



THE DRAKE GROUP

Advancing Positive Legislative
Change In College Athletics



The Drake Group Examines 2023 Congressional Efforts to Alleviate the College Athlete NIL Chaos

The involvement of Congress in college athletics name, image, and likeness (NIL) practices is primarily the result of courts striking down the National Collegiate Athletic Association (NCAA)'s long-time monetary restrictions under the false flag of "amateur status." Many states stepped into this space by adopting laws giving athletes the right to monetize their names, images, and likenesses. Boosters also stepped into this void realizing they could influence prospective athlete and transfer portal athlete recruiting decisions and encourage current athletes to remain at their institutions by creating financially attractive NIL employment opportunities. Booster groups formed "NIL collectives" for the explicit purpose of giving their respective schools significant recruiting and retention advantages, such as pooling funds to provide payments of \$25,000 per year to every football player on scholarship or providing six-month leases, all-insurance-paid Dodge RAM trucks to each of the 85 football players on scholarship. Some of these NIL employment opportunities had no relationship to the fair market value of the athletes' services. Rather NIL payments were based on the roster value of the athlete to the institution, raising questions of legitimate employment versus monetary payments or other benefits offered as inducements to attend or remain at the institution.

In the midst of these developments, the NCAA stopped enforcing its outside rules prohibiting boosters from providing financial inducements, extra benefits, or employing college athletes at rates not commensurate with local rates because they feared being sued. The result was many NIL booster collectives funneling dollars primarily to football and men's basketball players and college coaches and administrators providing enthusiastic overt or "wink, wink" encouragement. In addition, institutions started designating these groups as "official university collectives" and providing direct assistance such as sharing athletic department donor or ticket purchase lists and promoting gifts to collectives at athletic events. In the media and at community and athletics events, coaches and administrators directly appealed to their athletic department donors to either redirect or give additional funds to help collectives win this new outside "employment" recruiting arms race. While doing so, institutions claimed no control over these new organizations, thereby attempting to evade their Title IX obligations to provide female athletes with equal financial aid, recruiting, promotions, and publicity benefits. While the IRS stepped up to tell collectives and boosters they couldn't claim donations to collectives (NIL employment payment to athletes) as tax deductions, the Office of Civil Rights has been remiss by not issuing guidance to institutions that collectives cannot be used to avoid their gender equity obligations.

Faced with such chaos, much of its own making, the NCAA and its member institutions engaged in a full-court press of Congress hoping lawmakers would provide statutory protection from legal liability created by state NIL laws or athletes using the courts to obtain payments for years during which the

NCAA did not allow outside NIL monetization. Further, the NCAA and its member institutions fear prospective state actions mandating revenue sharing or treating athletes as employees and are seeking the help of Congress to adopt federal laws preventing the classification of college athletes as employees. After years of acting as a trade association advancing the commercial interests of its members and allowing institutions to economically exploit academically underprepared, predominantly athletes of color in football and men's and women's basketball while failing to deliver on the promise of graduation, Congress appears to have good reason to deeply distrust the NCAA.

It is within this context that Congress is trying to remedy the NIL chaos by proposing that new federally chartered independent organizations and/or existing government agencies be charged with overseeing the implementation of new federal laws to protect college athletes' outside NIL employment rights. Hopefully, this focus on NIL chaos, while necessary, will not prevent Congress from taking a deeper dive into numerous other athletics governance areas (e.g., lavish expenditures, coach abuse, academic fraud, inadequate medical coverage, embarrassing graduation rates of revenue sport athletes, etc.) that need careful study to produce major reforms.

Each of the following bills examined have flaws, but we remain hopeful that these flaws will be corrected as the legislative process continues. Amendments to bills already filed and revisions of proposed drafts will happen through the end of 2024. Few observers believe Congress will act before the end of the 118th Congress.

Current Filed and Draft 118th Session Name, Image, and Likeness Bills Analysis by The Drake Group

As of October 16, 2023, there were five bills announced (discussion drafts) or filed in the U.S. Senate and two in the U.S. House related to the protection of high school and college athletes now being permitted to monetize their names, images, and likenesses (NILs) via employment outside of the colleges and universities at which they are enrolled.¹ Following is an executive summary of the key elements of each bill which includes comments of *The Drake Group* on provisions we believe require more careful study or revision.

We note that all of these bills would either directly preempt state NIL laws or define a process that would be used if conflicts between federal and state law occur. All of the bills prohibit institutions, conferences, and/or national associations from punishing college athletes who enter into allowable NIL agreements. Most of the proposed legislative initiatives include transparency provisions mandating institutional or national database disclosure of information on NIL employment with anonymized athlete identities and information on the type, number, and value of agreements disaggregated by sport, sex, or other categories. Most bills either create a new entity or designate a federal agency to assist or replace

¹ Not included in this analysis is an eighth bill, [S. 1454 Athlete Opportunity and Taxpayer Integrity Act](#). This bill would amend the Internal Revenue Code to specify the "no deduction shall be allowed for any contribution any portion of which is used by the donee to compensate 1 or more secondary or post-secondary school athletes for the use of their name, image, or likeness by reason of their status as athletes." This bill would affect NIL collectives who received or applied for 501(c)(3) status, representing that contributions to these funds would be tax deductible. This amendment is consistent with a [May, 2023 IRS memorandum](#) iterating that position.

the NCAA in the governance or enforcement of each Act's provisions. Most bills contain mechanisms to protect athletes from unscrupulous agents.

