

THE DRAKE GROUP (contact Julie Sommer - jsommer@jsommerlaw.com)

FEDERAL LEGISLATION RELATED TO COLLEGE ATHLETE NIL/OUTSIDE EMPLOYMENT COMPENSATION (as of 5/7/21)

	<u>Sens Cory Booker (D-NJ), Richard Blumenthal (D-CT), Kirsten Gillibrand (D-NY), and Brian Schatz (D-HI): College Athletes Bill of Rights (116th Congress)</u>	<u>Sen. Wicker (R-MS): Collegiate Athlete Compensation Rights Act (116th Congress)</u>	<u>Sen. Marco Rubio (R-FL): Fairness in Collegiate Athletics Act (116th Congress)</u>	<u>Sen. Chris Murphy (D-CT) and Rep. Lori Trahan (D-MA): The College Athlete Economic Freedom Act (117th Congress)</u>	<u>Sen. Jerry Moran (R-KS): The Amateur Athletes Protection and Compensation Act of 2021 (117th Congress)</u>	<u>Reps Anthony Gonzalez (R-OH), Emanuel Cleaver (D-MO), Rodney Davis (R-IL), Josh Gottheimer (D-NJ), Steve Stivers (R-OH), Colin Allred (D-TX), Richard Hudson (R-NC), and Sharice Davids (D-KS): Student Athlete Level Playing Field Act (117th Congress)</u>
College Athletes' Right to Earn NIL Compensation and Professional Representation:	Athlete NIL Rights Guaranteed as specified that college athletes have the right to monetize their names, images, likenesses and athletic reputations, be a part of group licensing agreements with other athletes, and employ agents, group licensing entities, attorney and financial advisors to help them do so.	Right to Commercially Market Their Own NILs clearly specifies the right of college athletes to earn compensation from marketing their publicity rights at fair market value (FMV) while they are enrolled in colleges and universities and to retain certified agents to help them do so.	Specifies that college athletes participating in NCAA programs are able to earn compensation from third parties for use of their NIL and obtain professional representation subject to the requirements of the Sports Agent Responsibility and 23 Trust Act (15 U.S.C. 7802).	Athletes have the right to market their NIL and athletic reputation, the right to a collective representative to facilitate group licensing agreements or provide representation for college athletes, and the right to be a part of group licensing agreements with other athletes.	Amateur athletes have the right to control their NIL and affords them the freedom to enter into an agency or endorsement contracts to receive compensation from a third parties and obtain certified representation so long as agreements do not violate a school's code of conduct.	Student athletes have the right to enter into an endorsement contract or retain professional representation without a covered athletic association or institution of higher education from prohibiting their participation/eligibility in intercollegiate athletics subject to the requirements of the Sports Agent Responsibility and 23 Trust Act (15 U.S.C. 7801).
Athletes' Right to Earn NIL Compensation and Their Eligibility:	Institutions not allowed to arrange athletes' NIL employment or endorsement agreements with third-parties; specifies that college athletes have the right to transfer to other institutions without penalty with reasonable conditions; Guarantees a college athlete's right to enter into a professional sports draft without losing collegiate athletic eligibility as long as no compensation is received and the athlete decides within seven days after the draft to forego professional sports participation; and specifies that institutional sponsorship agreements requiring college athletes to wear specific team apparel cannot include footwear, permitting athletes the freedom to market their NILs in other product categories.	Protection from breach of agreement upon cessation of participation allows athletes to rescind NIL agreements with remaining terms of more than one year if they cease intercollegiate athletic participation and specifies the responsibility of athletes' agents to disclose NIL agreements to the third-party administrator.	Athlete NIL Rights are applicable only to National Collegiate Athletic Association (NCAA) athletes and specifically excludes the National Junior Collegiate Athletic Association (NJCAA), the National Association of Intercollegiate Athletics (NAIA), or any other successor organization.	Compensation shall not adversely affect the eligibility or opportunity of a college athlete to apply for a grant-in-aid , or the amount, duration, or renewal of the grant-in-aid of a college athlete or prospective college athlete.	Recruits can sign contracts as long as they're not considered recruiting inducements ; athletes have the right to enter into a sports draft and retain their eligibility if they don't receive compensation from a professional sports league, team, or agent (declare intentions after 7 days of draft); athletes have the right to transfer at least once without penalty ; ensures athletes are not considered employees of their institutions, a conference, or a national amateur association based on their participation in sports.	A covered athletic organization or institution may not prohibit a student athlete from participating in intercollegiate athletics because such student athlete enters into an agency contract or an endorsement contract or otherwise receives consideration for such student athlete's name, image, or likeness. Covers athlete NIL rights of NCAA and other organizations, allowing college athletes to enter into endorsement agreements with third parties outside the institution without being declared professional athletes, but limits compensation to the Sport Agent Responsibility and Trust Act definition of "endorsement contract," thereby excluding athletes who are self-employed.

