State Trends Policy Brief
Student Athlete Compensation: Name, Image and Likeness

Background

The National Collegiate Athletic Association (NCAA) rules on amateurism set the guiding principles for student-athletes participating in intercollegiate athletics, including those related to the permissibility of compensation. These rules currently stipulate that only amateur student-athletes are eligible to participate in intercollegiate athletics.1

Under these rules:

- A “student-athlete” is one who engages “in athletics for the education, physical, mental, and social benefits he derives therefrom, and to whom athletics is an avocation.”
- Amateur status of a student-athlete can be revoked if an athlete does any of the following:
  - Uses his/her athletic skill (directly or indirectly) for pay.
  - Accepts a promise of pay, such as by signing a contract for post-graduate play, or receives a salary, reimbursement of expenses, or other financial assistance from a professional sports organization.
  - Competes on any professional athletics team or enters a professional draft.
  - Enters into an agreement with an agent.
- “Grant-in-aid” tied to athletic participation can be given to students by educational institutions, if it does not exceed financial aid limitations—typically costs of tuition, room, and board, as determined by the NCAA. Under the NCAA’s current rules, institutions may also provide student-athletes with stipend payments for indirect costs.2

Currently, 1,098 colleges and universities, in three divisions, participate in and are governed by NCAA-sanctioned athletics.3

State Action

Late 2019 brought increased attention at both the state and federal level to the issue of student-athlete compensation. A number of states, led by a pioneering law4 passed in California, have moved to implement laws that would allow student-athletes to be compensated by external entities for the use of their name, image, and likeness (NIL) related to their amateur athletic performance as collegiate student-athletes. While California was the first in the nation to pass a law permitting this compensation, lawmakers in numerous other states* have either introduced, or plan to introduce similar laws. California’s law does not currently place limits or prohibitions on student-athletes’ ability to be compensated for their NIL, but other states are considering a less-flexible approach. Provisions in other draft bills would place restrictions on the types of industries student-athletes could potentially accept NIL compensation from; tobacco and liquor companies, for example, would be restricted in some states.

---

1 NCAA Eligibility Center.
2 O’Bannon v NCAA 802 F.3d 1049 (9th Cir. 2015).
3 NCAA: Who We Are.
4 CA: Fair Pay to Play Law

Prepared Winter 2020
NACUBO, founded in 1962, is a nonprofit professional organization representing chief administrative and financial officers at more than 1,900 colleges and universities across the country.
Contact: Megan Schneider, Senior Director, Government Affairs, mschneider@nacubo.org
Additionally, the California law and similar legislation in other states prohibits the NCAA or schools – and in some instances both—from penalizing student-athletes who receive NIL compensation. A minority of states, including New York, also feature legislation with direct pay provisions that require forms of revenue sharing whereby student-athletes would receive direct compensation from colleges and universities tied to revenue generated by student athletics.

**Federal Action**

While state lawmakers led the charge in providing for student-athlete NIL compensation, interest at the federal level followed shortly after.

Sen. Chris Murphy (D-CT), who has long been critical of student-athlete treatment by the NCAA, announced a bipartisan working group with Sen. Mitt Romney (R-UT) to discuss student-athlete compensation in late 2019. The working group met with current NCAA President Dr. Mark Emmert and both parties expressed a desire to work together to address issues of student-athlete compensation. Sen. Murphy and Sen. Romney wrote a letter to Dr. Emmert in January 2020 calling for a discussion of the issue.5 Dr. Emmert also appeared on Capitol Hill in mid-February 2020 for a Senate hearing on the issue.

In the House of Representatives, a bill has been introduced that would amend the definition of a “qualified amateur sports organization” in the U.S. tax code to ban organizations from prohibiting or restricting student-athletes from being compensated for the use of their NIL, essentially forcing NCAA to amend its rules or lose its tax-exempt status.6 Another bill would establish a Congressional Advisory Committee to investigate the relationship between institutions of higher education, intercollegiate athletic programs, and the NCAA.7

Representing a different viewpoint, Sen. Richard Burr (R-NC) has stated that he believes student-athletes who are receiving compensation for use of their NIL should be required to pay federal income tax on their otherwise tax-exempt college scholarships. Burr has not yet introduced legislation but has indicated he plans to in the future.

**NCAA Response**

In light of interest by both state and federal lawmakers to ensure student-athletes may be compensated for use of their NIL without being penalized or having their amateur athlete status called into question, the NCAA Board of Governors voted unanimously to permit student-athletes the opportunity to benefit from the use of their NIL “in a manner consistent with the collegiate model.” The Board has now formed working groups with member schools in each of its divisions to “examine the issue, provide feedback and prepare for future rules changes.”

As the NCAA moves through its process of developing best practices and adopting new rules, it has expressed concern with states acting individually to adopt their own legislation that would create a patchwork of rules surrounding student-athlete NIL compensation. The NCAA, urging additional states to refrain from adopting legislation on the issue, has stated, “It is critical that college sports are

---

5 [Office of Senator Murphy: Senators Murphey and Romney Meet with Dr. Mark Emmert](#)
6 [H.R. 1804: The Student Athlete Equity Act](#)
7 [HR 5528: The CACIA Act of 2019](#)
8 [NCAA Taking Action: Name, Image and Likeness](#)
regulated at a national level. This ensures the uniformity of rules and a level playing field for student-athletes.”

Federal lawmakers appear to agree with this position. Sen. Murphy, following his meeting with Dr. Emmert stated, “I’m a supporter of the California law, but I also acknowledge that this is a national endeavor and it really can’t ultimately work with 50 different state laws...So I would like to see us work with the NCAA and work with student-athletes to try to come up with a federal solution.”

Many state lawmakers are refusing to halt action on their own legislation, however. As public criticism of the NCAA’s handling of this issue increases, its various working groups are pressing on with discussions surrounding best practices for future NIL compensation rules. A wholesale vote to amend NCAA rules regarding student-athlete NIL compensation is anticipated at the NCAA Convention in January 2021.
*State Bills Currently Introduced*

1. WA: [HB 1084/SSB 5878](#)
2. CO: [SB 20-123](#)
3. NY: [SB 6722A](#)
4. NJ: [S971](#)
5. FL: [HB251](#)
6. MI: [HB5217](#)
7. NE: [LB962](#)