All but one bill expressly prohibits the use of NIL employment as inducements to attend, remain at, or transfer to an institution while none explain what conditions constitute "inducement." The Drake Group maintains that any NIL compensation paid for services rendered (i.e., autograph signings or endorsement/promotional work) must be commensurate with the local or national market rate for such services in an uninterested party (a non-booster) transaction. Any compensation in excess of such market rates likely reflects roster value to the team and therefore presumably constitutes an improper inducement. Further, any NIL employment practice that identically values all athletes playing a particular sport, all those playing similar or identical positions in a particular sport (i.e., offensive line), or that specifies athletic scholarship recipients only, likely reflects roster value to the team and presumably therefore constitutes an improper inducement.

Only four of the bills address the issue of the non-profit educational institution sharing its NIL marks with athletes. The Drake Group points out the impropriety of any non-profit institution, conference or national governance association gifting its marks to any individual or entity for private gain. Institutional permission for the use of marks and standard royalties to be paid to the institution should be required of athletes and other entities commercially exploiting institutional assets. Similarly, NIL collectives using institutional facilities, or receiving the endorsement of the institution, should pay for such rights. Certainly, institutions should not be sharing assets such as donor or ticket buyer lists, offering coaches to speak at collective fundraising or promotional events unless they are paid, etc.

The Drake Group also believes that national governing associations should receive a carefully studied, carefully crafted, and narrowly limited and conditional antitrust exemption to permit necessary rulemaking. "Conditional" is a critical requirement. The privilege of an antitrust exemption must be tied to assurances that the conduct of athletic programs meet educational expectations and protect athletes from physical and mental harm. These controls are required to achieve the priority purposes of higher education in the conduct of intercollegiate athletics as an extracurricular activity. We suggest few or no cost limitations in the areas of athlete expenses related to athletic injuries, emergency needs, or education-related costs. We suggest strong cost controls prohibiting lavish or excessive expenditures inconsistent with the operation of a non-profit organization or normal treatment of college students.

Critically, in the opinion of The Drake Group, only one of the bills addresses the current sex inequities in the operation of NIL collectives. None of the bills address the fact that NIL collectives, which provide NIL employment opportunities to benefit only the college athletes at a single institution, have escalated the recruiting arms race. They are competing with the collectives of other institutions to enable coaches at their respective institutions to dangle the recruiting or retention carrot of significant outside employment income as a strong incentive to attend, remain, or transfer. The Drake Group continues to express concern to Congress and the Department of Education Office for Civil Rights in particular, that these collectives in most cases, are being directly and indirectly supported by athletic departments, allowing them to evade their Title IX female athlete recruiting, financial aid, promotions, and publicity equal treatment obligations. When NIL collectives are allowed to exist, even if they declare their support for all sports, both the number and value of the NIL employment opportunities heavily favor male athletes. When collectives argue that male athletes have higher market value, it must be recognized that this reality is the result of 50 years of institutions ignoring their Title IX equal publicity

and promotional efforts for female sports, choosing to develop the brands of men's football and men's basketball players over participants in all other sports.

College Athletes Protection and Compensation Act of 2023

Co-Sponsors: Senators Cory Booker (NJ-D), Richard Blumenthal (CT-D), and Jerry Moran (KS-R)
(Discussion draft/bipartisan)

Key Elements:

- 1. College Athletics Corporation (CAC), a federally chartered non-governmental organization, would be established to protect college athletes' NIL and other rights established by the Act**
 - Enforces the Act with respect to athlete agents, institutions, conferences, and national associations
 - Establishes and enforces standards for review of NIL contracts
 - Serves as clearinghouse for best practices
 - Establishes standards and certification and revocation processes for agents
 - Provides for swift resolution of contract disputes between athletes and agents and athletes and employers, including the provision of a neutral arbitrator
 - Oversees a medical trust for college athletes
 - Maintains a public searchable database containing each institution's required annual website report of revenues and expenditures of each sport including 3rd party donations, federal funds, state funds, and compensation for athletic program personnel, individually and in the aggregate by sport, average number of hours athlete spends on college athletic events and competitions disaggregated by sport, academic outcomes and majors for college athletes disaggregated by sport, race/ethnicity, and gender, and number, average and total value of endorsement contracts, disaggregated by sport, race/ethnicity, and gender
- 2. Strong protection of athlete NIL rights**
 - **Rescission:** The athlete who no longer participates in college athletic competitions may rescind an endorsement contract with a remaining term of more than 1 year without being held liable for breach and with no obligation to return earned payments that were received before giving notice of the rescission.
- 3. Strong NIL disclosure, transparency, and athlete privacy provisions**
 - For NIL agreements valued at less than \$1,000 annually in the aggregate, the enrolled athlete provides copy to institution within 7 days of execution; while recruited athletes, before signing letter of intent, provide current and expired agreements.
 - Institutions must produce annual website report on number, average, and total value of endorsement contracts disaggregated by sport, race/ethnicity, and gender.
 - Neither the institution nor CAC may publicly disclose agreement without consent of the athlete or athlete representative. Federal or state open records laws are not applicable.
- 4. Strong athletes' rights provisions in addition to protecting athletes' NIL rights**
 - **Legally binding full disclosure prior to enrollment of significant institutionally provided non-NIL costs to athlete.** Such disclosure must include duration of athletics scholarship, athletics scholarship value as a percent of cost of education, amount and duration of financial aid after eligibility to participate is exhausted, percent of comprehensive medical coverage paid for by the institution during eligibility, percent of out-of-pocket medical costs paid for by institution, by student and the difference between in-network and out-of-network costs, and whether future loss of earning disability insurance will be provided at market rate of similarly situated athletes.
 - **Academic protections.** The institution cannot discourage athlete choice of course or major, retaliate based on athlete choice of course or major, and are required to continue athletics

