

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 7B Intercollegiate Athlete Compensation and Rights

SPONSOR(S): LaMarca

TIED BILLS: None. **IDEN./SIM. BILLS:** SB 8-B

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Education & Employment Committee	19 Y, 0 N	Wolff	Hassell

SUMMARY ANALYSIS

Florida was an early leader in allowing intercollegiate student athletes to earn compensation for the use of their name, image & likeness (NIL). Since that time, the majority of states have followed Florida's lead and enacted NIL laws of their own. In response to these actions, the National Collegiate Athletic Association (NCAA) adopted an interim policy allowing intercollegiate athletes to earn NIL compensation without jeopardizing their amateur status or athletic eligibility.

While Florida's NIL law has not been updated since its enactment, other states have had the opportunity to learn and benefit from Florida's early action. For example, Florida's NIL law prohibits institutions from causing NIL compensation to be directed to an intercollegiate athlete. As a result, athletes may not be aware of NIL opportunities that exist, or if they are aware, are unable to receive information or other support from their institutions beyond the statutorily required financial literacy and life skills workshop.

Consequently, several states have since revised their laws by removing this prohibition. In addition, the NCAA issued new guidance in October 2022 clarifying that institutions may, in fact, have limited involvement in the NIL process, such as: providing information to student athletes about NIL opportunities of which the institution has become aware; arranging space for a NIL entity and student athlete to meet on campus or in the institution's facilities; or through other specified actions. As a result of these other state actions and newly-issued NCAA guidance, Florida's NIL law is currently more restrictive than the NCAA.

The bill removes restrictions on Florida's postsecondary educational institutions and student athletes relating to the governance of student athlete NIL opportunities. For example, the bill removes the prohibition on institutions and their support organizations causing compensation to be directed to a student athlete. Institutions and their support organizations must still adhere to long-standing NCAA bylaws that prohibit 'pay-for-play' and illegal recruiting inducements. These changes place Florida's institutions on an even playing field with other states and permit student athletes in Florida to capitalize on the full benefits of NIL as authorized by the NCAA.

The bill expands the financial literacy and life skills workshop institutions must conduct for their intercollegiate student athletes to include an entrepreneurship component and requires the workshop be conducted twice for each student athlete prior to graduation. The second workshop must be more advanced than the first. The bill maintains the current authorization for student athletes to hire athlete agents for NIL purposes.

The bill protects postsecondary institutions and their staff from liability related to loss of NIL compensation due to routine decisions taken in the course of intercollegiate athletics.

The bill has an indeterminate positive fiscal impact on intercollegiate student athletes at Florida's postsecondary institutions.

The bill takes effect upon becoming a law.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Background

National Collegiate Athletic Association

The National Collegiate Athletic Association (NCAA) regulates intercollegiate athletic competitions in various sports across three divisions (Division I, Division II, and Division III).¹ As the governing body for the majority of intercollegiate athletic programs, the NCAA provides that its basic purpose is to “maintain intercollegiate athletics as an integral part of the educational program and the athlete as an integral part of the student body and, by so doing, retain a clear line of demarcation between intercollegiate athletics and professional sports.”²

The NCAA issues and enforces rules governing athletic competitions among its member schools. The rules are developed by a member-led governance system in which members introduce and vote on proposed rules. The rules for student-athletes vary by division.

Student-athletes are allowed to receive scholarships, or "grants-in-aid," which may cover tuition and fees, room and board, required course-related books, food, and cash stipends to help defray the actual cost of attending school.

The NCAA and member colleges and universities award nearly \$3.6 billion in athletic scholarships every year to more than 180,000 student-athletes.³ According to the NCAA, they also provide almost \$100 million each year to support student-athletes' academic pursuits and assist them with the basic needs of college life, such as a computer, clothing or emergency travel expenses.⁴

Florida Intercollegiate Athletic Programs

In Florida, 13 schools participate in NCAA Division I athletics, of which seven compete in the Football Bowl Subdivision, three compete in the Football Championship Subdivision, and three do not field football teams. There are 14 NCAA Division II athletic programs located in the state, and no NCAA Division III athletic programs. Additionally, Florida is home to 26 institutions participating in the National Junior College Athletic Association (NJCAA), nine institutions participating in the National Association of Intercollegiate Athletics (NAIA), and six institutions participating in the National Christian College Athletic Association (NCCAA).