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Enforcement Agency / Governing Organization:	Federally Chartered Commission on College Athletics establishes a perpetual oversight body, with funding from Congress, to oversee implementation of the standards of the Act with an independent Board of Directors including NIL standards, resolution of NIL disputes, and certification of agents.	Enforcement and review by the Federal Trade Commission provides for an independent third-party oversight including comprehensive details about how a private, independent self-regulatory, nonprofit corporation will carry out the provisions of the bill and develop standards to “maintain fairness and integrity” and regulate agents.	Specifies the Federal Trade Commission to enforce the Act and cover unfair or deceptive acts or practices.	Specifies the Federal Trade Commission to enforce the Act and cover unfair or deceptive acts or practices.	Specifies the Federal Trade Commission to enforce the Act and cover unfair or deceptive acts or practices.	Designates the Federal Trade Commission as enforcement agency to investigate allegations of unfair or deceptive acts or practices by college athlete agents, institutions or their boosters, make determinations of wrongdoing and impose penalties under the Federal Trade Commission Act (15 U.S.C. 41 et seq.).
Preemption Provision:	Nothing in this Act may be construed (1) to preempt, modify, limit or supercede any state law or regulation relating to sports agents, attorneys, or other athlete representatives; or (2) to modify or limit the enforcement authority of OSHA, Dept. of Labor, Dept. of Education or any other federal agency.	None	Preempts any state or a political subdivision of a state from adopting, maintaining, enforcing, or continuing in effect any law, regulation, rule, requirement, or standard related that permits or prohibits 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.	A State may not enforce a State law relating to the ability of college athletics to enter into contracts for the use of their NILs or athletic reputations pursuant to this Act; prohibits the institution or athletic associations from regulating legal, financial, or agency representation; prohibits any agreement or legal settlement that waives or permits noncompliance with Act.	Preempts any law, state or local, which is inconsistent with this Act or otherwise governs or regulates the compensation, intellectual property rights, endorsement contracts, employment status or eligibility for any amateur intercollegiate athlete, including any provision that governs or regulates the commercial use of the name, image, or likeness of an amateur intercollegiate athlete.	Preempts existing or future state laws or regulations that might limit or expand the right of college athletes to enter into endorsement agreements with agencies outside athletes’ colleges or universities.