financial aid until graduation, including for athletes who have been on scholarship and left for professional sport opportunities and then return.

- **Treatment by National Association.** The Act prohibits sex discrimination with regard to the provision of medical care, rest, hotel stays, food, athletic facilities, transportation, and sporting event promotions at post season championships.
- **Right to Transfer.** The Act establishes one-time transfer without penalty subject to 7-day notification to institution that does not occur during the season or 60 days prior to start of season and unlimited if athlete is subject to abusive or negligent environment.
- **Third party provided benefits.** The athlete cannot be punished for accepting reasonable food, rent, medical expenses, or insurance, tuition, fees, or books, reasonable transportation for the college athlete or the friends or family members of the college athlete during any period in which the college athlete is experiencing a physical or mental health concern or participating in a college athletic event or college athletic competition. **DRAKE COMMENT: "Reasonable" is undefined and may undermine national association scholarship limits with regard to food, rent, tuition, fees, or books if not tethered to emergency circumstance and prohibition of use as inducement. Provision of transportation to athletic events for friends or family members using institutional funds raises questions of improper use of non-profit organization assets and would increase the cost of the recruiting; if provided by third party, "reasonable" is undefined and inducement prohibition necessary.**

5. **Prohibits NIL or other compensation to be offered or used as an inducement to attend or remain at an institution**
 - The institution, conference, and/or national association may declare athlete ineligible who receives extra benefits prohibited by CAC.
 - The CAC can subpoena documents and require depositions/appearances "at request of a national association." **DRAKE COMMENT: This provision may provide a potent investigative and enforcement mechanism to address bad actors but there does not appear to be an penalty for a third party violator.**
6. **Weak Control of Booster NIL Collectives**
 - Defines third party and most NIL collectives as being "unaffiliated" with the institution because they "do not share interrelated operations, common management, centralized control of labor relations or common ownership or financial control"
 - Allows athletes to use institutional marks without charge to athlete or NIL employers with permission of institution conditioned on the institution, conference, or national association not determining amount of third party NIL compensation

DRAKE COMMENT: These provisions do not address the current entwinement of the institutions with collectives with regard to institutional non-financial support (provision of donor lists, promotion, designation of "official collective" and donor encouragement) and provision of clear direction to collective with regard to fulfilling institutional recruiting needs.

DRAKE COMMENT: No individual or outside third party should use the assets of a non-profit organization for private gain. Such entities should pay market priced royalties for such use.

The College Athlete Economic Freedom Act

Co-Sponsors: Senator Christopher Murphy (CT-D) and Representative Lori Trahan (MA-D)

Key Elements:

1. Federal Trade Commission's (FTC) reach covering unfair or deceptive acts or practices would be extended to non-profit organizations for purposes of enforcing provisions of the Act that:

- Require institutions and associations (conferences, NCAA, etc.) to obtain licenses from athletes for the use of their NILs for any type of promotion or media rights agreement;
- Prohibit institutions or associations from preventing prospective or current athletes, individually or as a group, from marketing their NILs and athletic reputations in any particular category or manner unless such restriction is part of a collective bargaining agreement with college athletes; **DRAKE COMMENT: May conflict with or prohibit institutions or associations from pursuing broad category exclusive sponsorship or advertising agreements or imposing restrictions prohibiting athlete NIL agreements with tobacco products, gambling, alcohol or similar product categories.**
- Prohibit institutions from coordinating with other institutions or third parties (collusion) from limiting the amount of any NIL payments to prospective or current athletes or groups of prospective and current athletes;
- Prohibit institutions and associations from regulating the legal, financial, or agency representation of prospective or current athletes with respect to marketing their NILs;
- require NIL collectives to register with the FTC, maintain records and produce annual reports on the number of NIL agreements disaggregated by gender, race, and sport, total monetary value of NIL agreements disaggregated by gender, race, and sport, and the number of college athletes and prospective college athletes receiving NIL agreements. disaggregated by gender, race, and sport; and
- Mandate that NIL collectives not discriminate on the basis of gender, race, or sport, in the facilitation of NIL agreements for prospective or current college athletes.

