

HB 4119 STAFF MEASURE SUMMARY

Senate Committee On Rules

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Meeting Dates: 2/22, 2/27

WHAT THE MEASURE DOES:

The measure makes changes to the rights of college athletes in Oregon to control and profit from their name, image, and likeness (NIL). It adds “athletic reputation” to the list of traits that the student has a right to earn money from. It also strengthens students’ rights under state law and gives liability protections to colleges and universities. The provisions apply to all NIL actions taken on or after June 29, 2021. The measure declares an emergency and is effective on passage.

Detailed Summary:

Strengthens protections for student athletes and institutions of higher education around name, image, and likeness rights by enacting the following:

- Adds right to compensation for athletic reputation to statutes governing name, image, and likeness rights for student athletes.
- Prohibits an athletic association, conference, or organization from penalizing an institution of higher education or a student athlete due to a violation of its rules and regulations related to name, image, and likeness rights.
- Prohibits student athletes from hiring an agent who was employed by an institution of higher education within the last four years and repeals prohibition on hiring a professional representative who represented a post-secondary institution within the last four years.
- Prohibits the use of athletic performance as a condition for compensation for a student athlete's name, image, likeness, or athletic reputation.
- Permits the use of attendance at a particular institution as a condition for compensation for a student athlete's name, image, likeness, or athletic reputation.
- Prohibits an athletic association, conference, or organization from restricting an institution's ability to identify and facilitate NIL opportunities for student athletes.
- Protects institutions from liability for damages to a student athlete's NIL opportunities as a result of a routine decision or action in intercollegiate sports, or as a result of the institution's attempts to identify and facilitate NIL opportunities for the student athlete.
- Applies protections to any NIL action taken on or after June 29, 2021.
- Requires student athletes to receive royalty payments for team jerseys, video games, and trading cards that use the student athlete's athletic reputation on or after the effective date of the measure.
- Declares emergency, effective on passage.

ISSUES DISCUSSED:

EFFECT OF AMENDMENT:

No amendment.

BACKGROUND:

In June 2021, the [U.S. Supreme Court](#) issued its ruling on *National Collegiate Athletic Association v. Alston*, which upheld the rights of student athletes to receive compensation for the use of their name, image, or likeness (NIL). Prior to this decision, the rules of the National Collegiate Athletic Association (NCAA) restricted student athletes from earning compensation other than the cost of attendance at their college or university. Leading up to

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NCAA v. Alston, at least 19 states, including California, passed legislation to guarantee student athletes' rights to profit from their name, image, or likeness.

Within weeks of the *NCAA v. Alston* decision, the NCAA adopted a [NIL policy](#) that permitted student athletes to benefit from sponsorships and outside payments, as long as they were consistent with the laws of the state where the student athlete's institution was located. The number of states regulating NIL has since increased. According to the [National Conference of State Legislatures](#), at least 28 states that have passed laws regarding NIL as of September 2023. [Senate Bill 5 \(2021\)](#), which guarantees student athletes' NIL rights in Oregon, passed in June 2021, simultaneous to the *NCAA v. Alston* ruling and subsequent NCAA policy change.

Since the NCAA's June 2021 interim policy, donors and institutions have increased their participation in securing NIL deals and advising student athletes. Donors at institutions across the country have formed institution-specific collectives, which pool donor resources and provide a variety of services to student athletes engaged in NIL deals. There are at least two NIL collectives in Oregon: [Dam Nation Collective](#) for Oregon State University (OSU) student athletes, and [Division Street](#) for student athletes at the University of Oregon (UO). In addition, several Oregon institutions offer student athletes mentorship and networking opportunities for NIL activities through their athletic departments. These programs include [The Shipyard Exchange](#) at Portland State University, [expOSUre](#) at OSU, and [Emerge at UO](#).

The [NCAA](#) issued additional guidance in May 2022 to address third party involvement in NIL activities, and in October 2022 to address institutional involvement. Generally, the NCAA prohibits boosters from using NIL opportunities as a recruiting tool and institutions from directly securing NIL opportunities for student athletes. The [October 2022 guidance](#) included a significant change in the NCAA's approach to enforcing these rules. In response to [high-profile cases](#) of student athlete recruitments that coincided with significant NIL deals, the NCAA announced that its investigatory body would use news reports and other sources as evidence of an infraction. In addition, rather than requiring investigators to prove that a third party or institution violated the policy, that it would now be the institution's responsibility to prove that it had not.