertise of commissioners, but also utilizes input from legal experts, and advisors and observers representing the views of other legal organizations or interests that will be subject to the proposed laws.
- ULC is a state-supported organization that represents true value for the states, providing services that most states could not otherwise afford or duplicate.

## **Uniform College Athlete Name, Image, or Likeness 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:

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# **Uniform College Athlete Name, Image, or Likeness Act**

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## **Uniform College Athlete Name, Image, or Likeness 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 (NIL). Although the traditional models of licensing NIL 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. See [mediakix.com/blog/influencer-marketing-industry-ad-spend-chart](https://mediakix.com/blog/influencer-marketing-industry-ad-spend-chart).

Despite the rapid escalation of the commercialization of intercollegiate sports and the increased opportunities for monetization of celebrity NIL, the benefits provided to college athletes remained relatively limited and restricted by the National College Athletic Association (NCAA) and other governing body rules. In an attempt to modernize the rules and provide greater rights for college athletes, while also maintaining the unique nature of intercollegiate sports, more than 40 states have introduced or enacted legislation that would permit college athletes to receive compensation from third parties for the use of their NIL. Additionally, several bills have been introduced at the federal level that would permit college athletes to receive NIL compensation. As of October 5, 2021, 36 states have enacted NIL laws and 24 of these laws became effective on July 1, 2021. On June 30<sup>th</sup>, 2021, the NCAA announced a new NIL Interim Policy that permits college athletes to “engage in NIL activities that are consistent with the law of the state where the school is located,” and allows “[c]ollege athletes who attend a school in a state without an NIL [to] engage in NIL activity without violating NCAA rules relating to NIL.” Institutions that are located in states without NIL laws were given permission to create their own NIL policies, as long as the policies prohibited NIL compensation to be used for pay-for-performance or as a recruiting inducement.

This fragmented NIL regulatory landscape has led to inconsistencies in institutional NIL policies and confusion among athletes, coaches, and administrators, even across schools within an individual conference. As one of many examples, the Athletic Coast Conference encompasses four states with disparate NIL state laws, two states with differing NIL executive orders, and four states with no NIL state legislation at all. Although the state laws share many similarities, there are significant differences among the laws that create inconsistent and conflicting NIL regulations across states. For example, some state laws expressly prohibit college athletes from using the marks and logos of their institution during NIL activity, while other states permit such use. Some state laws expressly prohibit institutional involvement in college athlete NIL activity, while other states implicitly permit institutions to arrange or facilitate NIL opportunities for college athletes. Athletes in states without NIL laws have been able to engage in a wide variety of NIL activity that is prohibited under most state laws. The patchwork of state laws has thus led

to disparate NIL benefits and opportunities for college athletes dictated almost entirely by the state law (if any) that governs their institution. These differences may become even more magnified during the upcoming recruiting cycle and influence the enrollment decisions of prospective college athletes.

The decentralized NIL system has also prevented the creation of a uniform mechanism for the oversight, monitoring, and enforcement of college athlete NIL activity (the NCAA Interim NIL Policy states that “[t]he national office will not monitor for violations of, or assess compliance with, state law or institutional NIL policies”) and for educating college athletes about the potential risks and opportunities presented by the new NIL landscape. This lack of enforcement and education has compounded the issues created by the inconsistent NIL laws across states and has heightened the risk that NIL activity will be used as a cover for pay-for-performance or as a recruiting inducement. Without uniform regulation of NIL, it appears increasingly likely that the NCAA and other athletic organizations will be unable to prevent illegitimate NIL activity that threatens to upend the collegiate model of sports.

The lack of uniformity in the state laws also 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 highlights 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 NIL 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, ensure that schools in each state are playing under the same general rules, and protect the integrity of intercollegiate sports.