2. Strong Protection of Athlete Rights

- Institutions or associations (conferences, NCAA, etc.) seeking athletes' group licenses to use their NIL must deal with an athlete group representative and disclose the details of the group license including the amount of revenue to be received by the institution or association to the representative. The Act establishes athletes' rights to collective representation as a condition of the institution or association entering into any promotional or media rights agreement requiring athletes' group licensing rights. **DRAKE COMMENT: Without addressing athlete compensation directly, the Act places athletes in the position of negotiating for compensation or better treatment in return for group licensing rights related to institution, conference, or NCAA promotional or media rights agreements.**
- Athletes have a private right of action in federal district court in which the prevailing party may be awarded actual damages and attorney's fees for a *per se* violation of the Sherman Act, subject to all rights and remedies of that Act.
- This is the only Act that removes F Visa and Immigration and National Act barriers to international college athletes' eligibility for NIL employment in the United States.
- An institution of higher education, an intercollegiate athletic association, or a party affiliated with an institution of higher education or an intercollegiate athletic association that provides direct or indirect support to college athletes with respect to the marketing of their names, images, or likenesses shall make such support available and accessible to all college athletes in the applicable athletic program, regardless of gender, race, or participating sport. **DRAKE COMMENT: The Act recognizes the importance and relationship of equitable athletic department promotion and publicity of men's and women's sports to NIL compensation which rewards individual athlete brands that historically have had better publicity and promotion of events.**
- For purposes of determinations about discrimination on the basis of sex under Title IX, the support of an institution of higher education or intercollegiate athletic association related to

athletes' names, images, or likenesses shall be considered, including how an institution of higher education or intercollegiate athletic association promotes sports predominantly comprised of women relative to men.

3. No prohibition of the Use of NILs as Inducements

- NIL collectives, by definition, are considered affiliated with their institutions and must register with the FTC prior to being allowed to provide NIL agreements. However, there is no provision prohibiting NIL agreements from being used as inducements for prospective or current athletes to attend, remain at, or transfer to institutions. **DRAKE COMMENT: The Act appears to allow an NIL arms race escalation. The Act does not specify marketplace value guardrails with regard to its compensation provisions as long as such compensation financially benefits athletes and terms are fair and not deceptive.**
- The Act provides third party to conduct surveys and interviews, an analysis of compensation received by college athletes disaggregated by gender, race, and sport, and recommendations in a report to the Secretary of Commerce to address any disparities. **DRAKE COMMENT: Because no central repository for NIL agreements exists, an examination of the price at which services are rendered compared to local and national rates for similar transactions provided for such services by uninterested parties (a non-boosters) may not be possible. Such information is needed to red flag the possible existence of inducements.**
- It is unclear whether the individual right to sue can be used by an institution to allege that an individual third party NIL agreement was unfair or deceptive. If so, if a NIL collective brokered the individual third party transaction, because collectives are required to maintain athlete NIL records, it may be possible for the FTC to address inducements under the "unfair or deceptive" rubric by performing a market value analysis.

Protecting Athletes, Schools, and Sport Act of 2023

Co-Sponsors: Senators Joe Manchin (WV-D) and Tommy Tuberville (AL-R)
(Discussion draft/bipartisan)

Key Elements:

1. **Agents and all third parties (individuals, boosters, and collectives) who enter into athlete NIL agreements must register with and provide full disclosure of details of representation, employment, and athlete services to be rendered, to the Federal Trade Commission (FTC) which enforces the Act.**
 - FTC website provides publicly accessible anonymized and aggregated data
 - FTC cannot prescribe rules or regulations governing the Act
 - FTC can investigate or penalize the NCAA for failure to carry out duties including penalties for unfair or deceptive acts or practices and revocation of tax-exempt status.
2. **NCAA has the duty to govern, enforce, and oversee institutions' compliance with Act, resolve athlete complaints and disputes and regulate and certify third parties providing NIL compensation to athletes**
 - NCAA defines Third Party permissive activities, uniform NIL agreements
 - NCAA provides educational resources and a dispute resolution process which must include athlete selection of arbitration option
 - NCAA conducts investigations and audits to determine compliance with the Act and sends an annual audit and compliance report to House and Senate Commerce Committees

- NCAA may impose penalties on agents, third parties, institutions, conferences, or athletes: (a) revoke license to participate in NIL activities, (b) refer to FTC for unfair or deceptive act or practice for enforcement, or (c) other violations of federal law, refer to appropriate federal agency

3. The Act preempts state laws in multiple categories that:

- conflict with the Act;
- limit the rights of college athletes under the Act;
- relate to the rights of college athletes to receive compensation from institutions, affiliates of institution, third parties, conferences or the NCAA; and
- include any law, regulation, rule, requirement or standard that is inconsistent with Title IX including laws that provide for the payment of college athletes from share of annual revenues generated by a particular sports program.

