

Date of Hearing: June 18, 2024

ASSEMBLY COMMITTEE ON HIGHER EDUCATION

Mike Fong, Chair

SB 906 (Skinner) – As Amended June 6, 2024

[Note: This bill is double referred to the Assembly Committee on Arts, Entertainment, Sports, and Tourism and will be heard by that Committee as it relates to issues under its jurisdiction.]

SENATE VOTE: 37-0

SUBJECT: Collegiate athletics: student athlete compensation

SUMMARY: Requires any entity that provides compensation or any item of value or service to a student athlete, or to the student athlete's immediate family, to disclose information, as specified, to the student athlete's postsecondary educational institution (PEI) and requires the PEI to make that information publicly available. Requires a PEI that shares revenues with student athletes to make publicly available the total value of the revenues shared with all of the PEI's student athletes, as provided. Specifically, **this bill:**

- 1) Requires any entity or person that provides compensation or any item of value or service to a student athlete, or to the student athlete's immediate family, over \$5,000 for athletic purposes, to disclose to the student athlete's PEI, and be made publicly available by the PEI, without personally identifiable information, all of the following information:
 - a) The amount of compensation and the value of the item or service provided to the student athlete or the student athlete's immediate family;
 - b) The athletic team for which the student athlete currently plays or the team for which it is anticipated the student athlete will play;
 - c) The student athlete's gender; and,
 - d) The total amount of compensation and the value of the items and services provided to all student athletes at the PEI each academic year disaggregated by athletic sport and gender.
- 2) Requires a PEI that provides material support or services to a student athlete in relation to the athlete receiving compensation or items of value or services for the use of the athlete's name, image, and likeness (NIL), or athletic reputation to make the total value of the material support or services provided to student athletes each academic year disaggregated by athletic sport and gender publically available.
- 3) Requires a PEI that shares revenues with student athletes to make publicly available the total value of the revenues shared with all of the PEI's student athletes each academic year, disaggregated by athletic sport and gender of the team.
- 4) Makes the following definitions:

- a) “Postsecondary educational institution” means any campus of the University of California (UC), the California State University (CSU), the California Community Colleges (CCC), an independent institution of higher education, as specified, or a private postsecondary educational institution, as specified.
- b) “Student athlete” means any college student who participates in an intercollegiate athletic program of a postsecondary educational institution, and includes student athletes who participate in basketball, football, and other intercollegiate sports.

EXISTING LAW:

- 1) Requires a student athlete who enters into a contract providing compensation to the athlete for use of the athlete’s NIL to disclose the contract to an official of the Institution of Higher Education (IHE). (Education Code (EDC) Section 67456 (e)(2))
- 2) Prohibits a PEI from upholding any rule, requirement, standard, or other limitation that prevents a student of that institution from participating in intercollegiate athletics from earning compensation as a result of the use of the student’s NIL, or athletic reputation. Earning compensation from the use of a student’s NIL, or athletic reputation shall not affect the student’s scholarship eligibility. (EDC Section 67456 (a)(1))
- 3) Prohibits an athletic association, conference, or other group or organization with authority over intercollegiate athletics, including, but not limited to, the National Collegiate Athletic Association (NCAA), from preventing a student of a PEI participating in intercollegiate athletics from earning compensation as a result of the use of the student’s NIL, or athletic reputation. (EDC Section 67456 (a)(2))
- 4) Prohibits an athletic association, conference, or other group or organization with authority over intercollegiate athletics, including, but not limited to, the NCAA, from preventing a PEI from participating in intercollegiate athletics as a result of the compensation of a student athlete for the use of the student’s NIL, or athletic reputation. (EDC Section 67456 (a)(3))

FISCAL EFFECT: According to the Senate Committee on Appropriations, the UC estimates General Fund costs of \$135,000 each year to collect and report the data required in the bill and one-time minor and absorbable costs related to guidance on how to implement the provisions around material support. The CSU estimates General Fund administrative costs of \$3,000 to \$5,000 per campus, per year, to compile and publish the required information.

COMMENTS: *Purpose.* According to the author, “prior to the enactment of my legislation, SB 206, the Fair Pay to Play Act, in 2019, student athletes were shut out financially from the multibillion-dollar business of college sports. With SB 206, California became the first state in the nation to open the door for college athletes to receive compensation for the use of their name, image, and likeness (NIL). SB 206 sparked a national movement and today every college athlete in the country can earn NIL money.”

