

## **A Comparative Analysis of U.S. Senator Rubio’s Proposed Federal Name/Image/Likeness (NIL) Bill and the new Florida NIL Statute**

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**Florida NIL Bill:** Intercollegiate Athlete Compensation and Rights (SB646) Signed by Governor DeSantis June 12, 2020 (see below for full text)

The Florida bill is among the three states that have been signed into law along with California and Colorado (CA and CO effective 1/1/23). There are 37 states that have pending or passed bills. Florida’s has the earliest implementation date of **7/1/21**.

There were at least three different bills dealing with athlete compensation that were filed in the Florida legislature this year. Initially, it was thought the Florida bill would provide athletes at Florida universities and colleges with a “bill of rights” guaranteeing financial aid and health coverage in their NIL bill allowing athletes to profit from their names and images. Original versions of the SB 646 (the one that made to the governor’s desk) contained provisions that looked to protect the health and well-being of college student athletes and included an amendment that would have provided health and disability insurance for college athletes. This amendment was wrestled with and eventually dropped. The sponsor, Rep. Chip LaMarca, relented on the health insurance amendment but vows to bring it back next year. The bill that was signed does include a required financial literacy and life skills workshop.

“I stand with Speaker Oliva and believe removing the health insurance provisions leaves our collegiate athletes behind,” LaMarca wrote in a [statement](#) released on March 10, 2020. “If a college or university benefits from the talent and skills of these young women and men, which they do, then it is my strong position that these schools should value the athletes enough to ensure that their health is protected.” Schools would be required to provide athletes with health and disability insurance, conduct financial-aid and life-skills workshops for athletes in their freshman and junior years and maintain grants in aid for up to one academic year after athletes have exhausted athletic eligibility and up to five years for those who become medically ineligible to continue playing.

The other bills (by Bracy and McGhee) sought creation of a task force to review state and federal laws and regulations by the NCAA and other organizations about compensation for college athletes.

Main points of final Florida statute:

- Bill defines and includes all institutions as “Postsecondary educational institution” — means a state university, a Florida College System institution, or a private college or university receiving aid under chapter 1009. (does not exclude NJCAA or NAIA)
- Compensation must be commensurate with the market value of the NIL.

- To preserve the integrity and amateur nature of intercollegiate athletics and to maintain a clear separation between amateur intercollegiate athletics and professional sports, such compensation may not be provided in exchange for athletic performance or attendance at a particular institution and may only be provided by a third party unaffiliated with the intercollegiate athlete's postsecondary educational institution.
- Institution, conference may not compensate or cause compensation to be directed to current or prospective intercollegiate athlete for NIL.
- Agent provision: No prohibition from retaining prof. representation; agent must be licensed by state; must comply with Fed Sports Agent Respon. & Trust Act; Attorney representing athlete for securing NIL compensation must be member of Florida Bar.
- Athletic scholarship is not compensation and may not be revoked or reduced as a result of an intercollegiate athlete earning compensation or obtaining professional representation.
- An athlete may not enter into a contract for compensation for NIL if a term of the contract materially conflicts with a term of the intercollegiate athlete's team contract. An institution asserting a conflict must disclose each relevant contract term that conflicts with the team contract to the intercollegiate athlete or her or his representative.
- Requires financial literacy and life skills workshop; workshop shall also include information on time management skills necessary for success as an intercollegiate athlete and available academic resources.

**U.S. Senator Rubio Proposed Bill: Fairness in Collegiate Athletics Act ([see here](#))**

- Filed: June 18, 2020; Effective date: June 30, 2021
- Specifically excludes NJCAA and NAIA. The Act does not protect the employment rights of *all* college athletes in that it is limited to those participating in National Collegiate Athletic Association (NCAA) programs.
- Permits student athlete to obtain professional representation subject to the requirements of the Sports Agent Responsibility and Trust Act (15 U.S.C. 7802)
- College athletes may earn compensation from NIL but leaves NCAA amateur status rules up to the NCAA, and NCAA responsible for:
  - Ensuring appropriate recruitment of prospective student athletes
  - Prevent illegitimate 3<sup>rd</sup> party involvement in recruiting/retention of college athletes
  - Violations will be considered "unfair or deceptive act under Federal Trade Commission
- Unfair or Deceptive Acts as covered by Federal Trade Commission
  - FTC shall have enforcement powers under the Act
- Neither NCAA nor institutions can be sued for enforcing its any of its amateur status rules. Act exempts the NCAA and its member institutions from antitrust or other lawsuits brought by college athletes who believe NCAA NIL rules are unfair.

- Preemption provision: No State or political subdivision of a State may adopt, maintain, enforce, or continue in effect any law, regulation, rule, requirement, or standard related to permitting or prohibiting a student athlete to receive compensation from an institution of higher education or a third party as a result of such athlete's performance or participation in postsecondary athletics.

The Rubio bill gives the NCAA and their member institutions protection from lawsuits and control of the definition of 'amateur status' thereby allowing institutions to continue acting in their own financial interests at the expense of college athletes' financial interests. The Rubio bill fails to put the athlete first and further ensures the NCAA has all the power to enshrine its own definition of amateurism.

**NOTE: The Drake Group maintains a [database of pending state NIL legislation](#).**