



**NEVADA LEGISLATURE
COMMITTEE TO CONDUCT AN INTERIM STUDY
CONCERNING THE USE OF THE NAME, IMAGE,
AND LIKENESS OF A STUDENT ATHLETE
([Assembly Bill 254](#) [2021])**

MINUTES

March 24, 2022

The first meeting of the Committee to Conduct an Interim Study Concerning the Use of the Name, Image, and Likeness of a Student Athlete for the 2021–2022 Interim was held on Thursday, March 24, 2022, at 1 p.m. in Room 4412, Grant Sawyer State Office Building, 555 East Washington Avenue, Las Vegas, Nevada. The meeting was videoconferenced to Room 3137, Legislative Building, 401 South Carson Street, Carson City, Nevada.

The agenda, minutes, meeting materials, and audio or video recording of the meeting are available on the Committee's [meeting page](#). The audio or video recording may also be found at <https://www.leg.state.nv.us/Video/>. Copies of the audio or video record can be obtained through the Publications Office of the Legislative Counsel Bureau (LCB) (publications@lcb.state.nv.us or 775/684-6835).

COMMITTEE MEMBERS PRESENT IN LAS VEGAS:

Assemblyman Cameron (C.H.) Miller, Chair
Senator Roberta Lange, Vice Chair
Dexter Irvin, Director of Athletics and Recreation, College of Southern Nevada (CSN)
Eric Nepomuceno, Deputy Athletics Director, Chief Operating Officer, University of Nevada, Las Vegas (UNLV)

COMMITTEE MEMBERS PRESENT IN CARSON CITY:

Devonte Lee, Student, Senior, Football, University of Nevada, Reno (UNR)
Yvonne Nevarez-Goodson, Deputy General Counsel, Legal Affairs Office, Nevada System of Higher Education (NSHE)
Katelyn Norris, Student, Freshman, Women's Soccer, Truckee Meadows Community College

COMMITTEE MEMBER ABSENT:

Linda Garza, Head Softball Coach, UNR

LEGISLATIVE COUNSEL BUREAU STAFF PRESENT:

Alex Drozdoff, Senior Policy Analyst, Research Division
Jennifer Ruedy, Chief Principal Policy Analyst, Research Division
Jen Sturm, Senior Policy Analyst, Research Division
Maria Aguayo, Research Policy Assistant, Research Division
Asher Killian, Chief Deputy Legislative Counsel, Legal Division
Jaimarie Mangoba, Principal Program Analyst, Fiscal Analysis Division

Items taken out of sequence during the meeting have been placed in agenda order.
[Indicates a summary of comments.]

AGENDA ITEM I—OPENING REMARKS

Chair Miller:

Good afternoon. I call this meeting to order. Welcome to the first meeting of the Committee to Conduct an Interim Study Concerning the Use of the Name, Image, and Likeness (NIL) of a Student Athlete. Thanks to everyone who is attending here in person and in Carson City and for those who are joining us online. We appreciate your participation, and it is great to be back in person.

[Chair Miller went over housekeeping reminders and meeting logistics.]

Meeting materials can be accessed on the [Committee's webpage](#) on the Nevada Legislature's website. Anyone who would like to receive electronic notification of and access to the Committee's agendas, minutes, and final report can do so by signing up on the [Legislature's website](#).

Finally, I expect courtesy and respect in our interactions with other members and all presenters, even if we do not agree.

Let us get started with our introductions of our members and staff.

I am Assemblyman C.H. Miller. I represent Assembly District 7 in southern Nevada. My district runs right along the borders of Las Vegas and North Las Vegas. I am serving in my freshman term, and this is my first time serving as a chair within the legislative structure. Please go easy on me.

I would like to now have my Committee members take a minute to introduce themselves and describe their interest in serving on the Committee.

Vice Chair Lange:

Good afternoon. I am Vice Chair Lange. I am the State Senator for District 7, which is on the east side of Maryland Parkway across from UNLV and it runs all the way east out to the Las Vegas Wash. I am excited to be on this Committee. I think this is something that has needed to happen for a long time. I am a former collegiate athlete and physical education teacher. Let us get to work!

Ms. Nevarez-Goodson:

Thank you, Chair, and Vice Chair. I presently serve as the Deputy General Counsel for NSHE. In my capacity here today, I am serving as the NSHE chancellor's designee on this Committee. I really look forward to the work—both on the legal side, given my legal experience, but also, I am a former college athlete as well. This was particularly interesting to me. I look forward to the work of the Committee.

Mr. Lee:

I appreciate you guys for having me here today. I am currently the running back at UNR, and I will be serving as firsthand on my knowledge of NIL and how it affects athletes, what we went through the first year, things we can improve, and things that we like about NIL.

Ms. Norris:

Hello. I am really excited to be here. I am in my freshman year at Truckee Meadows Community College, and I play on the women's soccer team. I am excited to be on this Committee because, especially in the junior college level of collegiate athletics, things like this are not necessarily thought about that much because it is a lower level when compared to other National Collegiate Athletic Association (NCAA) athletics. I am excited to see what we can do about all this.

