

Date of Hearing: June 29, 2021

ASSEMBLY COMMITTEE ON HIGHER EDUCATION

Jose Medina, Chair

SB 26 (Skinner) – As Amended June 23, 2021

SENATE VOTE: 39-0

SUBJECT: Collegiate athletics: student athlete compensation and representation

SUMMARY: Expands the existing authority for a collegiate student athlete to receive compensation to also 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 name, image, or likeness. Specifically, **this bill:**

- 1) Makes the operative date of Education Code (EDC) Section 67456 contingent on when rule changes adopted by the Board of Governors of the National Collegiate Athletic Association (NCAA) to allow student athletes to receive compensation for third-party endorsements take effect, but no later than September 1, 2021.
- 2) Allows student athletes to earn compensation for their athletic reputation.
- 3) Defines, "postsecondary educational institution" to mean any campus of the University of California (UC), the California State University (CSU), or California Community Colleges (CCC), or an independent institution of higher education, as defined in Section 66010, or a private postsecondary educational institution, as defined in Section 94858.
- 4) Makes various legislative findings and declarations.
- 5) Declares that the provisions of SB 26 would take effect immediately as an urgency statute.

EXISTING LAW:

- 1) Prohibits a postsecondary educational institution from upholding any rule, requirement, standard, or other limitation that prevents a student of that institution participating in intercollegiate athletics from earning compensation as a result of the use of the student's name, image, or likeness. Earning compensation from the use of a student's name, image, or likeness shall not affect the student's scholarship eligibility. (EDC Section 67456(a)(1))
- 2) Prohibits an athletic association, conference, or other group or organization with authority over intercollegiate athletics, including the NCAA, from preventing a student of a postsecondary educational institution participating in intercollegiate athletics from earning compensation as a result of the use of the student's name, image, or likeness and from preventing a postsecondary educational institution from participating in intercollegiate athletics as a result of that compensation. (EDC Section 67456(a)(2)-(3))
- 3) Restricts a postsecondary educational institution, athletic association, conference, or other group or organization with authority over intercollegiate athletics from providing prospective student athlete with compensation in relation to the athlete's name, image, or likeness. (EDC Section 67456(b))

- 4) Prohibits a postsecondary educational institution, athletic association, conference, or other group or organization with authority over intercollegiate athletics from preventing a California student participating in intercollegiate athletics from obtaining professional representation in relation to contracts or legal matters, including, but not limited to, representation provided by athlete agents or legal representation provided by attorneys. Representation obtained by student athletes shall be from persons licensed by the state, as specified. (EDC Section 67456(c))
- 5) Provides that a scholarship from the postsecondary educational institution in which a student is enrolled that provides the student with the cost of attendance at that institution is not compensation, and a scholarship shall not be revoked as a result of earning compensation or obtaining legal representation pursuant to this section. (EDC Section 67456(d))
- 6) Prohibits a student athlete from entering into a contract providing compensation to the athlete for use of the athlete's name, image, or likeness if a provision of the contract is in conflict with a provision of the athlete's team contract. An institution asserting such a conflict is required to disclose to the athlete or the athlete's legal representation the relevant contractual provisions that are in conflict. A student athlete who enters into a contract providing compensation to the athlete for use of the athlete's name, image, or likeness shall disclose the contract to an official of the institution. (EDC Section 67456(e))
- 7) Prohibits a team contract of a postsecondary educational institution's athletic program from preventing a student athlete from using the athlete's name, image, or likeness for a commercial purpose when the athlete is not engaged in official team activities. (EDC Section 67456(f))
- 8) Defines "postsecondary educational institution" for these provisions as any campus of the UC, or the CSU, an independent institution of higher education, as defined, or a private postsecondary educational institution, as defined. (EDC Section 67456(g))
- 9) Makes the above provisions operative on January 1, 2023. (EDC Section 67456(h))

FISCAL EFFECT: According to the Senate Committee on Appropriations, "By moving up the implementation date for collegiate students to receive compensation for the student's name, image, or likeness, this bill could accelerate the corresponding financial impacts to the UC and CSU systems. These include General Fund costs in the hundreds of thousands of dollar to ensure compliance, fines resulting from violations of NCAA bylaws, and potential revenue losses to the extent UC and CSU lose NCAA and conference eligibility. There could also be additional, unknown costs associated with increased litigation and attorneys' fees."

COMMENTS: *Author and supporter's statement of need for legislation.* According to the National College Players Association, "With Gov. Newsom's signature of SB 206 (Skinner, 2019), California became the first state to pass legislation to address the massive inequity in college sports, a huge industry in which everyone involved — colleges, universities, the NCAA, media and large corporations — pocket billions of dollars each year, while student athletes are excluded from any of that wealth. SB 206 gave college athletes the right to earn compensation from their name, image, and likeness (NIL), for example, from endorsement and sponsorship deals, and allowed college athletes to operate a business or take jobs as a coach or instructor."

The author adds, “SB 206 contained a delayed effective date (1/1/23) to give colleges and the NCAA time to adjust. However, since the passage of SB 206, five other states have enacted comparable laws, with some taking effect as early as July 1, 2021. Additionally, the NCAA, the national governing body for intercollegiate college sports, has proposed rule changes that could take effect prior to SB 206 taking effect. As a result, California college athletes, and its colleges and universities, could be at a disadvantage to states whose NIL rules take effect earlier. Further, if California does not change the effective date of SB 206, then our colleges and universities may have to implement new NCAA rules until the time California’s NIL law takes effect, requiring colleges to later redo their rules to accommodate our own state’s law.”

Recent amendments. SB 26 was recently amended to add community colleges to the NIL law. This is the result of the requirement in SB 206 of last session for the Community College Chancellor to convene a working group on NIL issues and report their recommendations by July 1, 2021. The working group has completed its work, recommending that community college student athletes be included in the NIL law.

