



Michigan's Name, Image, and Likeness (NIL) Law

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On December 30, 2020, Michigan Governor Gretchen Whitmer signed House Bill 5217 (MCL 390.1731, *et al*) into law allowing collegiate student-athletes to profit from their name, image, and likeness (NIL). The law became effective on December 31, 2022. Michigan is one of 32 states which have passed NIL legislation since the National Collegiate Athletic Association (NCAA) issued an interim policy in July 2021 which allowed college student-athletes to monetize their NIL.

Under Michigan's NIL law, in general, collegiate student-athletes can sign endorsement deals, participate in advertising campaigns, and hire agents, consultants or attorneys to help them arrange and secure these deals. The law states that postsecondary educational institutions, the NCAA, and athletic conferences shall not prevent a student from fully participating in collegiate athletics based upon the student earning compensation from the use of a student's name, image, or likeness. These institutions are prohibited from preventing a student from obtaining professional representation in relation to contracts or legal matters regarding use of the student's NIL.

Earning compensation from NIL will not affect a student's scholarship eligibility or renewal, and a scholarship is not considered compensation for the use of the student-athlete's name, image or likeness. Academic institutions, however, are not required to identify, create, facilitate, negotiate or otherwise enable NIL opportunities for students.

However, there are also limits to what student-athletes can do under the law. Student-athletes are prohibited from entering into an apparel contract providing compensation for the student-athlete's NIL that requires the student-athlete to display a sponsor's apparel or otherwise, during official team activities if the activities conflict with a provision of the student-athlete's "team contract." Student-athletes are required to disclose any proposed NIL opportunity or contract to their institution at least seven days prior to entering into that opportunity or contract for review by the institution. The institution is required to identify any conflict between the proposed NIL opportunity and any existing agreements of the institution and communicate that conflict so

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the student-athlete may negotiate a revision to avoid the conflict.

NIL Regulatory Landscape: State, NCAA and Institutional Regulations

One of the key issues surrounding Michigan's NIL law is how it interacts with existing NCAA rules. While the NCAA has relaxed its rules on NIL compensation, it still places limitations on what athletes can do. This has led to a patchwork of laws and regulations across different states, with some states allowing athletes more freedom than others.

In addition to complying with Michigan's NIL law and NCAA regulations, student-athletes must also comply with their university's policies regarding NIL compensation. Universities may also have their own guidelines and reporting requirements for athletes who are seeking endorsement deals.

The NCAA's landmark July 2021 interim NIL policy gave student-athletes at all member institutions permission to engage in paid NIL activities consistent with the law of the state where the school is located without impacting their amateur status and athletic eligibility. Student-athletes who attend a school in a state without a law governing NIL can engage in NIL activity without violating NCAA rules. The NCAA's interim NIL policy also reinforces the organization's longstanding foundational prohibitions on pay-for-play arrangements and any kind of recruitment inducements or promises.

The interim policy permits student-athletes to engage in NIL activities throughout the U.S. (including states without NIL laws on the books) and to work with professional services providers. In addition to the interim policy, the NCAA has issued continuing guidance regarding NIL.

In October 2022, the NCAA issued guidance regarding institutional involvement in NIL activities. The guidance provides a list of permissible and impermissible activities related to the following categories: institutional education and monitoring, institutional support for NIL activity, institutional support for NIL entities and collectives, and negotiating and revenue sharing for NIL deals.

Similarly, in May 2022, the NCAA issued guidance defining boosters and discussing third-party involvement with regards to prospective student-athletes. In particular, boosters are prohibited from communicating with prospective student-athletes for recruiting purposes or to encourage the prospective student-athlete to enroll at a particular institution. The NCAA further stated in this guidance that NIL agreements must be based on an independent, case by case analysis of the value each athlete brings to an NIL agreement as opposed to providing compensation or incentives for enrollment decisions, athletic performance, achievement, or membership on a team.

It's clear that the introduction of NIL marks an exciting new era of financial and career opportunities for thousands of student-athletes. However, it's critical for participants to understand and follow their university's policies in addition to the fast-changing state and NCAA regulations to avoid any potential conflicts or penalties.



Working with an NIL attorney who is familiar with state, NCAA and university policies will help ensure compliance with all applicable regulations and policies.

Foster Swift's NIL Legal Services Group provides a wide-range of legal counsel and services for NIL collectives, businesses and organizations involved with or planning NIL initiatives and student-athletes participating in NIL deals. Contact Tony Dalimonte at adalimonte@fosterswift.com/248-785-4733 or Michael Cassar at mcassar@fosterswift.com/517-371-8110.