



# The 5 Biggest Name, Image, and Likeness Takeaways for Universities and Athletic Conferences

Insights

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***[Ed. Note: This Insight was updated in December 2021 to identify additional states that have passed NIL legislation.]***

Name, image, and likeness (NIL) legislation for college athletes has changed the landscape for college athletic departments and conferences alike, creating a host of new and unique compliance obligations. In the past year alone, new NIL laws took effect in Alabama, Arkansas, California, Florida, Georgia, Illinois, Louisiana, Mississippi, Nevada, New Mexico, Oregon, Texas, and Tennessee, and we'll see additional states joining them in 2022 – with this list only growing in the coming years. What do you need to know about these developments, and what are the five biggest takeaways for athletic departments and conferences?

## The ABCs of NILs

The new NIL laws allow college athletes to receive compensation based on their name, image and likeness. While universities and athletic conferences will remain forbidden from paying student-athletes for their athletic performances, student-athletes can now sign endorsement deals and profit from advertising and marketing campaigns for third-parties.

NIL compliance obligations will only continue to increase. Other states have already passed NIL legislation that will go into effect in 2022 and beyond, including Arizona, Colorado, Connecticut, Kentucky, Maryland, Michigan, Montana, Nebraska, New Jersey, Ohio, Oklahoma, South Carolina, and Pennsylvania.

In response to the state legislation, the National Collegiate Athletic Association (NCAA) has adopted a uniform interim policy which suspends NCAA NIL rules for all incoming and current student-athletes in all sports. The policy provides the following guidance to college athletes, recruits, their families and member schools:

- Individuals can engage in NIL activities that are 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 this type of activity without violating NCAA rules related to name, image, and likeness.

- Individuals can use a professional services provider for NIL activities.
- Student-athletes should report NIL activities consistent with state law or school and conference requirements to their school.

## **What Will the Future Hold?**

Due the varying state laws adopted across the country, the NCAA has indicated that it will work with Congress to develop a framework that will provide clarity and uniformity on a national level.

Throughout this year, federal proposals have emerged quickly because of the new state laws that went into effect on July 1. Many federal proposals include a state preemption clause to avoid inconsistent state regulations that could impact where a student-athlete decides to attend college.

The federal proposals would ensure that scholarships and other grant-in-aid remain guaranteed regardless of NIL compensation. The proposals would also require universities to avoid attempts to influence third parties to entice recruits to choose a certain school.

Even though current legislative proposals in Congress agree on the general framework of allowing college athletes to seek endorsement compensation, key differences include a limited antitrust exemption, royalty revenue, penalties, and enforcement.

## **5 Biggest Takeaways for Universities and Athletic Conferences**

The state laws and new NCAA policy create new compliance obligations and concerns for universities and athletic conferences. What do you need to know about this NIL legislation before you venture into uncharted territory? Here are the five biggest takeaways you should consider.

### **1. *Review and Ensure NIL Contracts are Legally Compliant***

Universities will need to review each written contract between brands and your student-athletes. Any such contracts should comply with applicable state law and also be compliant with the Fair Trade Commission (FTC) rules and regulations for advertising products and services.

You will also need to ensure that student-athletes are compensated within fair market value for their name, image, and likeness. Additionally, compliance departments should ensure that athletic department donors or boosters are not involved in securing NIL for student athletes.

### **2. *Develop Clear Boundaries***

Athletic departments should ensure that NIL opportunities do not conflict with a student-athlete's athletic performance or academic obligations. Further, you need to ensure that any NIL deals do not conflict with any university contracts or policies.

### 3. ***Ensure Compliance with University Policy and Procedures***

Many universities have already published NIL policies that student-athletes and third-party companies must follow. Some of these policies include but are not limited to: the use of university or athletic department-related marks, logos and other intellectual property; the use of university or athletic department facilities; waiver of liability forms; and the disclosure of any NIL agreement to the university.

### 4. ***Designating University Representatives for NIL-Related Issues***

Compliance departments should designate and publicize the compliance employees who are responsible for managing NIL contracts. You should ensure compliance department employees are trained on issues related to NIL contracts and any applicable state laws.

### 5. ***Consider Financial Literacy, Brand Building, and Educational Workshops***

Athletic departments can also create and develop courses for your student-athletes related to NIL contracts, focusing on managing compensation and marketing. This additional benefit can create value for student-athletes who are focused on growing their brand while they are in still in school.

## **What's Next?**

NIL laws generally prohibit schools from preventing or unduly restricting an athlete from seeking name, image, and likeness compensation. There has already been a surge in NIL business and universities should monitor any new developments or trends. We expect to see Congress attempt to create a national framework in the near future that could provide additional clarity.

Until then, state NIL laws will create unique compliance obligations for universities depending upon which state you are located in. Due to the importance of compliance, you should ensure that you adhere to the best legal practices to mitigate risks while maximizing value for their student-athletes.

As more state NIL laws take effect, we can expect to see a continued increase in NIL deals. If your university has additional questions on this process, feel free to reach out to your Fisher Phillips attorney, the author of this Insight, or another member of our [Sports Industry Group](#). We'll continue to monitor the status of this type of NIL legislation and will provide updates as warranted, so [make sure you are signed up for Fisher Phillips' Insight service](#) to receive the latest news directly in your inbox.

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