Intercollegiate Athletics Revenue and Expenses

NCAA Revenues and Expenses

College athletics, particularly football and basketball, is big business. The games associated with the College Football Playoff paid out a combined \$549 million to athletic conferences and schools in 2018-2019.⁵ ESPN will reportedly pay approximately \$7.3 billion to televise the games associated with the

¹ Division I is further subdivided into the Football Bowl Subdivision (FBS), Football Championship Subdivision (FCS), and Division I Subdivision.

² NCAA Constitution Art. I, s. A, available at <https://web3.ncaa.org/lstdbi/reports/getReport/90008>.

³ NCAA, *Scholarships*, <https://www.ncaa.org/sports/2014/10/6/scholarships.aspx> (last visited Feb. 3, 2023).

⁴ See NCAA, *2023 Division I Revenue Distribution Plan*, available at https://ncaaorg.s3.amazonaws.com/ncaa/finance/d1/2023D1Fin_RevenueDistributionPlan.pdf.

⁵ Brent Schrottenboer, *College Football Playoff Business is Booming at Halfway Point, but Expansion Looms*, USA Today, Jan. 9, 2020, available at <https://www.usatoday.com/story/sports/ncaaf/2020/01/09/college-football-playoff-financial-success-expansion-future/2838495001/> (last visited Feb. 3, 2023).

College Football Playoff over the twelve-year period.⁶ The NCAA's current eight-year television contract with CBS and Turner Sports for the NCAA's men's March Madness basketball tournament is reportedly worth \$8.8 billion. For the year ending August 31, 2021, the NCAA reported revenue of \$1.15 billion and expenses of \$1.03 billion.⁷ The vast majority of revenues were received from television and marketing rights fees (\$915 million) while \$613 million was distributed to Division I member institutions.⁸

Division I Revenue and Expenses

In 2020-2021, 350 Division I schools reported a total revenue of \$13.3 billion through the NCAA financial reporting system.⁹ The majority of this revenue was received from institution and government support (37 percent), media rights (26 percent), and donor contributions and endowments (17 percent).¹⁰ However, these same institutions had \$13.7 billion in expenses, with the largest expenses being coach compensation (22 percent), student athletics aid (21 percent), administrative compensation (18 percent) and facilities (18 percent).¹¹ Of the 350 institutions that reported financial data to the NCAA in 2021, only nine FBS and no FCS institutions reported revenue that exceeded expenses.¹²

Name, Image, and Likeness

NCAA Interim Policy

Prior to July 1, 2021, the NCAA prohibited intercollegiate athletes from earning compensation for the use of their name, image, and likeness. In June 2021, the United States Supreme Court (Supreme Court) upheld a ruling against the NCAA striking down long-standing restrictions on permissible education-related benefits for student athletes, such as rules that limit scholarships for graduate or vocational school, payments for academic tutoring, or paid posteligibility internships.¹³

In light of the Supreme Court ruling and changes in public sentiment regarding student athlete compensation, including a number of state laws authorizing student-athlete name, image, and likeness opportunities, the NCAA adopted an interim policy governing name, image and likeness opportunities for member institutions.¹⁴ The interim policy provides the following regarding college athletes, recruits, their families and member schools:

- Individuals can engage in NIL activities that are consistent with the law of the state where the school is located. Colleges and universities may be a resource for state law questions.
- College athletes who attend a school in a state without a NIL law can engage in this type of activity without violating NCAA rules related to name, image and likeness.
- Individuals can use a professional services provider for NIL activities.
- Student-athletes should report NIL activities consistent with state law or school and conference requirements to their school.¹⁵

⁶ *Id.*

⁷ NCAA, *Consolidated Financial Statements August 31, 2021 and 2020*, p.6, available at https://ncaaorg.s3.amazonaws.com/ncaa/finance/2020-21NCAAFIN_FinancialStatement.pdf.