4. Strong Protection of Athlete NIL Rights

- **Duration.** The athlete may enter into an NIL contract only if the athlete is enrolled during an academic term for which classes have begun; duration does not extend beyond enrollment. **Drake Comment: Athlete does not enjoy option to continue a desirable agreement without negotiating a new contract. Giving the athlete the option to end the agreement at the end of enrollment should be considered.**
- **NIL Contract protections.** Athletes may only enter into NIL contracts that are in writing and signed by each party, include the names of each party, outline the scope of work to be performed, state the timeline for performance of such work, state the compensation to be provided, describe duration of contract, and conform with standard contract template developed by the FTC.
- **Agent contract protection.** The NCAA is obligated to resolve athlete complaints and offer arbitration as an athlete alternative. **Drake Comment: The existence of an arbitration option should alleviate many of the concerns with the current NCAA enforcement process and result in more timely determinations.**
- **Gender and sport equity.** Third parties (e.g., collectives) associated with institutions of higher education shall offer equal representation of, and provide equal services to, all student athletes in all intercollegiate athletics programs at the institution of higher education.

5. Elimination of Athletic Eligibility Rights of Transfer Students

- Upon transfer, athlete is immediately ineligible to play at new institution beginning at start of fall semester and ending after institution's final summer session.
- The national association may waive year of ineligibility if athlete appeal provides documentation not later than 30 days after the qualifying event supporting any of the following conditions:
 - has completed 3 years of eligibility
 - family member dies or is diagnosed with terminal illness
 - primary position coach voluntarily or involuntarily leaves institution before the date the athlete enters the portal or other criteria established by the association

Drake Comment: The Act does not have a 'grandfather clause.' The new rule supercedes rules in effect at time Act enacted that gave the athlete a one-time transfer with no eligibility restriction.

6. Athlete Medical Benefits That Must be Provided by the Institution

- Health care (injuries, communicable diseases) coverage including all out-of-pocket and second opinions during athletes' years of participation

- Trust fund (1% of all revenue-generating tournaments/playoffs) established for uncovered medical expenses until age 28 or 8 years after completion of eligibility; trust fund may be used for second opinion at institutions generating <\$20MM in annual revenues
- Institutions generating >\$20MM in annual revenues must pay all out-of-pocket and expenses for second opinions for two years after eligibility completed; for 4 years if institution generates >\$50MM annual revenues -- with these two categories of institutions having an unspecified duration obligation for second opinions beyond 4 years for all former non-transfer athletes

Drake Comment: Medical provisions fail to confront the long-term impact of brain trauma in 10-20 years while a provision allows the Trust Fund to be used for travel to sporting events for members of the immediate family of the student athlete. We believe that long-term disability protection deserves higher consideration compared to financing family travel to athletic events.

7. Third Party Controls and Loopholes

- Control: No individual, booster, or other third party can promote athletic program, assist w/ recruiting or assist with providing benefits unless formally associated with institution by contract
- Control: Unlawful to provide or offer funds as an inducement to transfer, attend or remain at institution
- Loophole: As long as not an inducement, a third party may offer or provide a grant to prospective or current athlete solely for payment of tuition, room and board, or other fees charged by an institution of higher education. **DRAKE COMMENT: Allowing boosters to provide such support undermines NCAA sport scholarship limits (controls athletic program costs and advances competitive equity), creates the conditions for an arms race similar to NIL compensation offered under the guise of purchasing a service, and enables institutions to evade their Title IX obligations.**

8. Additional Mandated or Allowable Benefits Related to Athletic Scholarships That May Not be Currently Permitted in all NCAA Divisions

- May include disability and loss of value insurance, clothing and magazine subscriptions, and unspecified "school supplies"
- Travel funds for members of athlete's immediate family to attend sporting events of the athlete **DRAKE COMMENT: Over 98% of all athletic programs receive institutional subsidies from general fund (tuition) and mandatory activity fees charged to all students because they operate in the red (expenses in excess of revenues). Average student loan debt upon leaving college is approximately \$39,000. Should expenses such as travel expenses for families to competitions, expenses not related to course requirements, or other non-essential/non-emergency expenses not be permitted?**

9. Athletes Permitted to Use Institutional Assets for Private Gain

- With express permission of institution, may use insignia, logo, or other intellectual property of the institution for any purpose **DRAKE COMMENT: Should any individual be allowed to use the assets of a 501 (c)(3) non-profit organization for private gain? Consideration should be given to the individual or entity paying the institution royalties at normal market rates.**

Fairness, Accountability, and Integrity in Representation of College Sports Act

Co-Sponsor: Representative Gus Bilirakis (FL-12)

(Discussion draft V. 2)

Key Elements

1. United States Intercollegiate Athletics Committee (USIAC), an independent non-governmental non-profit corporation organization, would be established to fulfill following duties:

