

New York Student-Athletes Benefit From Their Name, Image, and Likeness Under New Law

By Susan D. Friedfel, Paul V. Kelly &

November 29, 2022

Meet the Authors



Susan D. Friedfel

Principal
914-872-8027
Susan.Friedfel@jacksonlewis.com



Paul V. Kelly

Principal
(617) 305-1263
Paul.Kelly@jacksonlewis.com

Related Services

Higher Education
Name, Image and Likeness
Sports

The “New York Collegiate Athletic Participation Compensation Act” ([S.5891-F/A.5115-E](#)) allows New York college athletes to receive compensation for their name, image, and likeness (NIL) without losing their scholarships or eligibility. It also allows these players to use an attorney or agent for business deals without punishment.

New York Governor Kathy Hochul signed the new law on November 21, 2022. This follows the NCAA’s October 26, 2022, guidance clarifying what schools can and cannot do when it comes to NIL in college athletics ([see NCAA Guidance Allows Schools to Engage in Certain Name, Image, and Likeness Activities With Student-Athletes, NIL Entities](#)).

The New York law takes effect immediately, but certain provisions that amend education law will not take effect until January 1, 2023.

Legislative Intent

Upon signing this legislation, Governor Hochul expressed, “For too long, collegiate student athletes have not been able to benefit from the extraordinary benefits their hard work has provided to their schools.” The bill sponsors advocated for these changes in response to how many student-athletes from marginalized communities tend to make early exits from colleges in hope to make a large profit and provide for their families, which often results in having to return to get a degree later in their career or after. State Senator Kevin S. Park stated, “This groundbreaking legislation will allow our student-athletes to remain in school, generate financial compensation for name, image, and likeness, and protect athletic scholarships and academic eligibility even after injury.” Assembly Member Michaelle C. Solages commented, “It is our hope that D1 colleges will continue to look out for the best interests of student-athletes by establishing savings plans for students, as well as a fund for financially distressed student-athletes, as our bill suggests.”

Current College Athletes to Benefit From NIL

The legislation prevents colleges, athletic associations, and groups with authority over intercollegiate athletics, including the NCAA, from preventing student-athletes from earning compensation for the use of their NIL. However, these organizations are not allowed to provide a prospective student-athlete with compensation in relation to their NIL.

Professional and Legal Representation

Collegiate student-athletes are allowed to obtain professional representation for NIL contracts or legal matters. Professional representation must be by persons registered in New York pursuant to [Article 39-E](#) of the General Business Law, and legal representation must be by attorneys licensed in New York pursuant to [Article 15](#) of the Judiciary Law. Athlete agents must comply with the federal Sports Agent Responsibility and Trust Act, established in [Chapter 104 of Title 15 of the United States Code](#)

NIL Contract Restrictions

The new law limits the types of contracts college athletes can enter. A student-athlete cannot enter into a contract providing compensation for use of their NIL if the proposed contract would:

1. Violate the team contract;
2. Violate the student's handbook or code of conduct;
3. Conflict with an existing contract or sponsorship the college participates in;
4. Reasonably be judged to cause financial loss or reputational damage to the college;
5. Require actions by student athletes during team activities;
6. Require actions by student athletes during scheduled classes;
7. Use the college's name, brand, or other intellectual property or indicia;
8. Require the student athlete to display a sponsor's indicia during official team activities;
or
9. Require the student athlete to display a sponsor's indicia and such sponsor is a competitor of or offers products or services within the same category as a sponsor of the college.

A college athlete who enters into a contract providing compensation for NIL must disclose the contract in advance of executing it to an official of the college designated by the college. That college official must disclose to the college athlete or the athlete's legal representation what relevant contractual provisions are in conflict.

College Athlete Assistance Programs

The legislation requires every college athletic program in Division 1 NCAA athletics to offer a student-athlete assistance program(s). These programs, include but are not limited to:

1. A dedicated financial distress fund;
2. Access to ongoing mental health support services;
3. Access to broad-based financial literacy training;
4. A degree completion assistance program that provides former student-athletes who disenrolled from college in good academic standing access to need-based financial aid and counseling assistance required to support undergraduate degree completion;
5. Access to training regarding sex-based discrimination and harassment;
6. Access to leadership training; or
7. Access to a career development program.

The Jackson Lewis Collegiate & Professional Sports and Higher Education groups are well-versed in NCAA issues and continue to analyze ongoing developments in the area. Please contact a Jackson Lewis attorney with any questions regarding NCAA, higher education, and any other collegiate and professional sports developments.

©2022 Jackson Lewis P.C. This material is provided for informational purposes only. It is not intended to constitute legal advice nor does it create a client-lawyer relationship between Jackson Lewis and any recipient. Recipients should consult with counsel before taking any actions based on the information contained within this material. This material may be considered attorney advertising in some jurisdictions. Prior results do not guarantee a similar outcome.

Focused on labor and employment law since 1958, Jackson Lewis P.C.'s 1000+ attorneys located in major cities nationwide consistently identify and respond to new ways workplace law intersects business. We help employers develop proactive strategies, strong policies and business-oriented solutions to cultivate high-functioning workforces that are engaged, stable and diverse, and share our clients' goals to emphasize inclusivity and respect for the contribution of every employee. For more information, visit <https://www.jacksonlewis.com>.