

HOUSE BILL REPORT

ESSB 5942

As Reported by House Committee On:
College & Workforce Development

Title: An act relating to the uniform college athlete name, image, or likeness act.

Brief Description: Enacting the uniform college athlete name, image, or likeness act.

Sponsors: Senate Committee on Law & Justice (originally sponsored by Senators Frockt, Pedersen and Hunt; by request of Uniform Law Commission).

Brief History:

Committee Activity:

College & Workforce Development: 2/16/22, 2/23/22 [DP].

Brief Summary of Engrossed Substitute Bill

- Allows college athletes to receive compensation for their name, image, or likeness and provides certain limitations on such compensation related activities.
- Imposes a disclosure requirement for college athletes related to name, image, or likeness agreements and exempts such disclosures from the Public Records Act.
- Establishes a right of action for college athletes and institutions and establishes civil penalties for violations of name, image, or likeness provisions.

HOUSE COMMITTEE ON COLLEGE & WORKFORCE DEVELOPMENT

Majority Report: Do pass. Signed by 8 members: Representatives Slatter, Chair; Entenman, Vice Chair; Leavitt, Vice Chair; Chambers, Ranking Minority Member; Hansen, Paul, Pollet and Sells.

Minority Report: Do not pass. Signed by 3 members: Representatives Chandler, Hoff

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not part of the legislation nor does it constitute a statement of legislative intent.

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Minority Report: Without recommendation. Signed by 1 member: Representative Jacobsen, Assistant Ranking Minority Member.

Staff: Elizabeth Allison (786-7129).

Background:

The National Collegiate Athletic Association (NCAA) is a nonprofit organization whose voluntary membership includes colleges, universities, athletic conferences, and other affiliated organizations. The NCAA regulates intercollegiate athletic competitions in various sports across three divisions.

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. Until recently, the NCAA's rules prohibited college athletes from receiving benefits for the use of their name, image, or likeness (NIL) while still maintaining athletic eligibility.

Name, image, and likeness refers to a person's right of publicity which entitles a person to prevent unauthorized use of one's NIL by a third party for commercial benefit.

The NCAA adopted guidelines in 2021 that allow individuals to engage in NIL activities consistent with the law of the state where the school is located. College athletes who attend a school in a state without an NIL law can engage in NIL activity without violating NCAA rules. Institutions 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.

The Uniform Law Commission (ULC) is a state-supported, nonpartisan, nonprofit organization that drafts and proposes specific statutory language that may be adopted by states. In 2021, the ULC drafted the Uniform College Athlete Name, Image, or Likeness Act (Act) to provide uniformity across state NIL laws. While several states have passed their own NIL laws, the Act has not been adopted in any other state.

The Washington Student Achievement Council (WSAC) is a 10-member council that provides strategic planning, oversight, advocacy, and program administration to support increased student success and higher levels of educational attainment in Washington.

The Public Records Act (PRA) requires all state and local government agencies to make all public records available for public inspection and copying unless certain statutory exemptions apply.

Summary of Bill:

The name, image, or likeness provisions apply only to college athletes and intercollegiate sports and does not create an employment relationship between a college athlete and the athlete's college.

The WSAC, upon request of at least one institution of higher education, is authorized to convene a meeting of representatives from institutions within the state that oversee at least one intercollegiate athletics program to adopt rules to administer and implement the NIL provisions.

An institution, conference, or athletic association may not prevent college athletes from receiving NIL compensation, entering into NIL agreements, engaging in NIL activities, obtaining services from an NIL agent, creating or participating in a group license, or participating in an intercollegiate sport because the college athlete exercises their NIL rights. An institution, conference, or athletic team may not interfere with the formation or recognition of a collective representative to negotiate a group license or provide representation. Receipt of NIL compensation may not affect eligibility of a college athlete or the duration, amount, or renewal of an athletic scholarship.