In order to allow California colleges and universities to compete with other states which have accelerated their NIL implementation dates, the SB 26 was amended to add an urgency. This will allow the bill’s terms to go into effect in time for this year’s recruitment cycle and the upcoming fall class of student athletes on a level playing field with states which have July 1st 2021 NIL law implementation dates. It should be noted that while the language of the urgency clause provides that upon adoption the measure shall take immediate effect, the bill’s terms define the enactment date, therefore the actual date of implementation will be September 1, 2021.

Name, image, likeness, and reputation provisions in SB 26 are consistent with pending changes in NCAA bylaws for Division 1 athletics. Specifically, proposed changes to NCAA bylaws include the following:

- 1) 12.4.1.1 Athletics Reputation. Such compensation may not include any remuneration for value or utility that the student-athlete may have for the employer because of the publicity, reputation, fame or personal following that he or she has obtained because of athletics ability.
- 2) 12.4.2.1 Fee-for-Lesson Instruction. A student-athlete may receive compensation for teaching or coaching sport skills or techniques in his or her sport on a fee-for-lesson basis, provided: [R] (a) Institutional facilities are not used; (b) Playing lessons shall not be permitted; (c) The compensation is paid by the lesson recipient (or the recipient's family member) and not another individual or entity; (d) Instruction to each individual is comparable to the instruction that would be provided during a private lesson when the instruction involves more than one individual at a time; and (e) The student-athlete does not use his or her name, picture or appearance to promote or advertise the availability of fee-for-lesson sessions.
- 3) 12.4.2.1 Use of Name, Image or Likeness in Business Activities. A student-athlete may use his or her name, image and likeness to promote his or her athletically and non-athletically related business activities (e.g., products, services, personal appearances). A student-athlete’s promotion of his or her business activity may include a reference to the student-athlete’s involvement in intercollegiate athletics and a reference to the institution he or she attends, consistent with institutional policies applicable to any student; however, no institutional marks may be used in such promotional activities.

- 4) 12.4.2.1.5 Fee-for-Lesson Instruction. A student-athlete may receive compensation for teaching or coaching sport skills or techniques in his or her sport on a fee-for-lesson basis and may use his or her name, picture or appearance to promote or advertise the availability of such lessons, subject to the following conditions: [R] (a) If institutional facilities are used, applicable institutional processes for renting facility space in a manner consistent with the general public apply; (b) Playing lessons shall not be permitted; (c) Compensation is paid by the lesson recipient (or the recipient's family member) and not another individual or entity; and (d) Instruction to each individual is comparable to the instruction that would be provided during a private lesson when the instruction involves more than one individual at a time.
- 5) 12.4.2.3 Athletics Equipment Sales. A student-athlete may not be employed to sell equipment related to the student athlete's sport if his or her name, picture or athletics reputation is used to advertise or promote the product, the job or the employer. If the student-athlete's name, picture or athletics reputation is not used for advertising or promotion, the student-athlete may be employed in a legitimate sales position, provided he or she is reimbursed at an hourly rate or set salary in the same manner as any nonathlete salesperson.
- 6) 12.4.4 Self-Employment. A student-athlete may establish his or her own business, provided the student-athlete's name, photograph, appearance or athletics reputation is not used to promote the business.
- 7) 15.2.7 *Employment*. Earnings from a student-athlete's on- or off-campus employment that occurs at any time is exempt and is not counted in determining a student-athlete's cost of attendance or in the institution's financial aid limitations, provided: (a) The student-athlete's compensation does not include any remuneration for value or utility that the student-athlete may have for the employer because of the publicity, reputation, fame or personal following that he or she has obtained because of athletics ability; (b) The student-athlete is compensated only for work actually performed; and (c) The student-athlete is compensated at a rate commensurate with the going rate in that locality for similar services. (see Bylaw 12.4).

Committee comments: The Student Athlete Bill of Rights, (SABR), of which the NIL sections under current consideration are a part, provides at Education Code section 67452 (b):

“Each athletic program shall conduct a financial and life skills workshop for all of its first-year and third-year student athletes at the beginning of the academic year. This workshop shall include, but not be limited to, information concerning financial aid, debt management, and a recommended budget for full- and partial-scholarship student athletes living on or off campus during the academic year and the summer term based on the current academic year’s cost of attendance. The workshop shall also include information on time management skills necessary for success as a student athlete, and academic resources available on campus.”

The author may wish to consider adding NIL issues to the financial and life skills workshops mandated under the SABR.

A second issue the author may wish to address is that the financial literacy and life skills workshop requirement is in the section of the SABR which only applies to institutions of higher education that receive, as an average, ten million dollars (\$10,000,000) in annual income derived

from media rights for intercollegiate athletics. In actuality only four California Universities currently meet this threshold: the UC Berkeley, UC Los Angeles, Stanford University, and the University of Southern California. As the bill moves, the author may wish to add to the legislative declarations, urging all institutions of higher education to offer their student athletes training in financial literacy and NIL issues.

Double referral. SB 26 was heard in the Assembly Committee on Arts, Entertainment, Sports, Tourism, and Internet Media on June 21, 2021, where it passed with unanimous support.

Prior related legislation. SB 206 (Skinner), Ch. 383, Statutes of 2019, provided a statutory framework for college student athletes to earn compensation for the use of their own name, image, or likeness.

REGISTERED SUPPORT / OPPOSITION:

Support

California Community Colleges, Chancellor's Office
California Faculty Association
Genup
National College Players Association
The Professional Collegiate League
United Steel Workers District 12

Opposition

None on file

Analysis Prepared by: Kevin J. Powers / HIGHER ED. / (916) 319-3960