Mr. Irvin:

Thank you, Mr. Chair. I am the Director of Athletics and Recreation at CSN. I have been there nine years now. We have a vibrant athletic program, and we are excited about the growth. Certainly, this is a new and challenging area for many of us in the evolution of athletics. It has far-reaching effects, obviously, from high school kids all the way up through the Division I. We are excited to be part of the continued operation to help evaluate this.

Mr. Nepomuceno:

Thank you, Chair. I am the Deputy Athletics Director and Chief Operating Officer for UNLV, and I oversee the student athlete NIL programming. I feel very fortunate to be a part of this Committee and I am excited to do the work. As an on-campus practitioner, this is something that I deal with day to day. So again, I am excited to be a part of this group.

Chair Miller:

I want to thank all our members for participating. I am especially excited about our student athletes being able to be a part of this Committee and give their voice as we move forward.

Next, I would like to introduce our LCB staff who will be assisting us throughout this study. Our staff includes Jen Sturm, Jennifer Ruedy, and Alex Drozdoff who will be serving as our Committee policy analysts. They will be helping us with background information on and research into the issues that come before the Committee. With this in mind, any research requests you have must go through the chair. Asher Killian will be serving as our Committee legal counsel. Our Committee research policy assistant is Maria Aguayo. She will prepare meeting minutes and will assist us with a variety of other tasks as they come up. Jaimarie Mangoba, with the Fiscal Analysis Division of the LCB, will assist us with any fiscal matters. Finally, I want to recognize our IT and Broadcast and Production Services staff who are critical to making our meetings go smoothly.

We are one of the first committees to meet again in person after two years. I want to give an extra shoutout to our staff who have been working hard to ensure everything goes smoothly today. I also appreciate everyone's flexibility as we transition back to an in-person meeting.

AGENDA ITEM II—PUBLIC COMMENT

Chair Miller:

Public comment may be provided in several different ways, all of which are listed on the agenda. You may provide public comment by:

1. Testifying in person, here in Las Vegas or in Carson City;

2. Calling;
3. Emailing comments to StudentAthlete@lcb.state.nv.us;
4. Mailing written comments to Research Division, 401 South Carson Street, Carson City, Nevada 89701; or
5. Faxing your comments to (775) 684-6400.

As mentioned before, public comment will be limited to three minutes per speaker. An additional opportunity to make public comment will be available at the end of the meeting as well.

Anyone wishing to make public comment?

Doug Knuth, Director of Intercollegiate Athletics, UNR:

Thank you for the opportunity. I am the director of athletics at UNR. In addition to Devonte Lee, I want to offer my support for this Committee as well. You have the subject matter expert in Eric Nepomuceno. He is, by far, the most well-versed person in the State of Nevada on NIL and everything else we are doing. I may play “second fiddle” to Eric in that role, but I also sit on some national committees, which I think I can help this Committee in a lot of ways. I sit in the NCAA’s Division I Council, which sets a lot of policy for NCAA Division I athletics. I have access to a lot of folks through that committee that can offer more support to this Committee, provide more background information, and speak to this Committee—whatever you need, I am here at your service to help. I will be at all the meetings, even though I am not on the Committee. I will be here to support Devonte, Coach Garza, and anyone else who is on the Committee. I am here for you. Please do not hesitate to call, email, or text me. I just wanted to state that for the record. Thank you, Chair.

Rob Sine, Cofounder and Partner, Blueprint Sports:

Thank you for giving me the opportunity. I am the cofounder and partner of Nevada-based NIL marketing agency Blueprint Sports. My partner, Francisco Aguilar, and I formed the company about two years ago in anticipation of NIL. With my 20-plus years of working in the sports industry experience and professional sports leagues—I worked with the Pac-12 Conference for multiple years; I worked for Learfield IMG College—we bring a good level perspective to working both with student athletes, donors, fans, and alumni and working on the revenue models to make sure we are compliant with the schools and programs that are put in place. Andre Agassi is our cofounder and principal investor, and he shares the belief that we have in really building a compliant marketplace for student athletes of all sports to be able to monetize their NIL.

Our company, Blueprint Sports, has two models. First is a marketplace that allows student athletes of any sport and any popularity ranking to be able to market opportunities to engage with them, such as opportunities to do youth sports coaching, public appearances, and the chance to interact with donors and alumni from a social standpoint commercial opportunity. It gives them the ability to build out the opportunities they feel most comfortable with. The second—and one of the ones that has become the most popular recently—is that we power fan and alumni collectives around athletic departments and student athletes at a particular university. We have seen this grow in popularity across the country. As I mentioned, when we first started, we were working with UNLV student

athletes, particularly the men's basketball team, and we saw the approach, passion, and fan base around the program grow. The collective idea has become the most popular. The collective is really an idea where you get multiple alumni fans, donors, and supporters of the institution together who want to be able to empower and bring together opportunities financially for these student athletes, from compensation-wise and also from the standpoint of giving them the ability to have opportunities in the community to find good places to eat, things like that.

We currently work with over ten universities and colleges to power their programs, including UNLV. We will be launching around UNR, Gonzaga University, the University of Tennessee, and the University of Arizona. Like two of your earlier speakers, including Eric on your Committee and Doug Knuth at UNR, we have been in close contact to make sure that we understand what is important on the campus side to be able to produce the results for student athletes.