The need for uniformity in NIL legislation was highlighted in the September 2021 United States House of Representatives Subcommittee on Consumer Protection and Commerce hearing on “A Level Playing Field: College Athletes’ Rights to their Name, Image, and Likeness,” the first Congressional hearing held since the patchwork of state NIL laws took effect on July 1, 2021. At the hearing, there was unanimous agreement from both Republican and Democratic representatives as well as college athlete and NCAA advocates that uniformity in NIL regulations was necessary. For example, Rep Bilirakis (R-FL) stated:

[T]his is not the first time a patchwork of state laws has caused potential confusion and crippled fair competition. We’re currently seeing this same scenario play out with consumer privacy laws. So, I’m hopeful this hearing highlights the need for Congress to establish a national preemptive framework for NIL and create a true level playing field for all students and educational institutions across the nation. If Congress fails to enact legislation preventing a patchwork of state laws, we will likely see states competing with one another to create the best incentives for students to come to their schools and you know that's going to happen. Again, while I know young people want

to come to the great state of Florida, preferably University of Florida, we must be fair to the hundreds of other universities and colleges across the country that may be a better fit for student-athletes. We have a lot of members here on both sides of the aisle represent different schools and different conferences. And student-athletes will end up being hurt by the lack of clear standards. I think everyone basically testified to that. We all agree of that – on that. So, we need to pass a bill as soon as possible in my opinion.

Similarly, Rep. Pallone (D-NJ) commented that “[d]iffering state laws could create competitive imbalances, foreseeably encouraging collegiate athletes to attend institutions of higher education in states with more lucrative NIL protections.” Rep. McMorris Rodgers (R-WA) noted that “young people still need a clear set of rules and understandable guidelines. This will ensure that her entrepreneurial spirit is rewarded and her passion to market the app she developed is not hindered by a lack of uniform rules.” Rep. McNerney (D-CA) stated that “I’ve heard clearly that uniform NIL regulations are needed as well as a level playing field. So we’ll take that as a sort of starting point.”

Recognizing the need for uniformity across state NIL laws the ULC agreed to draft a uniform act regarding NIL compensation issues in 2020. The Drafting Committee met several times and received valuable input from athlete agents, current and former college athletes, coaches, college athletic department administrators, representatives of the players associations of the National Football League, the National Hockey League, the NCAA, the National Federation of High Schools, the NAIA, and other stakeholders. These stakeholders unanimously confirmed and emphasized the necessity of a uniform state NIL law.

In July 2021, the Uniform Law Commission formally approved the Uniform College Athlete Name, Image, or Likeness Act (UCANILA). Many provisions of the UCANILA are similar to provisions found in existing state NIL laws. Like many of the individual state laws, the UCANILA creates a set of rules and restrictions to ensure that college athletes can benefit from the use of their NIL without hurting their eligibility to compete as a college athlete and strikes a balance between providing more rights to college athletes while maintaining the integrity of intercollegiate sports. The UCANILA provides (1) a mechanism for permitting college athletes to receive compensation for their NIL rights; (2) parameters on the types of activity athletes can engage in to protect institutions; (3) parameters on the compensation athletes can receive to protect college athletes and institutions from misuse or abuse of NIL deals; (4) limitations on institution, conference, and athletic association involvement; (5) a disclosure requirement for college athletes; (6) a mechanism for certifying and regulating agents; (7) a mechanism for certifying and regulating third parties who provide compensation to college athletes for the use of their NIL; (8) a right of action for college athletes if their NIL rights are violated; (9) civil penalties for violations of the act.

## **Uniform College Athlete Name, Image, or Likeness Act**

### **Section 1. Title**

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

### **Section 2. Definitions**

In this [act]:

(1) “Athletic association” means a nonprofit intercollegiate sport governance association that regulates the eligibility of players and institutions.

(2) “College athlete” means an individual who attends or is eligible to attend an institution and engages in or is eligible to engage in an intercollegiate sport. The term does not include an individual:

(A) participating in a sport in kindergarten through grade 12 or at a youth, preparatory school, recreation, or similar level; or

(B) permanently ineligible to participate in a particular intercollegiate sport for that sport.