⁸ *Id.*

⁹ NCAA, *Trends in Division I Athletics Financing*, p. 13, available at https://ncaaorg.s3.amazonaws.com/research/Finances/2022RES_DI-RevExpReport_FINAL.pdf.

¹⁰ *Id.* at 14.

¹¹ *Id.* at 21-22.

¹² *Id.* at 8-9. At least one Division I Subdivision school reported revenue greater than expenses, but the NCAA report does not provide a specific count. *Id.* at 10.

¹³ See *NCAA v. Alston*, 141 S.Ct. 2141 (2021).

¹⁴ NCAA, *NCAA adopts interim name, image and likeness policy*, <https://www.ncaa.org/news/2021/6/30/ncaa-adopts-interim-name-image-and-likeness-policy.aspx> (last visited Feb. 3, 2023).

¹⁵ *Id.*

In October 2022, the NCAA issued additional guidance seeking to clarify its interim NIL policy.¹⁶ The guidance addressed three main areas of confusion related to the interim policy:¹⁷

- Schools generally can and should provide education to current student-athletes on topics such as financial literacy, taxes, social media practices and entrepreneurship. Schools also can provide NIL education to collectives, boosters and prospects.¹⁸
- Schools can inform student-athletes about potential NIL opportunities and can work with a NIL service provider to administer a "marketplace" that matches student-athletes with those opportunities, schools cannot engage in negotiations on behalf of a NIL entity or a student-athlete to secure specific NIL opportunities.
- School personnel (including coaches) can assist a NIL entity with fundraising through appearances or by providing autographed memorabilia but cannot donate cash directly to those entities. School staff members also cannot be employed by or have an ownership stake in a NIL entity.

To aid institutions in understanding the new guidance, the NCAA's guidance document also included several other examples of activities that are permissible and activities that are impermissible.¹⁹ The NCAA stressed that this additional guidance was a clarification of existing policy, but acknowledged that the guidance may render prior acts by institutions violations of the interim policy. However, the NCAA directed its enforcement staff to only pursue the most egregious offenses that were "clear violations" of the interim policy.²⁰

Florida Name, Image, and Likeness Law

Recognizing that intercollegiate athletes have a property right in their name, image, and likeness and generate significant revenue for their institutions, in 2020, Florida adopted the 'Intercollegiate Athlete Bill of Rights' (Florida NIL Law).

Effective July 1, 2021, Florida's NIL Law permits intercollegiate athletes at postsecondary educational institutions to earn compensation for the use of their name, image, or likeness.²¹ Such athletes may do so by, among other things, endorsing products and/or services, making public appearances, signing autographs, participating in sports camps, or even starting their own businesses. The compensation provided must be commensurate with the market value of the authorized use of the athlete's name, image, or likeness.²² To preserve the integrity, quality, character, and amateur nature of intercollegiate athletics and to maintain a clear separation between amateur intercollegiate athletics and professional sports, state law prohibits such compensation from being provided in exchange for athletic performance or attendance at a particular institution.²³ Additionally, the duration of an intercollegiate athlete's name, image, or likeness contract may not extend beyond his or her participation in an athletic program at a postsecondary educational institution.²⁴ An intercollegiate athlete must disclose the contract to her or his postsecondary educational institution.²⁵

After Florida, several other states enacted name, image, and likeness laws and, as of January 2023, 29 states have adopted NIL laws and five states have proposed NIL laws.²⁶

¹⁶ NCAA, *DI board approves clarifications for interim NIL policy*, <https://www.ncaa.org/news/2022/10/26/media-center-di-board-approves-clarifications-for-interim-nil-policy.aspx> (last visited Feb. 3, 2023).

¹⁷ *Id.*

¹⁸ The board also noted that — when permitted by applicable state laws — schools can and should require student-athletes to report NIL activities to the athletics department. *Id.*

¹⁹ NCAA, *Institutional Involvement in a Student-Athlete's Name, Image and Likeness Activities*, available at https://ncaaorg.s3.amazonaws.com/ncaa/NIL/DINIL_InstitutionalInvolvementNILActivities.pdf.