We believe NIL provides parity for both men's and women's sports, and it is becoming an essential piece for the future of college athletics when it is done in a supportive and compliant manner. We believe that those are two very important pieces that we pride ourselves on bringing to all the equations when we work with student athletes. Name, image, and likeness goes way beyond those student athletes who may play football or basketball. It extends to all sports because every student athlete has a marketplace and there is somebody who is excited to work with them. These athletes put in countless hours and years of hard work to become college athletes at any level or any sport. There is somebody else that wants to be in their shoes, to learn from them, and to understand.

Again, we believe that while there are commercial opportunities that are exceeding for some student athletes of certain sports, success, or notoriety, youth sports coaching, for example, permitted and allows every inspiring college athlete to interact with somebody who has that same goal. We believe this is a good opportunity and look forward to continuing to support, not only UNR and UNLV, but other institutions and athletic departments across the country. Thank you.

AGENDA ITEM III—DISCUSSION ON THE EXIGENCE OF [ASSEMBLY BILL 254 \(2021\)](#) AND THE STUDENT ATHLETE PERSPECTIVE

Chair Miller:

Together with Speaker Frierson, Karyna Armstrong and Sebastian Ross gave testimony on AB 254 during the 2021 Session about their experiences as student athletes. I have invited them here to present their comments because I think it gives this Committee a foundational understanding, especially from that perspective on the necessity of this study and why this issue is important for us to review.

Karyna Armstrong, J.D., Former Collegiate Athlete and William S. Boyd School of Law, UNLV Alumnus

Good afternoon. I want to thank you for allowing Sebastian and I to present today. I am a recent graduate from the William S. Boyd School of Law—I just graduated in December. Sebastian and I first started this journey with a competition at our school. As athletes born and raised in Nevada, this bill and new law was important to both of us.

A little background on myself: I was born in Las Vegas and raised in Reno. I was a collegiate athlete in track and field at Boise State University, which is part of the Mountain West

Conference, which is what UNR and UNLV are a part of. My fifth year, I transferred to the University of Miami in Florida and was in the Atlantic Coast Conference (ACC) for track and field. Being a collegiate athlete gave me the firsthand knowledge and experience of what limitations student athletes had when it came to earning money for their NIL.

I think it is important to note that many people continue to look at laws passed for NIL as ones that only benefit the so-called "big sports," such as football or men's basketball, even women's basketball. However, NIL was and is important to me because it benefits and helps the so-called "smaller sports," such as gymnastics, track and field, swimming and diving, golf, baseball, and softball. When I was competing, before NIL, athletes were limited in what they could do. For example, I had many fellow teammates and friends who sent a lot of their money and stipend back home to help their families. Athletes could not get paid for giving lessons to younger kids. After being done with college athletics, there was no support for physical issues that may arise from competing, such as knee, back, and even some mental health issues.

Yes, NIL does allow some athletes to make significant money with endorsement sponsorships, et cetera, but it also opens the door to allow athletes who may peak in college and not have the chance to go further in the professional aspect in their sport to gain money in other parts of their collegiate career.

I want to end this by displaying some of the good that has come from NIL, not strictly large sponsorships to individual top athletes:

- Recently, Built Bar has sponsored \$1,000 to all Brigham Young University (BYU) football players and provided a full-ride and full-tuition scholarship to all walk-on players;
- Olivia Dunne at Louisiana State University (LSU) gymnastics has a large NIL contract with an activewear company;
- An Indiana University (IU) cheerleader has a t-shirt deal after getting a basketball down during March Madness—the video kind of went viral; and
- Masai Russel, a University of Kentucky track and field athlete, has a lot of sponsored social media posts;

I also want to shine a light on some of the good that has come from NIL:

- Dillan Gibbons, a football player at Florida State University, used his sponsorship and endorsement to give back to a GoFundMe page to help a person with severe medical needs. He also created a nonprofit called "Big Man Big Heart" to help other athletes use their NIL for social good;
- Lexi Sun, a University of Nebraska volleyball player, has a deal with a volleyball apparel company and proceeds are going to a nonprofit sports psychology organization;
- Blake Corum, a University of Michigan running back, used his NIL earnings to donate over 100 Thanksgiving dinners to his local area where he was born; and
- Kenny Pickett, a University of Pittsburgh quarterback, used his NIL earnings to sell t-shirts and give proceeds to a boys and girls club.

Although it cannot be said that all student athletes are giving back with their NIL earnings, the sky is definitely the limit, as the above examples show.

I wanted to shine light on a recent article I saw from Arizona State University's (ASU) Associate Athletic Director, Marcus Williams. He stated that of the 26 sports at ASU, 19 have seen at least one athlete with an NIL deal. In the University, student athletes have nearly 150 deals and most of them are for marketing products through social media.

Again, I want to thank you for allowing me to present today and be a part of this important conversation for collegiate athletes in Nevada. I am open to any questions if you have any.

Chair Miller:

Thank you, Ms. Armstrong. We really appreciate your engagement and appreciate you still doing the work even after you have graduated. Thank you for bringing those examples to light for this particular meeting.