(3) “Conference” means a person, other than an athletic association, with the primary purpose of governing the athletic programs of more than one institution.

(4) “Group license” means a name, image, or likeness agreement that covers the name, image, or likeness of more than one college athlete.

(5) “Institution” means a public or private institution of higher education in this state, including a community college, junior college, college, and university.

(6) “Intercollegiate sport” means a sport played at the collegiate level for which eligibility requirements for participation by a college athlete are established by an athletic association. The term does not include a recreational, intramural, or club sport.

(7) “Name, image, or likeness” includes a symbol, word, name, or design that readily identifies a college athlete.

(8) “Name, image, or likeness activity” means licensing, transferring, or other commercial use of a name, image, or likeness.

(9) “Name, image, or likeness agent” means an individual who:

(A) directly or indirectly recruits or solicits a college athlete or, if the athlete is a minor, the athlete’s parent or [guardian], to enter into an agency contract or name, image, or likeness agreement;

(B) enters into an agency contract with an athlete or, if the athlete is a minor, the athlete’s parent or [guardian]; or

(C) directly or indirectly offers, promises, attempts, or negotiates to obtain name, image, or likeness compensation or a name, image, or likeness agreement.

(10) “Name, image, or likeness agreement” means an express or implied agreement, oral or in a record, under which a third party provides name, image, or likeness compensation.

(11) “Name, image, or likeness compensation” means money or other thing of value provided by a third party in exchange for use of a college athlete’s name, image, or likeness.

(12) “Person” means an individual, estate, business or nonprofit entity, public corporation, government or governmental subdivision, agency, or instrumentality, or other legal entity.

(13) “Record” means information:

(A) inscribed on a tangible medium; or

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

(14) “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.

(15) “Student” means an individual enrolled at an institution under the rules of the institution.

(16) “Third party” means a person, other than an institution, that offers, solicits, or enters into a name, image, or likeness agreement or offers or provides name, image, or likeness compensation.

***Legislative Note:*** *If a state uses a different term to describe the relationship of guardian, insert that term in paragraph (9) and when “guardian” is used in Sections 10 and 16.*

### **Comment**

The definition of “college athlete” applies to a two-sport athlete who has eligibility remaining in one sport. For example, an individual who has signed a contract to play professional basketball is not a student-athlete in basketball, but is a student-athlete in baseball.

The definition of “name, image, or likeness” includes any form or combination of a college athlete’s name, image, or likeness that readily identifies the athlete, including in visual, graphic, audio, or other forms.

The definition of “name, image, or likeness agent” in Section 2(10)(c) does not include a college athlete who directly or indirectly offers, promises, attempts, or negotiates to obtain name, image, or likeness compensation or a name, image, or likeness agreement for or on behalf of themselves.

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

The definition of “name, image, or likeness compensation” includes compensation provided to, among others, an individual who is in a position to influence a college athlete to enter into a name, image, or likeness agreement or engage in name, image, or likeness activity. This is intended to cover a situation where a payment or promise it made to, among others,

family members, friends, or roommates of college athletes to enlist their services to induce the college athlete to enter into a name, image, or likeness agreement or to engage in name, image, or likeness activity.

### **Section 3. Scope**

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

[(b) This [act] does not apply to a military service academy.]

(c) This [act] does not create an employment relationship between a college athlete and the athlete's institution with respect to the athlete's participation in an intercollegiate sport. This [act] may not be used as a factor in determining whether an employment relationship exists.

***Legislative Note:*** Subsection (b) should be included in a state that has a military service academy.

### **Section 4. Rulemaking Authority**

The [insert name of agency responsible for administering and implementing the Uniform Athlete Agents Act, Revised Uniform Athlete Agents Act, or comparable law, or other appropriate agency] may adopt rules under [cite to state administrative procedure act] to administer and implement this [act].

***Legislative Note:*** The state agency to administer this act may vary from state to state. The name of the appropriate agency should be inserted in the first brackets.