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Enforcement Provision:	Specifies stringent enforcement of athletes' rights by imposing significant financial and employment penalties on institutions, conferences, athletic associations, or their employees that violate college athletes' rights and protections specified by the bill, including individuals being suspended or permanently banned from higher education institutional or intercollegiate athletic association employment.	Enables the NCAA and conferences to pass rules consistent with proposals in the bill and declare athlete ineligible for violations, and also allows the oversight NIL Commission to penalize institutions in violation of the Act by withholding revenue distributions.	Acts deems the NCAA responsible for ensuring appropriate recruitment of prospective student athletes, prevent illegitimate third party involvement in recruiting/retention of college athletes, while violations will be considered unfair or deceptive act under Federal Trade Commission Act .	Violation of athletes' NIL rights will be considered unfair or deceptive act under Federal Trade Commission Act . SHERMAN ACT .—A violation of this Act shall be deemed to be a per se violation of the Sherman Act (15 U.S.C. 1 et seq.) and subject to all remedies and rights afforded under that Act.	Act establishes the Amateur Intercollegiate Athletics Corporation to create and enforce rules related to NIL; creates and enforces a formal certification process for agents, and coordinate with the Federal Trade Commission.	Act establishes the Covered Athletic Organization Commission that will report not later than one, two, and three, years, respectively, to the Committee on Energy and Commerce of the House of Representatives and the Committee on Commerce, Transportation, and Science of the Senate annual reports for the purpose of making recommendations to Congress and athletic government organizations regarding NIL rules.
Athletes' Scholarships:	Guarantees athletic scholarships for five years or until graduation, whichever occurs first.	Protects athletic scholarships and prohibits revocation or the imposition of a condition of athletics financial aid for reasons related to the college athlete entering into NIL agreements or retaining an agent.	None	Receipt of NIL or athletic reputation compensation of a college athlete or prospective college athlete shall not adversely affect eligibility or grant-in-aid opportunity of a college athlete or prospective college athlete . Nothing in Act shall affect the treatment of qualified scholarships under IRS code.	Requires schools to honor any "grant-in-aid" for the duration of time it takes an athlete to complete their undergraduate degree, including former amateur athletes who return to school and prohibits a school from revoking any grant-in-aid due to an amateur athlete's athletic ability, performance, and contribution to team success or as a result of an injury or illness.	Nothing in Act shall affect the treatment of qualified (athletic) scholarships under IRS code (scholarships not to be treated as income).

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Disclosure and Transparency Provisions:	Requires annual reporting of athletics' generated revenues and sports revenue royalties, athletics' expenditures, hours spent on athletics, and academic outcomes in a publicly accessible database disaggregated by team and academic outcomes; disaggregated by team, race, ethnicity and gender with financial penalties for non-compliance.	Specifies that the third-party entity must publish annual reports that are publicly available , including information that is specific to individual NILs.	No later than June 30, 2021, any intercollegiate athletic assn. shall establish (2) rules and programs for administration of policy allowing a student to earn compensation, including requiring student-athletes to report any compensation derived. Requires student athletes to report any compensation or agreement to receive compensation to the institution of higher education in which they are enrolled within a reasonable period to preserve the amateur status of student athletes, ensure appropriate recruitment of prospective student athletes, and prevent illegitimate activity with respect to any third party.	Annually, the Secretary of Commerce may award a grant to, or enter into a contract with, an eligible entity for the purpose of conducting a market analysis of the monetization of the rights granted to college athletes during the 1-year period preceding the date of analysis.	Requires athlete who enters into an endorsement contract to provide their school a copy of the contract not later than 7 days; Amends the Higher Education Act of 1965 to require schools to disclose the total compensation of the athletic director and every athletic coach, as well as the total amount of federal and state funding they receive per year and establishes that schools must comply to receive federal education funding.	No disclosure provisions: Requires student athlete to notify their institution's athletic director of agreement to agent representation within 72 hours or before the next athletic event, but lacks any provision requiring transparency of institutional or athlete endorsement agreements that would enable any stakeholder to discover or expose the misuse of NILs or non-compliance with the Act.