Sebastian Ross, Editor-in Chief, UNLV Gaming Law Journal:

Good afternoon, Chair, and members of the Committee. First, I want to acknowledge the leadership of Katelyn Norris and Devonte Lee in their participation as student athletes within this Committee. They and other college athletes are the reason Karyna and I worked with Assembly Speaker Jason Frierson in bringing forth AB 254 during the 81st Session.

Karyna and I's mission was to expand equity for a demographic of Nevadans participating in a larger system that has perpetuated inequity for generations. As someone who participated in college athletics, I witnessed accounts of teammates struggling financially. Name, image, and likeness opportunities have the potential to serve as financial literacy lessons for young adults by exposing them to business practices—a concept that has long been denied by the NCAA. From a fiscal perspective, the inequities exercised within college athletics have adversely impacted Black college athletes at a conspicuously disproportionate rate.

Although we want all students to have an opportunity to benefit from an endorsement model functioning like a free market system, I think it is important to consider particular issues concerning Black athletes as well as female athletes. According to numbers released from Opendorse this past January, the top three grossing NIL sports are football at 47 percent, women's basketball at 27 percent, and men's basketball right underneath at 16 percent. A Texas A&M women's basketball player by the name of Jordan Nixon wrote an op-ed in her school newspaper. In her article, she stresses that gender and race seem to be detriments to success in the NIL world. Given that a substantial portion of revenue deals for women comes from social media marketing, continuing to gain a comprehensive understanding of various social media platforms can be a proponent to marketing athletes efficiently. The historical lack of inequity suggests that schools need to continuously apply ingenuity when marketing women's athletics.

I want to share a quote from a *Washington Post* article written by Candace Buckner, who states, "Now that the free market has been unleashed, it would be great if companies recognized female athletes for their accomplishments, not just their physical assets." Schools can apply specific ingenuity when it comes to marketing women's athletics. Perhaps this happens by highlighting stories of women, as some avenues of marketing have focused solely on physical characteristics.

In closing, I would like to express my gratitude for allowing Karyna and I to participate. Thank you for your time.

Chair Miller:

I want to thank both Ms. Armstrong and Mr. Ross for their time today, setting the tone of what we are looking at and sharing why we are exploring this topic and how important it is.

AGENDA ITEM IV—REVIEW OF THE COMMITTEE’S DUTIES AND RESPONSIBILITIES

Chair Miller:

Next, we will move on to a presentation by our LCB staff on the Committee’s duties and responsibilities.

Ms. Drozdoff:

Thank you, Mr. Chair. I am joined by my colleague, Jen Sturm, who is in Las Vegas for this presentation. As nonpartisan staff, we do not advocate for or against any measure. I am going to provide a quick overview of the Committee Brief, which you have in front of you as well as on the Committee page under “Meeting Material” ([Agenda Item IV](#)), and then I will turn things over to Ms. Sturm to say a little bit more about the staff, services, and support provided by the LCB.

The 2021 Legislature passed [AB 254](#), which required the Joint Interim Standing Committee on Education (COE) to appoint a committee to conduct an interim study concerning collegiate bylaws and state and federal laws relating to compensating student athletes for the use of their NIL. At its [January 20th meeting](#), earlier this year, the COE appointed the Committee members and the chair and vice chair of this Committee.

During its meetings this interim, this study committee will endeavor to hear from a variety of stakeholders, both local and national, about NIL issues. At its final meeting, this Committee will discuss the results of this study, including any recommendations to bring forward to the COE for its review.

Ms. Sturm:

Thank you, Ms. Drozdoff. As many of you know, there are a lot of acronyms in education, especially with regard to athletics, so we have also included on page 3 of the Committee Brief a list of frequently used acronyms that you might see on this committee.

There are several LCB staff working on this Committee, and Chair Miller mentioned all of us who are helping support the work of the Committee, including research, legal, fiscal, and broadcast and production staff. Again, as nonpartisan LCB staff, we do not advocate for or against any proposal. If you have any questions on any issue related to matters before the committee, please do not hesitate to reach out. As a reminder, questions must be directed through the chair. We have also provided our contact information on page 4 of the Brief.

Mr. Chair, we are happy to answer any questions.

Chair Miller:

Thank you so much for the presentation and for your time. They are correct, there are a lot of acronyms. This is very helpful, particularly for people like myself who are not well-versed in all the college sports and different athletic acronyms that are out there, so I really appreciate it.

AGENDA ITEM V—NATIONAL LANDSCAPE CONCERNING COMPENSATION OF A STUDENT ATHLETE FOR THE USE OF THE NAME, IMAGE, AND LIKENESS OF THE ATHLETE, INCLUDING RECENT LEGISLATION AND JUDICIAL ACTION

Chair Miller:

We will now have Andrew Smalley of the National Conference of State Legislatures (NCSL) here to present on what we are seeing nationally with NIL issues. Mr. Smalley, thank you so much for being here in person.

Andrew Smalley, Policy Associate, Education Program, NCSL:

Thank you, Mr. Chair, and thank you to the Committee. I work at our Denver office on our postsecondary education team. We have been covering all national legislation around NIL over the past couple of years now, so I am excited to be with you all today.