- Adopt rules that prevent unfair or deceptive acts or practices in the use of athlete NILs via a public notice and comment process;
- Remove impediments to a free and open market through public transparency of aggregated information by maintaining a public database with quarterly updates to include total NIL athlete agreements, total compensation, and average compensation disaggregated by conference competitive division, sport, deidentified service description to include compensation, duration of agreement and other data helpful to evaluation of free market value;
- Prevent inducements or other compensation related to transfers, school selection, or athletic performance through penalties which may include: (a) expulsion, (b) suspension, (c) limitation of activity, function, and operation, (d) fine, (e) censure, (f) a suspension or bar from being associated with a member, or (g) any other fitting sanction;
- Protect the privacy of athletes by protecting information disclosed to USIAC;
- Not set athlete compensation limits or regulate matters unrelated to the purpose of the Act
- Operate a “tip” line;
- Require agents to register and provide affidavits of compliance, certification, and a copy of the contract with the athlete which may not be executed until after 45 days after athlete enrollment
- Require third parties and collectives to register and submit (a) affidavits of non-inducement, (b) NIL agreements within 30 days of execution or penalty of perjury, (c) monthly disclosure of amount of compensation with copy of NIL agreement and description of work, and (d) for collectives only, name and contact information of all donors whether any individuals has been adjudicated as bankrupt, filed for bankruptcy, convicted of fraud, or caused an athlete or institution to be sanctioned
- Require athletes to submit to USIAC: (a) a copy of agent contract w/in 30 days, (b) a copy of NIL agreement w/in 30 days, and (c) quarterly reports of compensation received – failure to register or not report an NIL agreement results in athlete being referred to NCAA for eligibility restriction
- Maintain a system for responding to inquiries regarding registration, disciplinary action, and appeal status information
- Determine “covered compensation” that may be included in NIL agreements that exceeds a monetary threshold determined by USIAC

2. FTC Enforcement

- Signing an NIL agreement by an unregistered third parties, collectives, or agents will be treated by the FTC as a violation of rules defining unfair or deceptive act or practice under Federal Trade Commission Act.
- Any violation of the Act by registered third parties, collectives, or agents will be enforced by the FTC according to its powers under the Federal Trade Commission Act

3. Strong Protection of Athlete Rights

- Athletes who cooperate in USIAC investigations will not be found in violation of the USIAC rules.
- USIAC registration of agents, third parties, boosters, and NIL collectives (including all donors to the collectives) is required and state whether any registrant has declared bankruptcy or been sanctioned/convicted of fraud or caused an athlete or institution to be declared ineligible.
- USIAC must maintain a public database of registrants revoked, disbarred, or otherwise prohibited from registration due to misconduct.
- The Act allows rescission of NIL agreements when athletics eligibility is completed if remaining NIL term is more than one year; athletes are not liable for breach nor obligated to return payments received.
- USIAC must establish a complaint procedure for athletes and institutions related to agents.

- USIAC website must include information on legal and business concepts in licensing and publicity rights.
- The Act preempts NIL state laws.

4. **Restrictions on Athletes' NIL Rights**

- No NIL agreements are permitted until athletes are enrolled for at least 90 days.
- No NIL agreements are permitted that include incentives for on-field actions or performance.
- Institutions, conferences, and national associations (entities) can prohibit NIL agreements that promote gambling, tobacco products, vaping or e-cigarette products, alcohol products, controlled substances, lewd and lascivious behavior or material, or other product or service that is reasonably considered to be inconsistent with the religious values of an institution – but only if respective entities are also restricted from contracts in these categories.
- Institutions can impose reasonable time restrictions on athlete NIL activities.
- No agent or third party can directly or indirectly provide compensation as inducement to enroll, remain or transfer.
- Athletes' NIL agreements shall not conflict with institutions' contracts unless institution consents in writing.
- Institutions, conferences, and national associations may set reasonable requirements or restrictions on the use of their respective trademarks in NIL activities, including requiring standard royalties to be paid to the entities for the use of such marks. **DRAKE COMMENT:**
Athletes and any third party using institutional marks should be required to pay fair market value royalties for such use based on the principle that no outside entity should use nonprofit assets for private gain.

5. Institutions, conferences, and national associations are prohibited from entering into NIL agreements with or paying, providing, or facilitating the provision of any payments to athletes for their licensing or publicity rights.
6. Collectives and third parties are limited to entering into NIL agreements that provide compensation for promotion by a student-athlete through the use of the NIL of the student athletes or payments for athletes' licensing and/or publicity rights commensurate with fair market value. **DRAKE COMMENT:** The “fair market value” standard should be required for all NIL agreements with compensation in excess of such assumed to be an “inducement” except that the employer should be given the opportunity to justify the excessive valuation prior to the imposition of any penalty (a rebuttable assumption).
7. Institutions, conferences, and national association are NOT prohibited from providing the athlete with the following, which are not considered “covered compensation”:
 - athletics grants-in-aid
 - academic assistance funds or academic enhancement funds awarded by national associations for postgraduate scholarships, school supplies, benefits unrelated to education such as loss-of-value insurance premiums, travel expenses, clothing, magazine subscriptions or cost-of-attendance stipends
 - awards for participation or achievement in intercollegiate athletics or the Olympics
 - awards for future educational opportunities
 - travel funds for members of the athlete's immediate family to attend the athlete's sporting events
 - provision or reimbursement of expenses for meals, lodging, child care, emergency family expenses, transportation and other benefits provided such payment or reimbursement is not for

engaging in intercollegiate competition and “are available based on uniform standards applicable to all athletes in an association”

- academic or graduation awards or incentives provided by an association, a conference or an institution per rules established by the governing association

DRAKE COMMENT: Currently, Alston vs. NCAA et. al. limits both awards for athletic participation or achievement and academics to maximum amounts. These provisions would allow unlimited awards.