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<p>Prohibition Provisions:</p>	<p>Prohibits restricting athlete endorsement categories unless their higher education institutions are subject to the same restrictions imposed by the state; and prohibits inducements to transfer.</p>	<p>Prohibits education institutions or athletic associations for imposing NIL restrictions and prevents institutions or athletic governance organizations from imposing rules that unduly restrict NIL activities; and prohibits NIL agreements as booster inducements.</p>	<p>Act leaves amateur status rules to the NCAA, giving the NCAA administrative control of outside employment and the ability to restrict employment, while protecting the NCAA and its member institutions from being sued for enforcing any of its amateur status rules.</p>	<p>Prohibits institutions of higher education from enacting or enforcing rules, requirements, standards, or limitations that prevents college athletes or prospective college athletes, individually or as a group, from marketing their NILs and athletic reputations; prohibits institutions from coordinating with other institutions or third parties to limit the amount of payment offered to a college athlete under a contract for their NIL or athletic reputation.</p>	<p>Prohibits the NCAA, conferences, and schools from rendering an athlete ineligible on the basis of entering into a contract or receiving covered compensation; Requires any covered compensation to an amateur athlete to be sourced from an "unaffiliated third party" and prohibits these payments from being used to incentivize recruitment or continued participation.</p>	<p>A covered athletic organization or institution may prohibit a student athlete from entering into an endorsement contract with companies and products such as tobacco, alcohol, marijuana, adult entertainment, or gambling. PERMISSIBLE PROHIBITIONS.—A student athlete may be prohibited by the institution from wearing any item of clothing or gear with the insignia of any entity during any athletic competition or athletic-related university-sponsored event. Bans NCAA amateur status rules that prohibit athletes from entering into endorsement agreements or hiring agents; Prohibits higher education institutions from compensating athletes for the use of their NILs; Prohibits antitrust causes of action based on any of the restrictions in the Act; Prohibits boosters from directly or indirectly providing cash or items of value as an inducement to enroll or remain at an institution.</p>

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Conflict and Reporting Provisions:	Specifies that the Commission operate a hotline for athletes to report improper conduct and provide athletes with an ombudsman to provide advice to college athletes and assist with resolution of NIL disputes at no cost; and charges the Commission with the responsibility to monitor Title IX compliance via use of publicly available data and to report institutions to the Department of Education Office for Civil Rights for investigation and enforcement.	Obligates the Federal Trade Commission to deal with athlete complaints.	Exempts and protects the NCAA and its member institutions from antitrust or other lawsuits brought by college athletes for enforcing any amateur status NCAA NIL rules.	Athletes aggrieved by a violation may pursue civil action in an appropriate Federal district court of competent jurisdiction and the court may award to a prevailing part in a civil action actual damages sustained by the party as a result of the violation and the costs of the action and reasonable attorney's fees.	The Act contains no mechanism for resolving disputes between athletes' and their institutions' contracts; disputes monitored by the Amateur Intercollegiate Athletics Corporation.	The Act contains no mechanism for resolving disputes between athletes' and their institutions' contracts other than directing the temporary Commission to make future recommendations in a report to Congress.
Athlete NIL Resources:	Provides the student athlete a list of entities with which the institutions and athletes are prohibited from entering into endorsement contracts; requires a 15-hour financial literacy and life skills development course to be available during the freshmen year to educate athletes about the requirements of the athletes' rights bill, time management skills, personal budgeting, debt, credit and interest rates.	Provision of Independent Educational Resources: Act mandates the operation of an independent entity to provide NIL educational resources.	None	Equitable Institutional Support: An institution, athletic association, or party affiliated with an institution of higher education or athletic association that provides direct or indirect support to college athletes with respect to the marketing of their names, images, likenesses, and athletic reputations shall make such support accessible to all college athletes in the applicable athletic program, regardless of gender, race, or participating sport.	Requires schools to disclose to athletes before their commitment to an institution, multiple items such as the amount and duration of any grant-in-aid they are to receive, relative to the most recent cost of attendance, the percentage of comprehensive medical coverage required, the percentage of any out-of-pocket sports-related medical expenses that the institution will pay during the athlete's period of eligibility, and whether or not the school will pay for disability insurance.	Sense of Congress that institutions of higher education and covered athletic organizations should develop a course or program to assist student athletes with understanding financial literacy with respect to entering into an endorsement contract. (not required)