Just to give a brief introduction to NCSL ([Agenda Item V A](#)), we are the membership organization for the nation's legislators and legislative staff. We promote policy innovation, create opportunities for lawmakers to come together and talk about the issues facing our states, and we also provide a strong cohesive voice for legislators at the federal level. We provide services including policy research; communication; meetings; and, of course, our state voice in D.C. We host a lot of meetings. You might be familiar with our Legislative Summit. This year it is going to be in Denver. We also host about 100 specific policy-focused meetings across the country on all sorts of topics, ranging from education, criminal justice, and transportation.

Moving into the student athlete compensation conversation, what we heard from our members over the past several years is just a growing interest in the concerns about the amount of money and revenues in collegiate athletics. Over the past two decades, the large increases in college athletic revenue have raised concerns from members across the country and states and prompted the conversations about whether or not athletes should be compensated or receive some of that compensation from those revenues. Important notes here are that the biggest drivers in the college athletic revenue increases are predominantly from men's football programs. Schools with major football programs are really driving the core increases in those revenues. From a state legislative perspective, there has been a lot of concern about: (1) how these revenues are being spent; (2) where these revenues are going; and (3) what portions are going to scholarships, facilities and stadiums, and coaches' salaries. There has also been precedent for allowing college athletes to earn compensation for competing in the Olympics, playing a professional sport while in school, or receiving gifts for tournaments and bowl games.

This was an issue that emerged almost three years ago with [California's "Fair Pay to Play" law](#), which was introduced and debated in the summer of 2019. It was introduced by California Senator Nancy Skinner (D-Berkeley) and California Senator Steven Bradford (D-Gardena). It passed both chambers in California unanimously, despite opposition from

the California State University system and private higher education institutions like the University of Southern California (USC), Stanford University, and the NCAA. It was signed into law in September 2019, originally set to take effect in 2023. That was really the start of us following this as sort of a major issue across the country with our members.

Some of the key provisions of the California Fair Pay to Play Act include:

- Prohibiting both higher education institutions and intercollegiate athletic organizations from upholding rules or regulations that limit athletes from earning compensation for their NIL; and
- Prohibiting organizations from preventing institutions from participating in athletic competitions if they allowed athletes to earn NIL compensation.

We will go into some of the more common provisions that were in the California law and laws across the country, but things like scholarships and financial aid do not count as compensation. Allowing student athletes to obtain agents and creating a working group to evaluate compensation models were also part of the original California bill.

After the California law was enacted, we saw swift movement across the country on this issue. Some of that was disrupted by the pandemic outbreak in early 2020 and the disruption that legislatures experienced, but over the past two sessions, we have seen bills introduced in 40 states, and 28 states have enacted measures, either through executive order or through passed legislation. Kentucky passed legislation via executive order and just recently signed it into law. We saw a flurry of activity around this last summer in the lead up to the July 1, 2021, deadline. Several states moved the effective date of their legislation to that July 1 deadline, earlier than California's, which had been 2023. From the map on slide 7, you will also notice that some states are colored for repealing their NIL laws, which is a trend that has emerged in the past few months, and we will cover that a bit when we get into some of the provisions.

I want to start with the most common elements that we followed around the enacted bills across the country. There are about seven main provisions that most state legislation that has been enacted across the country contains. Some of them are in all state legislations, some are only in a few states, but there are definite trends that have emerged:

- The first is what we call the enabling provision that is allowing student athletes to earn compensation for their NIL, explicitly prohibiting limits from organizations or the state from allowing them to earn that compensation—pretty straightforward;
- The second element that is present in all the state legislation is that NIL compensation cannot impact financial aid or scholarships in terms of eligibility or amount; and
- The third provision that is in most state legislation is specific references to allow students to attain legal representation in the form of athletic agents. All but two states have this in their enacted NIL statutes.

Then there are a few provisions that most states have, but not all:

- The first is exemptions or institutional limitations. These are allowing institutions to limit ways that student athletes can earn NIL compensation. Some statutes have very specific carve outs that say, "We do not want students to earn compensation

from promoting products like firearms, gambling, adult entertainment, or controlled substances.” Things like that. Others just leave it up to the institution to stop NIL compensation activities from anything that does not align with their institutional values. We have seen that most states have that as part of their legislation; and

- The majority of states require student athletes to disclose their NIL activities to their institution. Some statutes in legislation have very specific timelines and outline that process very clearly. Others leave it up almost entirely to the institution on how that is done.

Then there are a few of the less common provisions that we have seen across the country, and those are:

- We know about a half dozen states where athletes who are earning NIL compensation should or are required to receive additional education in terms of money management training, financial literacy, or life skills workshops; and
- Then there are a few states—about a handful—that have added specific language to clarify explicitly that student athletes are not to be considered employees of the state, institution, or an athletic conference. I should also note that these are the provisions mainly from enacted bills.

We have also followed several dozen bills around the country that really propose totally different strategies related to not just NIL, but also student athlete compensation more broadly. There are proposals across the country. There is one in South Carolina that will create a student athlete trust fund that would provide stipends to students after they graduate. There are bills, including in New York, that would define students as employees and give them collective bargaining rights. None of these measures have passed, but they have been introduced in several states around the country, and there is definitely overlap between those approaches and the broader federal proposals that we will talk about in a bit.