DRAKE COMMENT: Allowing institutions to provide educationally unrelated funds such as family member travel expenses to athlete competitions, clothing, etc. is not consistent with either the education institution’s mission or financial policies typically applied to non-profit education institutions.

8. National associations and conferences receive implicit antitrust exemption to establish and enforce rules and render athletes ineligible who receive payments or to withhold distributions from institutions that make payments in violation of the Act.

Untitled NIL Draft Bill Not Yet Introduced

Co-Sponsor: Senator Ted Cruz (TX-R)

Key Elements:

1. **Federal Trade Commission’s (FTC), extends reach to non-profit entities and Sports Agent Responsibility and Trust Act (SPARTA) and the Consumer Review Fairness Act of 2016, are amended to permit FTC to use its unfair or deceptive acts or practices enforcement powers to enforce provisions of the Act including:**
 - Institutions, conferences or interstate intercollegiate athletic associations (entities) shall not restrict the eligibility of athletes or the ability of athletes to obtain third party representation or enter into NIL agreements unless the agreement violates student codes of conduct, reasonably impacts the reputation or public image of the entity, or conflicts with an existing contract of the athlete’s institution;
 - Athletes are required to disclose terms of NIL agreements to their institutions;
 - Agents are required to disclose their registration status with an Interstate Intercollegiate Athletic Association or conference;
 - Institutions are not permitted to release information provided by the athletes without written consent of the athlete or athlete’s agent;
 - Athlete NIL contracts are required to conform to Consumer Review Fairness Act specified contract format; and
 - Using FTC Act powers, void NIL agreements or penalize entities violating the Act.
2. **Act authorizes that Interstate Intercollegiate Athletic Associations and Conferences may:**
 - Establish a registration process for athlete agents;
 - Using member institution disclosures of athlete NIL agreements containing descriptions of services rendered and amount of compensation, establish and maintain an anonymized, publicly accessible, and searchable database for athletes and their agents to estimate fair market value (FMV) for NIL agreements that protects athletes’ identities;
 - Establish and enforce rules related to recruitment of college athletes before and during their eligibility for college athletic competition, prohibit or limit compensation to athletes by

institutions, institutional affiliates (not NIL collectives), or conferences for purposes of recruiting or inducing athletes to attend or transfer, and governing athlete transfers between institutions;

- Provide athletes, parents and guardians with educational materials related to athletes NIL rights;
- Organize intercollegiate athletics championships; and
- Establish bylaws governing membership, restricting institutions or athletes from competing and eligibility for athletic competitions.

3. Strong Protection of Athlete Rights

- Institution may not disclose terms of NIL agreement without written consent of athlete or athlete's agent;
- Athlete's third party agent must disclose registration status and ensure that NIL agreements are in writing, contain description of services to be rendered, names of parties, term, amount of compensation, terms by which agreement may be terminated for athlete's non-performance of obligations (or they will be declared void);

4. Preemption of State Laws – preempts any state law conflicting with the Act, governing or regulating the compensation, employment status, or athletics eligibility of prospective or current college athletes, or regulation of college athlete NILs

5. Antitrust Exemption or Application – not subject to legal liability for adoption or enforcement of rules limiting athlete compensation, restricting eligibility of athletes who violate bylaws or rules reasonably related to those contemplated by Act. **DRAKE COMMENT: We support this antitrust exemption but believe it should be better defined and limited and conditional on medical and health protections that are absent from the Act.**

6. Athletes are Not Employees - athletes shall not be considered employees of an institution, conference, or national athletic association for purposes of (or as a basis for imposing liability on or awarding damages or other monetary relief under) any Federal or State law based on the athlete's participation in, or status as a member of, any varsity sports team.

H.R. 3630 Student Athlete Level Playing Field Act

Co-Sponsors: Representative Mike Carey (OH-15-R) and Representative Greg Landsman (OH-D)
(Referred to House Committee on Education and Workforce and Committee on Energy and Commerce/bipartisan)

Key Elements:

- 1. Federal Trade Commission's (FTC) jurisdiction covering unfair or deceptive acts or practices, and enforcement powers under the FTC Act would be extended to non-profit organizations for purposes of enforcing provisions of the Act that:**
 - Require FTC to investigate claims under the Sports Agent Responsibility and Trust Act;
 - Ensure NIL agreements are not entered into until the athlete enrolls in college;
 - Ensure that boosters do not directly or indirectly provide funds or anything of value to induce athletes to enroll;
 - Ensure that institutions, conferences, or national associations do not prohibit athletes from entering into NIL agreements or penalize students' eligibility for participation or athletics related aid with any violation treated as unfair or deceptive acts or practices under the FTC Act;
 - Require athletes and their agents, within 72 hours after execution of the agreement between the athlete and the agent, to notify the athletes' institutions of such agency agreement;

- Require the FTC, within 180 days from adoption of the Act, to establish a clearinghouse for NIL agreements >\$500 notify the athlete's institution of such, and make disclosures available to the public on a regular basis; **DRAKE COMMENT: Unclear as to what will be included in the public database (e.g., entire contract?).**
- Require athlete agents to register (at no charge) with the FTC and ensure they do not engage in unfair or deceptive acts or practices; and
- Make an annual report to House and Senate commerce committees summarizing investigations and enforcement actions including number of complaints filed.