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Title IX and Gender Equity:	One member of Board shall have expertise with Title IX. Commission shall monitor and provide publicly available information about compliance with Title IX of athletic programs within an institution that is subject to Title IX. Commission may investigate any action by any such athletic program that would constitute a violation of Title IX. If in course of an investigation Commission becomes aware of a potential violation of Title IX, the Commission shall submit to the Office for Civil Rights of the Department of Education all proper information in the possession of the Commission relating to the potential violation.	None	None	Institution, athletic association, or 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 NIL , and athletic reputations shall make such support accessible to all college athletes in the applicable athletic program, regardless of gender , race, or participating sport. Entity who conducts market analysis of the monetization of NIL rights compensation received by college athletes during the 1-year period preceding the date of the analysis of those college athletes, separated by gender ; race; and sport.	None	Rule of Construction: Nothing in this Act or the amendments made by this Act may be construed to affect the rights of student athletes or affect any program funded under Title IX of the Education Amendments of 1972.
Athlete Education Provisions:	Guarantees athletes' rights to select academic major and coursework and participate in internships, student groups, and events without restriction or retaliation from athletic department for conflict with athletic activities; requires academic advising and tutoring services to be administered independent of the athletic department.	To preserve the integrity of the educational programs of institutions, an institution or the Entity may impose reasonable limits on the amount of time a student athlete may spend to carry out endorsement activities relating to a name, image, and likeness agreement	None	None	None	None

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Health and Wellness Provisions:	Requires U.S. Secretary of Health and Human Services to establish guidelines that must be followed by every athletic program, including regular compliance audits with individual and institutional penalties for non-compliance, and whistleblower protection; establishes a private National College Athlete Medical Trust Fund to pay the medical expenses that occur within five years after the individual ceases to be an athlete, second opinions, and long-term brain trauma related condition; specifies athletes' right to a second medical opinion and right to an end-of-college physical examination to diagnose any sports-related injury or condition; and requires outside independence of trainers and medical personnel from the athletic department. Institution may not restrict the ability of an athlete to receive payment from any source for necessities including food, shelter, medical coverage, and medical expenses not provided by	Establishes Student Athlete Health and Safety Standing Committee within independent entity for intercollegiate athletics which shall provide advice and guidance to the Board on the development of standards to help prevent serious injury to and abuse of student athletes.	None	None	Institutions of higher education are required to cover athletes' out of pocket medical expenses and secondary medical opinions for any injury or communicable disease that was incurred while the athlete was participating in an athletic event for former athletes for at least 2-4 years depending on school's revenue.	None

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<p>Additional Prohibition Provisions:</p>	<p>A State may prohibit college athletes residing in the State from entering into endorsement contracts with entities in a particular industry if the State also prohibits institutions of higher education located in the State from entering into agreements with such entities; prohibits arbitrary elimination of teams from the athletic program unless all other options for reducing expenses, including reduction of coach salaries and administrative and facilities expenses have been determined to be not feasible.</p>	<p>Prohibits institution from paying athletes or their families for publicity rights and specifies that athletes cannot be considered employees. Prohibited agreements: An association, a conference, or an institution may prohibit a booster from providing covered compensation to, or entering into a NIL agreement with an athlete or prospective student athlete as an inducement to attend or enroll in or continue attending a specific institution. May also prohibit an athlete from entering into a NIL agreement with a third-party licensee before the date on which the student athlete enrolls at an institution; or for the promotion of gambling, tobacco or alcohol products, adult entertainment, or any other product or service that is reasonably considered to be inconsistent with the values of an institution.</p>	<p>None</p>	<p>Collusion: An institution of higher education may not coordinate with any other institution of higher education or third party to limit the amount of payment offered to a college athlete, prospective college athlete, or group of college/prospective athletes under a NIL contract. Prohibitions on regulation of representation: An institution of higher education or athletic association may not regulate the legal, financial, or agency representation of college athletes and prospective college athletes with respect to the marketing of their NIL, or athletic reputation, including certification; Prohibition on waiver: A college or prospective athlete, institution, athletic association, or any other person may not enter into any agreement or a legal settlement that waives or permits noncompliance with Act.</p>	<p>The NCAA, conferences, and schools may prohibit participation if the contract of the amateur athlete is in violation of the student code of conduct or rules established by the Amateur Intercollegiate Athletics Corporation; An institution of higher education may prohibit an athlete from engaging in promotional or endorsement activities in connection with an endorsement contract during, immediately before, and after an amateur intercollegiate athletic event.</p>	<p>Nothing in this Act or amendments made by this act shall affect the treatment of qualified (athletic) scholarships under Section 117 of the Internal Revenue Code of 1986. Student Athlete Not Considered and Employee: Nothing in this Act or the amendments made by this Act shall affect the employment status of a student athlete who enters into an endorsement contract with respect to a covered athletic organization or institution of higher education.</p>