On the recent state development in this past session, we know one state—Kentucky—has passed an NIL bill this year. It already had NIL provisions from a prior executive order. There have been conversations this year about repeal. Several states have considered repealing the statutes that they passed in the last session because they are concerned that their statutes are too restrictive—more restrictive than the NCAA’s interim guidance on this—and they do not want to be at a recruiting disadvantage or limit the athlete’s ability to earn compensation. Alabama was the first state to repeal its law. We know three other states—I think slide 12 says two, but there has been one in the past week, South Carolina—considering repeal. This extends to a broader conversation that we have heard about from our members of making sure that these statutes are allowing student athletes to be competitive, and they do not want to be at a recruiting disadvantage.

There are groups, like the National College Players Association, that have tried to go through and review state statutes and look at how competitive each state’s approach is, score them, and rate them. Nevada scored a 71 percent in its [report](#) recently. A higher score is a more athlete friendly approach. The top score was New Mexico with a 90 percent, and the least athlete friendly was Mississippi with a 43 percent. There is quite a bit of variation in terms of how athlete friendly some of these statutes can be across the country. We also know there is some early data emerging about what athletes are earning from these transactions and it confirms some of the larger trends that we have followed early in the presentation—men’s football is the top sport for NIL by a wide margin, and men’s sports in general are receiving the majority of NIL dollars.

Over the past two years, there have been several bipartisan federal proposals relating to student athlete compensation. Two of these are far beyond the scope of just NIL. The first is the [College Athletes Bill of Rights](#) (S. 5062 of the 116th Congress). This is U.S. Senator Cory A. Booker's (D-New Jersey) bill, which is very broad in that it would address everything from student athlete compensation, revenue sharing, health care, and medical expense coverage to scholarships. The second is the [College Athlete Right to Organize Act](#) (S. 1929 of the 117th Congress), which would amend the [National Labor Relations Act](#) (29 U.S.C. § 151 et seq [2022]) to give student athletes the status as employees and collective bargaining rights. There are five other notable but less broad bills that would address just NIL compensation. Our broad sense here is that this is an area of bipartisan interest on Capitol Hill. There has been a lot of interest from staff and committee meetings on this, but there are a lot of other federal priorities at the moment, and it is an election year, so we would not anticipate it being especially likely, but we would not consider it unlikely either. On the federal piece of this, my colleague, Tres York, works at our D.C. office, and he has been meeting regularly with the committee staffs regarding this topic and his contact information is on slide 13. He would be happy to reach out or perhaps even attend one of these meetings in the future if you had more questions about the federal side of this. He has been very engaged with the conversations we have been having with the folks on the Hill about this. That is an overview of the NIL issues that we have been following at NCSL.

I will put in one last plug for our Legislative Summit in Denver this summer. We are going to have legislators and staff from across the country there. We will be discussing all sorts of topics, including potentially this topic as it continues to evolve. The NCSL is here to serve legislators and legislative staff and we want you to be able to access our resources and we want the resources to be relevant to what you are working on in the states. I know several of the members on this Committee are not legislators or legislative staff, but we also do a lot of—particularly in my role and the postsecondary education team—work with institutions and we are always interested to hear about best practices and challenges that higher education institutions are facing across the country.

We have a lot of resources; we track basically all legislation that impacts higher education institutions across the country. We do a lot of work on student loan debt. And, of course, we have done work on student athlete compensation. I wanted to share those resources and flag that we are open to questions from anyone, but particularly legislators and legislative staff. This concludes my remarks, and I would be happy to answer any questions.

Chair Miller:

Thank you, Mr. Smalley. We appreciate the information. It was pretty informative. We are going to go ahead and open it up for questions with the Committee.

I just have one quick question. The ranking of states as athlete friendly versus not—what was that report again?

Mr. Smalley:

The organization is the National College Players Association. I can share the [link](#).

Vice Chair Lange:

I have a question about recruiting since it is so important to the programs and their fundraising efforts. In your research, have you found that there is a difference between the

kinds of legislation or the practices of a state that have affected recruiting either in a negative or positive way?

Mr. Smalley:

I do not think in our research we have seen any hard data on that, but I can tell you the discussions about repeal in Alabama and other states are highly centered on this concern that the members have felt that if they do not have the ability to offer NIL compensation that is comparable to the states nearby and the schools with which they are competing in recruiting, that is really an urgent problem. It was repealed very quickly in their session this year, and they have expressed the feeling that if they do not have the ability to remain relevant, that puts their institutions at a disadvantage. If that is something you would like us to look into, we can see if there is any hard data out there.

Vice Chair Lange:

I think that would be great to get some of that research because when you look at the states that have approved legislation, it is kind of the smile around the bottom of the United States. When you look at the tier I NCAA schools and the kinds of recruiting that they do, it is so highly competitive, and I just think that information would be helpful as we consider what we want to do here in Nevada.