²⁰ *Id.*

²¹ Section 1006.74, F.S.

²² *Id.*

²³ *Id.*

²⁴ *Id.*

²⁵ *Id.*

²⁶ See Justia, *Laws for College Athlete Name, Image, and Likeness Rights: 50-State Survey*, <https://www.justia.com/sports-law/college-athlete-name-image-and-likeness-rights-50-state-survey/> (last visited Feb 3, 2023).

Prohibition on Directing Compensation to Student Athletes

Florida and only six other states prohibit a postsecondary educational institution, as well as its booster organization, from causing compensation to be directed to a current intercollegiate athlete for the use of his or her name, image, or likeness.²⁷

However, the prohibition against causing compensation to be directed to a current intercollegiate athlete has resulted in confusion as to the extent to which a postsecondary educational institution, any of its staff, or its booster organization, may be involved in the NIL process at all. For example, this portion of Florida's NIL law could be interpreted to prohibit athletic department staff from merely answering questions from a current student athlete regarding the NIL process and/or setting up an introduction between the current student athlete and a third-party. As a result of the confusion, institutions and coaches have shied away from discussions surrounding NIL altogether.

The confusion exists in some of the other states that have NIL laws similar to Florida's. However, in 2022, Louisiana, Mississippi, Missouri, and Tennessee amended their NIL laws to address the confusion and clarify that institutions are not prohibited from being involved in the NIL process altogether. Alabama repealed its NIL law entirely. Several other states, such as Arkansas, Georgia, North Carolina, and Texas have codified NIL laws, but do not have the prohibition. South Carolina's NIL law has the prohibition, but its NIL law has been suspended for the 2022-2023 academic year.²⁸

Because the October 2022 guidance from the NCAA clarifies that some institutional involvement in NIL is permissible, and in some instances, encouraged, Florida's prohibition on 'causing compensation to be directed' has been interpreted as being more restrictive than what is allowed by the NCAA Interim Policy.²⁹

Hold Harmless Provisions

As part of their NIL laws, 11 states have enacted hold harmless provisions to provide clarity to educational institutions and student athletes and to protect educational institutions from unintended liability arising from the ever-evolving and accelerated proliferation of state NIL laws. Seven of these states include provisions limiting the liability of educational institutions for any damages a student athlete might suffer from decisions made in the ordinary course of operating a postsecondary athletics program.³⁰ These seven states are Illinois, Kentucky, Louisiana, Mississippi, Nebraska, North Carolina, and Ohio.³¹

Athlete Agents

The licensing and regulation of athlete agents in Florida is administered by the Department of Business and Professional Regulation (DBPR). An athlete agent is a person who:³²

- Recruits or solicits a student athlete to enter into an agent contract,³³ directly or indirectly;
- Procures, offers, promises, or attempts to obtain employment or promotional fees or benefits for a student athlete with a professional sports team or as a professional athlete, for any type of financial gain; or

²⁷ Section 1006.74(2)(c), F.S.

²⁸ Andy Wittry, *University of South Carolina Embraces Suspension of NIL law*, On3NIL.com, July 1, 2022, available at <https://www.on3.com/nil/news/south-carolina-gamecocks-facilitate-nil-deals-after-state-law-suspended/> (last visited Feb. 3, 2023).

²⁹ NCAA, *DI board approves clarifications for interim NIL policy*, <https://www.ncaa.org/news/2022/10/26/media-center-di-board-approves-clarifications-for-interim-nil-policy.aspx> (last visited Feb. 3, 2023).

³⁰ See 110 ILL. COMP. STAT. 190/35; KY. REV. STAT. ANN. § 164.6947; LA. REV. STAT. ANN. § 17:3703; MISS. CODE ANN. § 37-97-109; NEB. REV. STAT. § 48-3601, *et seq.*; 2021 N.C. Exec. Order No. 223; Ohio Exec. Order No. 2021-10D.

³¹ *Id.*

³² Section 468.452(2), F.S.

³³ An agent contract is the contract or agreement in which a student athlete authorizes an athlete agent to represent the student in the marketing of the student's athletic ability or athletic reputation. Section 468.452(1), F.S.