### **Section 5. Name, Image, or Likeness Activity and Compensation; Limit on Institution, Conference, and Athletic Association**

(a) Except as provided in Section 6, this [act] does not limit the ability of a college athlete to engage in name, image, or likeness activity to the extent permitted under other law of this state.

(b) Except as provided in Section 6:

(1) an institution, conference, or athletic association may not:

(A) prevent or restrict a college athlete from:

- (i) receiving name, image, or likeness compensation;
- (ii) entering into a name, image, or likeness agreement;
- (iii) engaging in name, image, or likeness activity;
- (iv) obtaining the services of a name, image, or likeness agent; or
- (v) creating or participating in a group license; or

(B) interfere with the formation or recognition of a collective representative to facilitate or provide representation to negotiate a group license;

(2) an athletic association may not prevent or restrict an institution or college athlete from participating in an intercollegiate sport because the athlete receives name, image, or likeness compensation, enters into a name, image, or likeness agreement, engages in name, image, or likeness activity, or obtains the services of a name, image, or likeness agent; and

(3) receipt of name, image, or likeness compensation may not affect eligibility of a college athlete or the duration, amount, or renewal of an athletic scholarship.

### **Comment**

Section 5(a) is not intended to diminish, enlarge, or modify the underlying right of publicity or related rights provided by other law of this state.

### **Section 6. Limit on Name, Image, or Likeness Activity and Compensation**

(a) Unless the use is permitted under intellectual property law, a college athlete may not include in name, image, or likeness activity an institution, conference, or athletic association name, trademark, service mark, logo, uniform design, or other identifier of athletic performance depicted or included in a media broadcast or related game footage.

(b) Name, image, or likeness compensation or an offer, promise, or solicitation of compensation:

- (1) may not attempt to influence the decision of a college athlete to attend,

continue attending, or transfer to an institution or an institution in a conference;

(2) must represent only compensation for use of the athlete's name, image, or likeness; and

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

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

(d) An institution may adopt a policy to prevent a college athlete from engaging in name, image, or likeness activity that is illegal or, if the institution complies with the same policy with respect to the institution's sponsorships and similar commercial activity, the institution determines has an adverse impact on its reputation. An institution that adopts a policy under this subsection shall disclose the policy and the institution's rationale in a record maintained on the institution's website that is accessible by the public and electronically searchable.

(e) An institution may adopt and enforce rules of conduct relating to name, image, or likeness activity that apply when the college athlete is engaged in an official team activity. An official team activity includes a competition, practice, supervised workout, and community service activity done at the direction of, or supervised by, a member of the institution's coaching or sport staff.

(f) An institution, conference, or athletic association may require a college athlete to waive a name, image, or likeness right associated with promotion, display, broadcast, or rebroadcast of an intercollegiate sport.

### **Comment**

Sections 6(a) and 6(c) are intended to be consistent with intellectual property law and do not permit an athlete to include in name, image, or likeness activity an institution, conference, or

athletic association name, trademark, service mark, logo, uniform design, or other identifier of athletic performance depicted or included in a media broadcast or related game footage if the use is 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, or is otherwise prohibited under intellectual property law.

Section 6(a) prohibits a college athlete from including in name, image, or likeness activity an institution, conference, or athletic association name, trademark, service mark, logo, uniform design, or other identifier of athletic performance depicted or included in a media broadcast or related game footage unless the use would be permitted under intellectual property law without a license from the owner of the intellectual property, including fair use or nominative use of the trademarked or copyrighted material.

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

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

(a) An institution, conference, or athletic association may:

(1) assist a college athlete:

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

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

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

(2) educate the college athlete about name, image, or likeness compensation, agreements, and activity.

(b) An institution may permit a college athlete to use the institution's facilities for name, image, or likeness activity under the same terms and conditions as other students at the institution.