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<p>Reports Required to Congress:</p>	<p>Reports required from institutions to Commission. See above "Disclosure and Transparency Provisions"</p>	<p>See above "Disclosure and Transparency Provisions." Specifies that the third-party entity must publish annual reports that are publicly available, including information that is specific to individual NILs.</p>	<p>None</p>	<p>Annually, the Secretary of Commerce may award a grant to, or enter into a contract with, an eligible entity for the purpose of conducting a market analysis of the monetization of the rights granted to college athletes during the 1-year period preceding the date of analysis. The eligible entity shall provide recommendations to Secretary which shall be publicly available. Estimates of the compensation received by college athletes during the 1-year period preceding the date of the analysis separated by gender; race; and sport; and provide recommendations to the Secretary to address any disparate estimates. Appropriations authorized by the Secretary such sums as may be necessary.</p>	<p>Requires the head of each national amateur athletic association to provide a biannual report to Congress on the issues faced in complying with trends that are developing in response to the Act and recommendations for improvement; Requires the Comptroller General to conduct an investigation to assess compliance with the Act once every five years; the Amateur Intercollegiate Athletics Corporation will submit a report to the Committee on Commerce, Transportation, and Science of the Senate and the Committee on Energy and Commerce of the House of Representatives annually that includes the number of disputes investigated by the AIAC and any recommendations to improve the endorsement contract process.</p>	<p>Reports: Not later than one, two, and three, years, respectively, after the Commission shall be constituted, it shall submit to the Committee on Energy and Commerce of the House of Reps. and the Committee on Commerce Committee of the Senate annual reports that includes the recommendations (1) to Congress & governing orgs. on implementation of NIL rules, (2) a process to recognize/certify agents, (3) establishment of an independent dispute resolution process between athlete and institution/covered org. and (4) additional categories of endorsement contracts that are excluded.</p>

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<p>Revenue Sharing and Royalty Payments:</p>	<p>Sec 5. (b) ROYALTY PAYMENTS. Institution associated with the covered sports team shall transfer to the athletic association— regardless of whether the institution awards any grant-in-aid to college athletes that participate on the covered sports team— (i) 50 percent of such commercial sports NIL revenue; minus (ii) the amount of grant-in-aid the institution awards to eligible college athletes that participate on the covered sports team. // If the grant-in-aid at the institution awards to eligible college athletes that participate on the covered sports team is more than percent of the commercial sports NIL revenue generated by the covered sports team, the institution shall transfer a percentage of such commercial sports NIL revenue determined by the Commission after calculating average contributions made by institutions of higher education of a similar size.//(2) PAYMENTS TO ATHLETES. Not later than the first August 15 occurring after the date that is 1 year after the date of enactment of this Act, and annually thereafter, an intercollegiate athletic association that has governing authority over a covered sports team shall, if practicable, distribute among every eligible college athlete that participates in the division or subdivision in which the covered sports team participates—(A) the total commercial sports NIL revenue received from institutions under paragraph (1) on account of a covered sports team that</p>	<p>None</p>	<p>None</p>	<p>None</p>	<p>None</p>	<p>None</p>