- Markets or attempts to market the student athlete's athletic ability or athletic reputation with any promoter.

In order to be licensed as an athlete agent, an applicant must be at least 18 years of age, be of good moral character, and submit a completed the application form with fingerprints for a background check.³⁴ In the 2020-2021 fiscal year, there were 438 licensed athlete agents in Florida.³⁵

An unlicensed person is generally prohibited from acting as an athlete agent, unless:³⁶

- A student athlete or person acting on the student athlete's behalf initiates communication with the individual; and
- The individual submits an application for licensure within seven days after an initial act as an athlete agent.

Contrary to any athletic association rules or policies, an athlete agent may represent an intercollegiate athlete in securing compensation for the use of her or his NIL. However, a person must be licensed as an athlete agent to represent an intercollegiate athlete for purposes of contracts regarding the use of her or his NIL.³⁷

Effect of Proposed Changes

The bill amends Florida's NIL Law to place the state's postsecondary educational institutions on an even playing field with other states and permit Florida's intercollegiate student athletes to capitalize on the full benefits of NIL as authorized by the NCAA. The bill retains the Legislative finding that intercollegiate student athletes must be able to profit from the commercial use of their NIL rights and be protected from unauthorized use of and commercial exploitation of his or her NIL.

The bill removes overburdensome restrictions on Florida's postsecondary educational institutions and intercollegiate student athletes. For example, the bill removes the prohibition on institutions and their support organizations causing compensation to be directed to a student athlete. Institutions and their support organizations must still adhere to long-standing NCAA bylaws that prohibit 'pay-for-play,' prohibit illegal recruiting inducements, and limit the reduction, revocation, or non-renewal of student athlete financial aid.

The proposed changes will not, however, negatively impact student athlete rights previously explicitly protected by Florida's NIL law. Specifically, student athletes retain the ability to hire professional representation, including licensed athlete agents, licensed attorneys, and tax professionals, as authorized by the NCAA NIL policy. Additionally, student athlete contractual rights will be governed by general statute, such as the Uniform Commercial Code, under which student athletes have all the attendant rights and responsibilities of private parties when entering into and fulfilling obligations under such agreements.

The bill expands the financial literacy and life skills workshop institutions must conduct for their student athletes to include an entrepreneurship component and requires the workshop be conducted twice for each student athlete prior to graduation. The second workshop must be more advanced than the first. The bill maintains the current authorization for student athletes to hire athlete agents for NIL purposes.

The bill protects postsecondary institutions and their staff from liability related to loss of NIL compensation due to routine decisions taken in the course of intercollegiate athletics.

B. SECTION DIRECTORY:

³⁴ Rule 61-24.004, F.A.C.

³⁵ Florida Department of Business and Professional Regulation, *Fiscal Year 2020-2021 Annual Report (2021)*, page 20, available at http://www.myfloridalicense.com/DBPR/os/documents/divisionannualreport_FY2021.pdf.

³⁶ Section 468.4561, F.S.

³⁷ Section 468.453(8), F.S.

Section 1: Amends s. 468.453, F.S.; revising requirements for athlete agents representing intercollegiate athletes for certain purposes; conforming provisions to changes made by the act.

Section 2: Amends s. 1006.74, F.S.; revising and deleting definitions; deleting requirements regarding the compensation that intercollegiate athletes may receive; deleting certain requirements for postsecondary educational institutions whose intercollegiate athletes seek to earn compensation or to have professional representation; requiring a postsecondary educational institution to conduct a financial literacy, life skills, and entrepreneurship workshop under certain conditions; making technical changes; providing that postsecondary educational institutions and specified individuals are not liable for damages under certain circumstances.

Section 3: Provides an effective date of upon becoming law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill has an indeterminate positive fiscal impact on student athletes at Florida's post-secondary institutions due to increased awareness of NIL opportunities that may be available to them.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

None.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

Current law requires the adoption of rules and regulations governing NIL by the SBE and BOG, respectively, and such rules and regulations will need to be updated to address changes made in the bill.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

None.