(c) Except as provided in subsection (a), an institution or conference and its employees,

agents, and independent contractors may not:

(1) provide compensation to a college athlete for the athlete's name, image, or likeness;

(2) assist, identify, arrange, facilitate, develop, operate, secure, or promote name, image, or likeness activity;

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

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

(5) license, transfer, or otherwise convey to a college athlete the right to use the intellectual property of the institution, conference, or athletic association in name, image, or likeness activity; or

(6) Except as provided in Section 6(f) or permitted by other law, use, license, or otherwise convey a college athlete's name, image, or likeness for a commercial purpose.

### **Comment**

Section 7(c)(5) is intended to limit the use of institutional, conference, or association marks in name, image, or likeness activity to ensure that name, image, or likeness compensation is not an inducement, represents only consideration for the use of the college athlete's name, image, or likeness, and does not include compensation for performance, participation or service in an intercollegiate sport.

### **Section 8. Required Disclosures**

(a) A college athlete shall provide or disclose to the individual or office designated under subsection (b):

(1) a copy of a name, image, or likeness agreement that provides name, image, or likeness compensation to the athlete or the athlete's designee in an amount more than \$[300] or, if a record of the agreement does not exist, the amount of name, image, or likeness compensation provided or to be provided, if the amount is more than \$[300];

(2) the amount of name, image, or likeness compensation provided to the athlete or the athlete's designee if the aggregate amount is more than \$[2,000] in a calendar year and a copy of each name, image, or likeness agreement if a record of the agreement exists;

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

(A) the arrangement for providing compensation;

(B) the amount of compensation;

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

(D) the activity required or authorized; and

(E) if the athlete is represented by a name, image, or likeness agent, the name of and a description of the agreement with the agent;

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

(5) other information required by the [agency designated in Section 4].

(b) An institution shall designate an individual or office to receive the information required by subsection (a).

(c) A college athlete shall provide:

(1) the information required by subsection (a) before the earlier of:

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

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

(2) an update after a change in any of the information, not later than [10] days

after the earlier of the change or the next scheduled athletic event in which the athlete may participate.

(d) If an institution, conference, or athletic association voluntarily, or as required by this [act], adopts a limitation affecting a college athlete's ability to engage in name, image, or likeness activity, the institution shall provide in a record a copy of the limitation on its website that is accessible by the public and electronically searchable and to each athlete the institution expects to participate in an intercollegiate sport:

(1) at or before the time an offer of admission or financial aid is made, whichever is earlier; or

(2) if the limitation is adopted after the athlete is a student at the institution, as soon as practicable after adoption.

(e) A name, image, or likeness agreement must contain a statement that the agreement is the sole, complete, and final agreement between the parties. The statement must be made by:

(1) the college athlete or, if the athlete is a minor, the parent or [guardian] of the athlete;

(2) the third party; and

(3) if a name, image, or likeness agent provided service in connection with the agreement, the agent.

### **Comment**

A college athlete would be required to disclose to a designated third party under Section 8(a) if a third party is designated 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 state agency or representative for inspection or review.

### **Section 9. Registration as a Name, Image, or Likeness Agent; Duties; [Fee Arrangements]**

[(a)] A name, image, or likeness agent shall 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 agreement between a college athlete and a name, image, or likeness agent must have a fee arrangement consistent with the customary practice of the agent's industry and otherwise complying with [cite to Uniform Athlete Agents Act or Revised Uniform Athlete Agents Act or other comparable law]].

***Legislative Note:*** A state should include subsection (b) if it wants to permit oversight of a fee arrangement between a college athlete and a name, image, or likeness agent.

### **Comment**

Section 9(b) prevents a name, image, or likeness agent from charging a fee to a college athlete that is higher than the fee typically charged by agents for similar work.

### **[Section 10. Registration as a Third Party**

(a) A person shall apply to register as a third party under Section 11 if in a calendar year the person provides or agrees to provide:

(1) more than \$[300] for a name, image, or likeness agreement; or

(2) more than \$[2,000] in the aggregate to college athletes for name, image, or likeness agreements.