2. **Allowable Restrictions to Athlete NIL Agreements**
 - Institutions can prohibit athletes from wearing clothing/gear with the insignia of an entity during athletic competitions or athletics-related events.
3. **Protection of Athlete Rights**
 - Act states that no provisions affect non-discrimination rights of athletes under Title IX.
 - Act states that no provisions affect the employment status of athletes with respect to their institution or covered athletic organizations on the basis of the athlete entering into a third party NIL agreement.
 - Act states that no provisions affect the treatment of qualified scholarships under the Internal Revenue Code of 1986.
 - Act "suggests" that institutions, conferences, national associations should develop courses or programs to assist athletes with financial literacy related to entering into NIL contracts.
 - Institutions cannot penalize athlete participation or athletics financial aid eligibility based on their participation in NIL agreements.
 - Athlete complaints about agents, institutions, conferences, national associations, or third parties related to NIL agreements may be made to FTC.
4. **Preemption of State Laws** – preempts any state law that permits or restricts the ability of an athlete to enter into an NIL or agent agreement pursuant to this Act.
5. **Antitrust Exemption Provided** – The Act states that no provisions may be construed to provide a cause of action pursuant to the Sherman Act. **DRAKE COMMENT: We support this antitrust exemption but believe it should be better defined and limited and conditional on medical and health protections that are absent from the Act.**
6. **Covered Athletic Organization Commission** – shall be established by Congress for a three-year period to make recommendations to:
 - Congress – on the implementation of NIL rules;
 - Covered Athletic Organizations – on process for certifying or recognizing credential athlete agents;
 - Establish an independent dispute resolution process for disputes between the athlete and the athlete's institution or a covered athletic organization; and
 - Produce annual report on the Commission's activities and recommendations.

College Sports NIL Clearinghouse Act of 2023

Co-Sponsors: Senator Lindsay Graham (SC-R)

(Draft Not Yet Introduced)

- 1. NIL Clearinghouse for Regulation of NIL Agreements MAY be Established by institutions and conferences to:**
 - Regulate NIL agreements consistent with this Act;
 - Monitor compliance with the Act;
 - Establish and enforce penalties for Act violations, acting in its own name and through its own attorneys in enforcing the Act or any other law or regulation and in any civil action which may be brought by Clearinghouse in federal district court;
 - Enforce penalties which may include levying fines, suspension or permanent ban of individual or entity from participating in athletics for period determined by Clearinghouse, or seeking other legal, equitable, or other relief via civil action including damages and injunctions;
 - Protect athletes from adverse treatment from conflicts between the athletes' and institutions' sponsorship agreements;
 - Compromise or settle any civil action if such compromise or settlement is approved by the Court; and
 - Provide athletes with educational information on financial and tax implications of NIL agreements.
- 2. State Actions Brought by Attorney General (AG)**
 - AG may bring civil action for a violation of this Act in any appropriate U.S. District Court if AG or other designated official believes residents of the State are threatened or adversely affected by an act or practice in violation of this Act after giving notice/copy of complaint to NIL Clearinghouse to determine need to coordinate prosecution, so it doesn't interfere with any NIL Clearinghouse or Federal agency proceeding.
 - The NIL Clearinghouse can intervene to remove any State action to U.S. District Court, allow the Clearinghouse to be heard in the proceedings and appeal any order or judgment.
 - The NIL Clearinghouse shall provide guidance to coordinate AG and other regulators' actions.
- 3. Restrictions on Athlete NIL Agreements**
 - Institutions may prohibit NIL agreements with particular industries if state law prohibits all institutions in the state from entering into agreements with such entities and if such agreements would violate the institution's student code of conduct.
 - If institution prohibits an NIL industry category, the institution must provide its athletes with a list of such entities via notice given in the previous academic year.
 - Institutions may prohibit athletes from carrying out NIL agreement obligations during any mandatory team activity if there is a conflict with institutions' sponsorship agreements and may not waive this right unless the waiver applies to all athletes.
- 4. Information Sharing** – Clearinghouse shall share any record maintained by Clearinghouse at request of FTC, DOJ or the AG of any State
- 5. No private right of Action for civil enforcement by any individual except athlete or certified agent.**
- 6. Antitrust Exemption Provided** -- nothing in this Act may be construed to provide a cause of action pursuant to the Sherman Act regarding the ability of an institution, conference, or national association to prohibit a third party from providing a recruiting inducement or compensation for participation in an intercollegiate sport or the Clearinghouse actions pursuant to the Act.