Mr. Irvin:

I noticed that in the California bill there was a specific section on the study for community colleges. They have a large community college system, obviously, and the National Junior College Athletic Association (NJCAA), which we are part of, it is a little bit of apples and oranges. In Nevada, our community college systems are very new in terms of athletics and how we deal with athletics. I am curious if anything has come out of that committee in California, and what the trend would be in community colleges because we will be behind, so to speak, in catching up because of our structure and the type of athlete that we get. I am not opposed to legislation; I am just concerned that if we pass this thing that is being brought—which we do a lot—it covers Division I schools. I have a background in Division II schools as well, and the smaller colleges tend to be affected disproportionately to this whole thing because it has such a broad scope that sometimes we miss out. Thank you.

Mr. Smalley:

Your concerns about the impact of this on community colleges is something that we have followed throughout the legislative tracking of this; it gets brought up consistently. Regarding the California provision, I do not know that off the top of my head because they passed subsequent legislation to move up their effective date of legislation. So, in part of that, they may have changed the structure of that committee. I am happy to look into it and see what came of that and what California decided.

Mr. Nepomuceno:

Mr. Smalley, thank you for this information. I certainly appreciate this concise synopsis. I think you did a really good job of making this easy to digest for myself, and I am a practitioner of this stuff. I do have a question about the trends that you have found within the particular bills. Have you seen anything that outlines potential sanctions or penalties for noncompliance of the actual state legislation?

Mr. Smalley:

Are you referring specifically to penalties for student athletes or for the institutions themselves?

Mr. Nepomuceno:

All of the above.

Mr. Smalley:

I believe there are. We have a full sheet that breaks down provisions state by state, so I am sure there are some in there. I am not sure of the states off the top of my head, so I can send that along to staff and we can flag any of the states that have those.

Mr. Lee:

What are some of the problems that the lower-level divisions face? I am in Division I, so I do not have insight on the problems that you all are talking about and the things that they are being left out of.

Mr. Smalley:

I might defer to Mr. Irvin, but from a legislative perspective, I think the concern has always been that opening this floodgate will disproportionately provide a lot of compensation for athletes in a small number of sports at the top, particularly men's football, and will then take away potential revenue from other sports that may not receive as much attention, media coverage, and press. I think that has always been the concern from legislators—"How do we create NIL compensation in a way that is equitable across sports, gender, and institutions?" That is generally what we have heard from members.

Mr. Irvin:

I really appreciate the question. It is certainly not the purview of the Committee to spend a ton of time on junior college athletics or small college athletics, but the structures are really different. We have built athletics in Nevada based on our two flagship institutions, and that is wonderful, but we have tried to then fit community college and junior college athletics into that mold. We have not made adjustments for community colleges because they are so new. For example, if it ever comes to legislation that would make community college athletes employees, that would be difficult for most community colleges to deal with for a myriad of reasons—from just personnel to make that function to the dollars and the scholarships we have are very limited. I really do appreciate the question because I think there is a great divide there. Some things we can do well together and other things might need separate legislation or provisions that could be effective for community college and junior college athletics.

Chair Miller:

I think it was a good question from Mr. Lee because it provided a lot of insight for all of us to understand the differences in some of those challenges. I know I needed to know more about them, so thank you.

I just have one last question. You mentioned social media and press. How does an athlete's social media following prior to an NIL deal/offer play into the picture versus those who are

not getting the same offers? Is it based on a standing that they have already, or is it things that are happening in the game that are driving these NIL deals? Is it performance-based? If there is some additional insight you can provide for that moving forward, I would appreciate it.

Mr. Smalley:

We can look into that. A lot of the data around this has just started to emerge and be published.

Mr. Lee:

I wanted to give some insight into your question. I feel that social media does have a great impact, especially because of one's following. Most people who give you NIL deals want you to have a following, to bring something to the table. It is also about what you do on the court or field. It depends on how much fan base you have, in my belief, and so I feel like that plays a great role in just getting deals. Everyone is not able to get a deal; everyone is not able to take part. Most people who I have dealt with in the past with NIL deals always want either the star player or the whole group. It just depends on social media presence and how you perform on the field to get you that certain deal.

Chair Miller:

Thank you very much for adding that to the discussion.

Thank you again, Mr. Smalley. We look forward to whatever additional research you can provide to us from that perspective.

[Subsequent to the meeting, information requested by the Committee was provided by Mr. Smalley ([Agenda Item V B](#)).]

AGENDA ITEM VI—DISCUSSION ON RECENT NIL POLICIES AND RELATED OVERSIGHT AND COMPLIANCE

Chair Miller:

Alright, that brings us to Agenda Item VI, which is a discussion on recent NIL policies and related oversight and compliance. We have got Scott Bearby, Dawn Buth, and Dave Schnase of the NCAA, and Jeff White and Keil Huber of the NJCAA presenting. Thank you all for being available to present, and I understand that our presenters are joining us from all around the country, so we very much appreciate you all being available to join us.

We will start with the presentation from the NCAA, and we will then hear from NJCAA. We will take questions at the end of each presentation.