(b) For each student who is a college athlete at an institution, a third party shall provide or disclose to the individual or office designated under Section 8(b) the name, image, or likeness compensation and agreements described in subsection (a).

(c) A college athlete or, if the athlete is a minor, the parent or [guardian] of the athlete, may void a name, image, or likeness agreement with a third party if the party fails to comply with subsection (a) or (b).]

***Legislative Note:*** *A state should adopt Sections 10 through 15 if it requires registration of third parties.*

**[Section 11. Application for Registration as Third Party]**

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

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

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

(3) identification of each social-media account with which the applicant is affiliated;

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

(5) the name and address of each person that:

(A) is a partner, member, officer, director, manager, or associate of the applicant,

(B) is entitled to a share of profits, income, receipts, or other funds of the applicant; or

(C) directly or indirectly holds an equity interest of at least [five] percent in the applicant;

(6) whether the applicant or a person named under paragraph (5) has been a defendant in a criminal proceeding or respondent in a civil proceeding and, if so, the date of

filing and a brief explanation of each proceeding;

(7) whether the applicant or a person named under paragraph (5) has been adjudicated as bankrupt or has filed for bankruptcy;

(8) whether conduct of the applicant or a person named under paragraph (5) has caused:

(A) a college athlete to be sanctioned, suspended, or declared ineligible to participate in an intercollegiate sport; or

(B) an institution to be sanctioned;

(9) whether a registration as a third party by the applicant or a person named under paragraph (5) has been denied, suspended, abandoned, or not renewed;

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

(11) other information required by [insert name of agency designated in Section 4].

(b) A person registered as a third party in another state may apply for registration as a third party in this state by submitting to the [insert name of agency designated in Section 4]:

(1) a copy of the application for registration in the other state;

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

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

(c) Subject to Section 12(b), the [insert name of agency designated in Section 4] shall issue a certificate of registration to a person that applies for registration under subsection (b) if

the [insert name of agency designated in Section 4] determines:

- (1) the application and registration requirements of the other state are substantially similar to or more restrictive than this [act]; and
- (2) the registration has not been revoked or suspended and no action involving the person's conduct as a third party is pending against the person or the person's registration in any state.

(d) In implementing subsection (c), the [insert name of agency designated in Section 4] shall:

- (1) cooperate with agencies in other states that register third parties to develop a common registration form;
- (2) determine which states have laws that are substantially similar to or more restrictive than this [act]; and
- (3) exchange information, including information related to actions taken against third parties or their registrations, with those agencies.]

### **Comment**

Section 11 is intended to provide a true reciprocal registration provision in that if a person registered in one state applies for registration in a second state, the second state is required to grant the registration if it determines the law in the first state is the same or more restrictive than the law in the second state, the registration is in good standing, and no proceeding involving the person's conduct as a third party is pending in any state in which the person is registered.

A central registration point with a single form is the easiest way to facilitate the reciprocal registration provisions of subsection (b). Subsection (c) encourages the administrative agencies to which the enforcement of the act is delegated to cooperate with agencies from other states to that end. It is recognized there are substantial obstacles to a central registration office, not the least of which is cost. If it is not possible or feasible to create a central registration point, agencies are encouraged to develop and adopt a common registration form.

### **[Section 12. Third-Party Certificate of Registration]**

(a) Except as provided in subsection (b), the [insert name of agency designated in Section 4] shall issue a certificate of registration to a person that applies for registration under and complies with Section 11(a).

(b) The [insert name of agency designated in Section 4] may refuse to issue a certificate of registration to an applicant under Section 11(a) if the [insert name of agency designated in Section 4] determines that the applicant has engaged in conduct that has a significant adverse impact on the reputation of a college athlete or the athlete's institution, conference, or athletic association. In making the determination, the [insert name of agency designated in Section 4] shall consider whether the applicant has:

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

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

(3) engaged in conduct prohibited by Section 16;

(4) engaged in conduct that has caused:

(A) a college athlete to be sanctioned, suspended, or declared ineligible to participate in an intercollegiate sport; or

(B) an institution to be sanctioned; or

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

(c) A third party registered under subsection (a) may apply to renew the registration by submitting an application for renewal in a form prescribed by the [insert name of agency designated in Section 4]. An authorized representative of the applicant must sign the application

under penalty of perjury and include updated information on all matters required in an initial application for registration.]