“But with the rapid growth of NIL nationwide, there is anecdotal evidence that so-called ‘collectives’ and other strategies employed by college sports boosters are primarily benefitting men and shortchanging women athletes. However, because collectives and other NIL entities have, to date, operated primarily in secret, the extent to which NIL is contributing to gender

inequity in California college sports is not clearly known. SB 906 is designed to pull back the veil on NIL in California and raise awareness about gender equity in the burgeoning NIL marketplace.”

Name Image and Likeness. On September 30, 2019, California became the first state to enact legislation to prohibit PHIs, amateur athletic associations, athletic conferences, and any other organization with authority over intercollegiate athletics from preventing student-athletes from earning compensation in connection with the use of the athlete’s NIL (see Existing Law). California began a nationwide conversation and initiative to address primarily NCAA bylaws that have historically prohibited student-athletes from using or permitting others to use their NIL to earn compensation or promote the athlete’s athletic skills and abilities.

NIL refers to what is legally defined as “publicity rights.” Publicity rights are the property rights associated with the personality and identity of an individual. These rights enable an individual to control the commercial use of their identity. The public image of a celebrity or athlete is of immense value and can produce significant amounts of money for the individual celebrity or athlete. Whether a student-athlete posts products on their social media, signs autographs, teaches camps, or promotes a local business it is the decision of a student-athlete to use their NIL.

NIL Collectives – What Are They and How Do They Operate? NIL collectives are organizations that operate independently of universities, but exist to fund opportunities for student-athletes to monetize their NIL. These collectives are typically founded by well-known alumni and supporters of the PEI and are financed through contributions from boosters, businesses, fans, and other sources. The revenue generated is pooled together and used to create opportunities for student-athletes to earn compensation in exchange for leveraging their NIL. Each collective sets out to accomplish a separate list of goals. For some, it may be streamlining NIL opportunities. Others may want to crowdsource funds from boosters. Most often across the college sports landscape, of the at least 250 collectives already formed, three types of collectives have emerged:

- a) **Marketplaces Collectives:** This organization sets out to create a meeting place for athletes and businesses to connect and create opportunities. Sometimes, this collective can even serve as the agent representative for the athlete;
- b) **Donor-Driven Collective:** In these collectives, athletic booster money is pooled and then given out to that school’s athletes in exchange for sponsorship or endorsement agreement that may include some specific activities that the athletes are to undertake. Each group has its own money collection format, with some opting for a subscription model while others welcome one-time payments.;
- c) **Dual Collectives:** A dual collective performs the functions of both a marketplace collective and a donor collective. Essentially, they provide themselves enough flexibility to both accept donations and facilitate outside deals for athletes.

NIL Collectives criticized due to lack of transparency. Collectives have recently been the centerpiece of controversy due to NIL deals and involvement in recruiting activities. NCAA guidance prohibits PEI from using NIL as a recruiting inducement. Further, before NIL policies, college athletes received compensation only through university scholarship payments which are closely monitored by Title IX of the Education Amendments of 1972.

Some of the most notable NIL deals in college sports have been with women athletes. *On3*, a news site focusing on college sports, has reported that Livvy Dunne, Angel Reese, Flau'jae Johnson, Hailey Cavinder, Caitlin Clark, and Paige Bueckers are among the top earners. However, a report by Opendorse, a company that supports student-athletes with marketing deals and endorsements, revealed that male athletes receive 77% of NIL revenue. In comparison, women athletes receive only 23%, despite women athletes making up 39% of the participants. Even with football excluded, men's sports still generate over half the revenue at 57.7%, while women's sports generate 42.3%, with 60% of women participating compared to 40% of men.

Recruiting activities. In 2021, the NCAA approved a temporary policy allowing student-athletes to earn money for their NIL. However, PEI cannot involve boosters or other collectives in recruiting. That means student-athletes can earn money from their NIL, but PEIs can't use NIL dollars to entice student-athletes to enroll, transfer, or stay at a particular PEI. The NCAA has released several guidance documents since the interim policy was issued, including additional student-athlete recruitment guidelines. These guidelines state that "booster/NIL entities" are not allowed to talk to recruits about enrolling at a PEI or offer deals based on whether athletes select a particular PEI. In the past, college booster-supported athletic programs have provided financial contributions directly to the PEI. However, the NCAA has always had a strict rule prohibiting "pay for play" in recruiting student-athletes to participate in sports at their college or university.

