NIL LEGISLATIVE UPDATES

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Student-athletes, schools, and businesses continue to watch closely. Legislatures and governing bodies grapple with the changing landscape of collegiate athletics and the ever-pressing issues surrounding the student-athlete's desire to monetize their name, image, and likeness and otherwise be compensated for their contributions toward their schools. Recent developments, including proposed legislation and newly enacted rules and procedures, are shedding light on the details of how amateur and collegiate athletes can pursue business opportunities.

At the federal level, proposals regarding how Congress will transform college sports continue to grow. The Amateur Athletes Protection and Compensation Act of 2021 (Protection Act) is the sixth congressional bill governing NCAA student-athlete name, image, and likeness (NIL) rights. The Protection Act was introduced by Senator Jerry Moran (R-KS) and followed parts of Senator Murphy's (D-CT) proposed federal College Athlete Economic Freedom Act and joins other proposals by Senators Booker (D-NJ) and Blumenthal (D-CT), Senator Wicker (R-MS), Senator Rubio (R-FL), and Representatives Gonzalez (R-OH) and Cleaver (D-MO.).

Under the Protection Act, athletes can sign endorsement deals if the agreements do not violate their school's code of conduct, and recruits can sign similar endorsement deals if they are not considered recruiting inducements. The Protection Act also grants student-athletes the right to enter a sports draft and retain their eligibility if they do not receive compensation from a professional sports league, team, or agent. Student-athletes are also provided with expanded medical coverage, lifetime scholarships until they complete their undergraduate degree, and the ability to transfer at least once without penalty.

Senator Moran's bill preempts varying state NIL laws, provides that no college athlete shall be considered an employee, and protects the NCAA from liability from former athletes retroactively seeking compensation. However, it does not grant the NCAA antitrust protection from legal entanglements tied to NIL.

At least six states have passed NIL legislation, while more than thirty others have either introduced or explored passing their bills. Florida's state law passed last year will be the first to take effect on July 1, 2021. In the final version of the bill signed by Florida Governor Ron DeSantis, the preamble expressly states the law's purpose:

"[t]he Legislature finds that intercollegiate athletics provide intercollegiate athletes with significant educational opportunities. However, participation in intercollegiate athletics should not infringe upon an intercollegiate athlete's ability to earn compensation for her or his name, image or likeness."

The U.S. Golf Association (USGA) has also recently addressed these familiar concepts of a player using his NIL for promotion and advertising purposes. Together with the R&A, the USGA is proposing significant changes to its existing Rules of Amateur Status. These new rules would clearly define three ways in which an amateur would cross the threshold into professional golf:

1. By accepting a prize in excess of the $750 limit.
2. By accepting payment for giving instruction.
3. By accepting employment as a golf club professional or membership of an association of professional golfers.

Among the fundamental changes proposed for the existing Rules of Amateur Status is eliminating all sponsorship restrictions for amateurs, removing any limits on how an amateur may benefit from their NIL, and eliminating the distinction between cash prizes and other prizes.

The USGA's proposal is very much in line with the various NIL legislation. The NCAA was expected to pass its NIL legislation in January but has delayed the measure in light of the Supreme Court case, Alston v. NCAA, that concerns the applicability of federal antitrust law NCAA restrictions on player compensation. This is the first NCAA case before the Supreme Court in over thirty-five years. Oral arguments are scheduled to begin on March 31, and the Court is expected to deliver a ruling no later than the end of June. Regardless of how the Supreme Court rules, its decision will undoubtedly impact NIL legislation's ongoing debate. It will serve as the needed motivation for both the NCAA and Congress to develop a workable, nationwide framework for NIL-based compensation for intercollegiate athletes.

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