

NIL LEGISLATION UPDATED OVERVIEW

Comparison Table

State Legislation	Athlete Terminology	Educational Institutions Covered	Notice Requirements	Rights Defined; Team Contract Conflicts; Disclosures; Restricted Activities	Enforcement
California (SB 206) Effective January 1, 2023	“Student” and “Student Athlete”	Institutions of higher education (IHE) (except community colleges) are any campus of University of California or the California State University, independent institution of higher education; or a private IHE	Athlete shall disclose contract to an official of the institution, to be designated by the institution	<p>Name, Image, and Likeness Rights</p> <p>Athlete shall not enter into contract if a provision of the contract is in conflict with provision of athlete’s team contract.</p> <p>Institution asserting a conflict shall disclose the relevant contractual provisions that are in conflict.</p> <p>Team contract shall not prevent athlete from using NIL for commercial purposes when the athlete is not engaged in team activities.</p>	No Express Remedies or Enforcement Mechanisms.
Colorado Effective January 1, 2023	“Student Athlete”	All Public and Private Educational Institutions in Colorado	Contract must be disclosed to AD within 72 hours or before next scheduled event, whichever is earlier (UAAA)	<p>Name, Image and Likeness Rights</p> <p>Athlete may not enter into contract in conflict with Team Contract.</p> <p>IHE must disclose relevant contractual provisions of the Team Contract in instances of claimed conflict</p> <p>Team Contract may not prohibit athlete from using NIL for commercial purposes when not engaged in official team activities</p>	Athletes may seek injunctive relief for violations of the Act

<p>Florida</p> <p>Effective July 1, 2021</p>	<p>“Intercollegiate Athlete”</p>	<p>All public universities, Colleges in Florida System, and private universities receiving financial aid</p>	<p>Contract must be disclosed in the manner designated by the university</p>	<p>Name, Image, and Likeness Rights</p> <p>Athlete may not enter into contract in conflict with Team Contract; IHE must disclose relevant terms of the Team Contract in instances of claimed conflict</p> <p>IHE shall conduct financial literacy and life skills workshop for a minimum of 5 hours at the beginning of athlete’s first and third academic years. Workshop may not include any marketing, advertising, referral, or solicitation by providers of financial products or services.</p>	<p>No Express Remedies or Enforcement Mechanisms.</p> <p>Remedies contained in Uniform Athlete Agent Act may apply</p> <p>However, no athlete contract can extend beyond the duration of participation</p> <p>Board of Governors and the State Board of Education shall adopt regulations and rules to implement this section.</p>
<p>Nebraska</p> <p>Effective July 1, 2023</p>	<p>“Student-Athlete”</p>	<p>All IHEs located in Nebraska</p>	<p>Contract must be disclosed to IHE</p> <p>IHE must designate person to whom disclosure is to be made</p> <p>IHE may not disclose the terms of such athlete contract deemed to be trade secret or otherwise undisclosable</p>	<p>Name, Image, and Likeness Rights or Athletic Reputation</p> <p>Athlete may not enter into contract in conflict with Team Contract</p> <p>IHE must disclose entire Team Contract in instances of claimed conflict. Athlete may not disclose Team Contract terms deemed trade secrets or otherwise undisclosable.</p> <p>Athlete may not enter into sponsor contract if it provides compensation for NIL or athletic reputation for display of sponsor’s apparel or otherwise advertise during official team activities</p> <p>No Team Contract shall prevent athlete from receiving compensation for NIL or athletic reputation when athlete is not engaged in team activities.</p>	<p>Private Right of Action for both athlete and IHE including</p> <p>(1) Damages; (2) Equitable and Declaratory Relief and (3) Attorneys’ Fees</p>

<p>New Jersey</p> <p>Effective immediately and applicable in the fifth academic year following enactment date of September 14, 2020.</p>	<p>“Student-Athlete”</p>	<p>Four-year institution of higher education</p>	<p>Contract shall be disclosed to an official of the institution, designated by the institution</p>	<p>Name, Image, and Likeness Rights</p> <p>Athlete may not enter into contract in conflict with Team Contract.</p> <p>IHE asserting a conflict shall disclose relevant contractual provisions in conflict.</p> <p>Shall not restrict activities when athlete is not engaged in official team activities.</p> <p>Athlete is prohibited from earning compensation in connection with adult entertainment p & s; alcohol products; casinos/gambling, sports betting, lottery, betting in connection with video games, on-line games, and mobile devices; tobacco and e-smoking products/devices; prescription Rx; controlled substances; and weapons, firearms, & ammunition</p>	<p>No Express Remedies or Enforcement Mechanisms.</p>
<p>California SB26 Supplement to SB206 (pending)</p> <p>January 1, 2022 or when rule changes are adopted by the NCAA, whichever occurs first</p>	<p>“Student-Athlete”</p>	<p>Post-secondary institution means any campus of UC or CSU, or a private postsecondary educational institution, and an independent institution of higher education</p>	<p>Adds “Athletic Reputation” to NIL activities.</p> <p>Prohibit team contract conflict from preventing athlete from using athletic reputation when not engaged in official team activities</p> <p>IHE shall not deny athlete any rights provided to other college students, except in relation to recruitment</p>	<p>Adds New Enforcement Mechanisms</p> <p>Athlete who prevails in an action brought against institution for violations may recover reasonable atty’s fees, court costs, damages or equitable relief against the institution</p>	