### **[Section 13. Limitation, Suspension, Revocation, or Nonrenewal**

The [insert name of agency designated in Section 4] may suspend, revoke, or refuse to renew a registration under Section 12(c) for a reason that would justify refusal to issue a certificate of registration under Section 12(b).]

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

The [insert name of agency designated in Section 4] may issue a temporary certificate of registration as a third party while an application for registration or renewal of registration is pending.]

### **[Section 15. Fees**

(a) An application for registration or renewal of registration as a third party must be accompanied by a fee of:

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

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

(3) \$[50] for an application for renewal of registration.

(b) The [insert name of agency designated in Section 4] by rule under Section 4 may modify the fees under subsection (a).]

### **Comment**

The amount of fees is left for each state to determine.

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

A third party may not intentionally:

(1) give materially false or misleading information or make a materially false promise or representation with the intent to influence a college athlete, parent or [guardian] of the athlete, or another person to enter into a name, image, or likeness agreement, receive name, image, or likeness compensation, or engage in name, image, or likeness activity;

(2) provide anything of value to a college 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; [or]

(3) predate or postdate a name, image, or likeness agreement[;

(4) unless registered under this [act], initiate contact, directly or indirectly, with a college athlete or, if the athlete is a minor, a parent [or guardian] of the athlete, to recruit or solicit the athlete, parent, or [guardian] to enter a name, image, or likeness agreement, receive name, image, or likeness compensation, or engage in name, image, or likeness activity;

(5) fail to apply for registration under Section 11; or

(6) provide materially false or misleading information in an application for registration or renewal of registration].

***Legislative Note:*** A state should include the bracketed language in paragraphs (4) through (6) only if the state includes optional Sections 11 through 15 that provide for third-party registration.

## **Section 17. Civil Remedy**

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

(1) is sanctioned, suspended, or declared ineligible to participate in an intercollegiate sport; or

(2) suffers financial damage.

(b) A college athlete has a cause of action under this section only if the athlete was 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] [treble] damages, [punitive damages,] reasonable attorney's fees, court costs, and other reasonable litigation expenses.

[(d) A violation of this [act] is a violation of and enforceable under [cite to state consumer protection or unfair trade practice law].]

**Legislative Note:** *A state that permits amendment by reference and has an unfair trade practice or consumer protection law that provides for civil enforcement by a state agency or person, including a competitor, should replace the bracketed language in subsection (d) with a citation to the state consumer protection or unfair trade practice law. A state that has an unfair trade practice or consumer protection law but does not permit amendment by reference should delete subsection (d) and make appropriate amendments to its unfair trade practice or consumer protection law. A state that does not have an unfair trade practice or consumer protection law should delete subsection (d) and substitute language providing for civil enforcement by a state agency, affected member of the public, or a competitor.*

### **Comment**

This Section does not preclude an individual from bringing other causes of action that might arise independently from this act, including, but not limited to, a claim for breach of contract or a violation of intellectual property rights.

### **Section 18. Civil Penalty**

The [Attorney General] [and] [insert name of the agency designated in Section 4] may 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].

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

## **Section 19. Uniformity of Application and Construction**

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

## **Section 20. Relation to Electronic Signatures in Global and National Commerce Act**

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

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

## **[Section 21. Severability**

If a provision of this [act] or its application to a person or circumstance is held invalid, 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 22. Repeals; Conforming Amendments**

(a) . . .

(b) . . .]

**Legislative Note:** *A state should repeal an existing state law on name, image or likeness agreements for college athletes.*

## **Section 23. Effective Date**

This [act] takes effect . . .