Despite this rule, some PEIs have been caught and punished. The most well-known case involved Southern Methodist University (SMU), which barred SMU from NCAA competition for two years. However, Tennessee AG Jonathan Skrmetti and Virginia AG Jason Miyares (collectively the plaintiffs) filed a lawsuit challenging this NCAA guidance regarding recruiting. They argued that the NIL recruiting ban is an illegal agreement to restrain and suppress competition within the relevant labor market, violating Section 1 of the Sherman Antitrust Act. With the introduction of the new NIL economy, whether these separate entities fall under the scope of Title IX enforcement is yet to be determined. Collectives are not required to publicize their deal making. This, understandably, makes it difficult to determine the applicability of Title IX and third party entities (i.e., NIL Collectives).

Revised NCAA Rules regarding collectives and NIL deals. The NCAA's updated its interim policy on January 10, 2024. The NCAA Division I Council replaced the interim policy January 10, 2024 by adopting new rules on disclosure requirements for third-party NIL agreements and voluntary registration for NIL service providers (sports agents, financial advisers, athletic consultants, etc.). The new rules, will take effect August 1, 2024:

- 1) **Voluntary Registration:** The NCAA will establish a voluntary registration process for NIL service providers, including potential agents, financial advisers, and consultants. This process aims to collect and publish information on service providers, making it available to student-athletes and PEIs in order to facilitate informed decision-making.
- 2) **Disclosure Requirements:** Student-athletes will be required to disclose to their universities details and information on any NIL agreements greater than \$600 in value no later than 30 days after entering into the NIL agreement. This includes disclosing contact information for all involved parties and NIL service providers; the terms of the agreement, including services rendered; term length of the agreement; amount compensated; and pay structure. PEIs will then provide deidentified data to the NCAA biannually for a database accessible to student-athletes schools to understand trends in NIL agreements and schools and administrators to

use to make informed decisions related to NIL policy. Notably, many states already require disclosure of NIL deals; the NCAA's new rule establishes a national requirement.

- 3) **Standardized Contract:** The NCAA will develop a template contract and recommended contract terms, and collaborate with PEIs to educate student-athletes on contractual obligations.
- 4) **Comprehensive NIL Education:** The NCAA plans to create comprehensive education for student-athletes and their support networks, covering policies, rules and best practices related to NIL.

Recent court action. On May 23, 2024, the NCAA agreed to a court settlement that could have the effect of further expanding athletes' rights to monetize their NIL. The settlement in *House v. NCAA* would end the prohibition against colleges directly compensating their athletes, including for the use of their NIL. As part of the settlement, the NCAA also agreed to pay nearly \$2.8 billion to current and former athletes who lost out on opportunities to capitalize on their NIL as a result of the old rules.

Recent amendments taken by the author in the call for additional transparency in those cases where a PEI that shares revenues with student athletes.

Arguments in support. A coalition representing print and broadcast media wrote in support, noting that they, "...have fought tirelessly for decades to maintain and increase transparency in California so that the press and the public are informed about the issues that matter to them. This bill will improve the press and public's access to information about important information, since the allowing college athletes to be paid for the use of their name, image and likeness in 2019. Senator Skinner's SB 206 sparked a national movement and today every college athlete in the country can earn NIL money."

"The explosive growth of NIL has also given rise to so-called "collectives," entities loosely affiliated with colleges that facilitate NIL deals and are typically backed by boosters. To date, collectives appear to be mostly benefitting men's football and basketball players, but they operate in secret. SB 906 would bring transparency to NIL deals and provide important information on whether aspects of NIL contribute to gender inequity in college sports."

Prior legislation. SB 206 (Skinner, Chapter 383, Statutes of 2019) allowed, commencing on January 1, 2023, college student-athletes to earn compensation for using their NIL (athletic endorsements). This bill allows student-athletes to obtain professional legal representation about their college athletics, such as that provided by a sports agent. This bill protects student-athletes who elect to engage in the compensation and representation activities described therein.

SB 26 (Skinner, Chapter 159, Statutes of 2021) expanded the existing authority for a collegiate student-athlete to receive compensation also to include compensation earned from the use of the student's athletic reputation and moves up the implementation date of existing statutes relative to compensation earned from the use of a student athlete's NIL.

REGISTERED SUPPORT / OPPOSITION:

Support

California Broadcasters Association
California News Publishers Association
California Teachers Association
Media Alliance

Opposition

None on file.

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