Federal Legislation	Athlete Terminology	Educational Institutions Covered	Restricted and Unlawful Activities	Enforcement
HR 8382 <i>Student Athlete Level Playing Field Act</i> (bipartisan bill introduced in House of Representatives) (pending)	“Student Athlete”	Covered Athletic Organization or IHE	<p>Covered Athletic Organization or IHE may not prohibit endorsement contracts except</p> <ul style="list-style-type: none"> • Tobacco company or brand including vaping, e-cigs • Alcohol company or brand • Seller or dispensary of controlled substance, including marijuana • Adult entertainment business • Casino or entities that sponsor or promote gambling <p>Athlete may be prohibited from wearing any item of clothing or gear with an insignia of any entity during athletic competition or university-sponsored event</p> <p>Unlawful for a booster to provide funds or thing of value as an inducement to enroll or remain at IHE or group of IHE</p>	<p>Violations shall be treated as unfair or deceptive trade practice under FTC regulation.</p> <p>FTC has power to enforce this section.</p> <p>Violations subject to penalties under FTC Act.</p>

Summary Takeaways

All currently enacted legislation contains consistent and/or similar protections and/or prohibitions regarding

1. Athletes’ rights to receive compensation from the use of their name, image, or likeness (NIL);
2. Protection for athletes from penalties (by educational institutions or athletic associations) related to eligibility, grant-in-aid, and scholarships due to receipt of compensation from NIL;
3. Post-secondary institutions prohibited from enforcing any athletic association(s) rules in violation of the act(s);
4. Post-secondary institutions protected from penalties by association(s) for athletes’ receipt of compensation from NIL;
5. Athletes permitted to engage advisors, registered agents, and licensed attorneys to negotiate and solicit contracts related to the use of NIL;
6. Athletes must provide notice and disclose terms of any agreement for the use of NIL;
7. Athletes are prohibited from entering into endorsement agreements or agreement for the use of their NIL that are in conflict with university team contracts.
8. University team contracts may not prohibit an athlete from use NIL for commercial purposes when athlete is not engaged in official team activities.

Primary Differences Between SB 206 and Other Similar State Legislation

1. Three enacted state laws do not exempt community colleges; however, at least one version of current proposed federal legislation and New Jersey state legislation is limited to 4-year degree-granting institutions.

2. Enforcement mechanisms and/or legal actions based on violations are only expressly provided in two enacted state laws; and one pending amendment to SB206.
3. Notice and disclosure by an athlete of entering into a contract for compensation based on NIL is required under all models. Method and timing of providing notice varies across all four state laws. Non-disclosure of contracts terms is prohibited in some models.
4. Athlete and Team Contract conflicts are prohibited, but method for resolving conflicts is not specified.
5. Treatment of current athletes and prospective athletes varies among states. Some states prohibit a post-secondary education institution from providing a prospective athlete with compensation concerning NIL. Other states prohibit the post-secondary institution from providing compensation to **both** current and prospective athletes.

Federal Legislation – only one bipartisan bill introduced to date

1. Creates 13 member Covered Athletic Organization Commission (with sunset provisions) to make recommendations (1) on NIL rules; (2) on processes to certify agents; (3) for establishment of independent dispute resolution process for any dispute between athlete and covered athletic organization or IHE; and (4) for additional categories of prohibited endorsements.
2. Commission should reflect diversity in gender, race, sport, and divisions/conferences of covered athletic organizations.
3. Bill includes additional provisions including (1) revisions to SPARTA (2) preemption of state law, (3) nothing shall affect rights under Title IX, (4) no cause of action under Sherman Act, and (5) nothing shall affect employment status of student athletes

Prepared by

Anita M. Moorman, J.D.

Githens and Associates LLC

For the Athlete Name, Image, and Likeness Working Group

Distributed during meeting on August 31, 2020

Updated, December 9, 2020 (amm)