College athletes may not use an institution's, conference's, or athletic association's intellectual property in NIL activities unless permitted under intellectual property law and approved by the organization in question. Name, image, or likeness compensation may not attempt to influence the college athlete to attend, continue attending, or transfer to an institution or an institution in a conference. Name, image, or likeness compensation must be for the use of a college athlete's name, image, or likeness or for work actually performed, and may not include compensation for the college athlete's enrollment at a specific institution or participation in an intercollegiate sport. Name, image, or likeness compensation may not include compensation for the college athlete's endorsement of a banned substance or of sports wagering. An institution may adopt policies to prevent a college athlete from engaging in NIL activity that is illegal or has adverse impact on the institution's reputation. An institution that chooses to adopt such policies must disclose the policy and the institution's rationale on the institution's website. An institution may adopt and enforce rules of conduct related to NIL activities when the college athlete is engaged in an official team activity. An institution, conference, or athletic association may require a college athlete to waive an NIL right associated with promotion, display, or broadcast related to the institution or an intercollegiate sport.

An institution may assist a college athlete in evaluating, understanding, and networking in relation to a college athlete's NIL rights. An institution and its employees, agents, and independent contractors may not provide compensation to a college athlete for the athlete's NIL; assist a college athlete in selecting, arranging for, or providing payment to an NIL agent; or, assist with selecting, arranging for, or collecting payment from a third party engaged in specific NIL agreements with a college athlete or athletes.

In addition to any applicable college policy, a college athlete shall provide or disclose to a designated individual or office details related to NIL agreements.

Name, image, or likeness agents are required to register in Washington as an athlete agent before engaging in NIL conduct.

Third parties are prohibited from intentionally giving materially false or misleading information or make a materially false promise or representation with the intent of influencing a college athlete, parent or guardian of the athlete, or another person in relation to NIL agreement, compensation, or activity. A third party is also prohibited from providing anything of value to a college athlete or another person if doing so results in loss of the athlete's eligibility to participate in the athlete's sport. A third party may not predate or postdate an NIL agreement.

An institution or college athlete has a cause of action for damages against an NIL agent or third party if the institution or college athlete is adversely affected by an act or omission of the agent or third party. The Attorney General and WSAC may assess a civil penalty against an NIL agent or third party not to exceed \$50,000 for a violation of the NIL provisions.

College athlete disclosures related to NIL activity are exempt from disclosure under the PRA.

Appropriation: None.

Fiscal Note: Preliminary fiscal note available.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed.

Staff Summary of Public Testimony:

(In support) The bill sets out the dos and don'ts of what colleges can do regarding their NIL. In June of 2021, after athletes challenged the NCAA prohibition on compensation for their NIL, the Supreme Court ruled that the prohibition was an antitrust violation. Some states have enacted NIL legislation based on the ULC's model law. This is Washington's version of the ULC's model. The federal government has not enacted a standard of legislation for states to follow, so states are acting on their own. This has resulted in a bit of a wild, wild west where a number of states in the PAC-12 have enacted legislation that is all a little bit different. There is some concern that if NIL laws are too restrictive there could be a competitive disadvantage. This bill creates standards that allow athletes to be fairly compensated for their NIL and the revenue they drive to universities without going

overboard. Flexibility is important, and there was a floor amendment to give universities flexibility to give guidance to college athletes on NIL opportunities. This bill strikes a balance between what is permissible and what is not permissible and educates athletes about what awaits them. The bill promotes confidence that uncharted waters regarding NIL are being navigated with care. This is a well-worked complex bill. Name, image, and likeness activity is already happening. This bill is an important bridge until federal legislation is enacted. Universities are notified when students sign NIL agreements. Compliance professionals helps students understand how NIL compensation affects their eligibility. Coaches have to disclose outside income annually on a form, so it should be clear when coaches are being compensated for assisting in NIL issues.

(Opposed) None.

Persons Testifying: Senator David Frockt, prime sponsor; Chris Mulick, Washington State University; Joe Dacca, University of Washington; and Kiley Strong, University of Washington Athletics.

Persons Signed In To Testify But Not Testifying: None.