Dawn Buth, Director, Office of Government Relations, NCAA:

Good afternoon and thank you everyone. Like many of the Committee members and panelists, I am a former student athlete myself and a beneficiary of college sports, so I am especially appreciative of the invitation to speak with you all today and to see representation from our Nevada member schools on the Committee. I am joined by two of my colleagues from our headquarters in Indianapolis, Scott Bearby and Dave Schnase.

Scott Bearby, General Counsel and Senior Vice President of Legal Affairs, NCAA:

Thanks, Dawn. I am the General Counsel at the NCAA located in Indianapolis. Thank you for the opportunity to be here today.

Dave Schnase, Vice President, Academic and Membership Affairs, NCAA:

Good afternoon. I am the Vice President of Academic and Membership Affairs at the national office. Chair Miller, Vice Chair Lange, Committee members, thanks for having us. I look forward to visiting with you this afternoon.

Ms. Buth:

Again, I want to thank Chair Miller, Vice Chair Lange, and the Committee for the opportunity to speak with you all today.

For the presentation ([Agenda Item VI A](#)), I thought I would start by providing a little bit of background about the NCAA, both as an organization and, also, a member association. Dave is going to walk through some of the historical context of how the Association and member schools have studied and addressed the issue of NIL, and he will walk through the specific policies and rules that our membership has adopted that apply to NIL. Then Scott will talk through the opportunities, benefits, and challenges that we are seeing nationally as a result of these new policies. I am certainly glad to take any questions from folks as we go along.

First, I thought it would be helpful to share a little bit of background about the NCAA as understanding the Association's organization and governance structure is certainly important to understanding its NIL policies. As I suspect, many, if not most of you, know the NCAA is a member-led organization not unlike some of the other organizations who presented today. Our membership adopts and develops rules through a representative system not unlike many state legislatures. Unlike other sport organizations or professional leagues, our headquarter staff—like Dave, Scott, or I, or even our president—do not have the authority to make policies or rules. We have a membership that governs each of three divisions and they set Association or divisional policy. We have an extremely diverse membership. We have 1,100 schools or so across the country with vastly different resources, geographies, and enrollments that serve about half a million student athletes each year. Our schools, like those represented today, provide an extraordinary amount of scholarship funding to student athletes—about \$3.5 billion each year in athletic scholarships. There is sometimes confusion about the Association's financial structure, so I do think it is worth taking an opportunity to note that the primary resource of our revenue generated for the NCAA is through television and marketing rights from the Division I men's basketball championship. The overwhelming majority of this is redistributed back to support our membership, and importantly, the Association does not receive any revenue from the football bowl subdivision (FBS), college football playoffs, or bowl games. Those revenues are primarily distributed to FBS conferences.

Before Dave talks a little more specifically about NIL, I do think it is worth sharing that NIL is one of the many legislative reforms that our membership has undertaken over the last several years. Today's NCAA looks significantly different than it did even five years ago. Student athletes can, of course, now benefit from their NIL. They can hold employment with scholarship protections and transfer flexibility. The membership certainly continues to shift and evolve their policy priorities.

I am going to pause there and turn it over to Dave to talk through the policy timeline on this specific issue of NIL.

Mr. Schnase:

I am going to take you quickly through the timeline, but I want to spend most of my time, if you do not mind, on the policy itself because I think that is where your interest may be. As you can see on slide 5, we started work on this in 2019 with the Board of Governors Working Group. The Board of Governors is made up of all three divisions. To a few questions asked earlier about the size of an institution, level of competition, etcetera, when we talk about NIL starting off with the Board of Governors, we are talking about this on an association-wide level—Division I, Division II, and Division III. The Board of Governors charged each division with coming up with its own NIL policy, and they came back together and came up with the interim policy. But before we did that—at least in Division I—we established a working group in the winter 2020. That working group was comprised of athletic directors, presidents, practitioners, student athletes—all the people who are intricately involved with NIL. They were at the table making sure the policy recommendations made the most sense with student athlete perspective and protected college sports as best it could. Once the interim policy was adopted in July 2021, that really kicked off all the opportunities that we heard about from the previous presenters. That is when student athletes could begin to take advantage of NIL. It is important to note that July 2021 was an important date because a lot of the state laws went into effect then. The goal of the NCAA interim policy was to make sure that all student athletes could benefit from the use of NIL, not just the student athletes in those states with the NIL legislation.

There are a lot of words on slide 7—I will acknowledge that—but let me just say a few things that I think are important to highlight. We are talking about all the NCAA rules that related to NIL previously being suspended so student athletes in all states could take advantage of these opportunities. That is the main thing; that is the main takeaway I want you to have. In addition to that, as many states did, the NCAA interim policy now allows for student athletes to hire professional service providers like agents to help with NIL opportunities, so we are seeing a lot of that now. Two more important points:

1. The NCAA is continuing its normal enforcement action as it relates to malfeasance, so all the rules and the rest of our bylaws remain in effect. The only bylaws that are suspended are the NIL bylaws. That means if there is any other bylaw that is implicated here, those would be enforced by our enforcement staff and, because this is a membership organization, like Dawn said, the schools themselves enforcing against their peers; and
2. It is important to note that the NCAA does not interpret state law. So, when schools call us and ask us if a particular activity is permissible, we encourage them to go back to their state laws, go back to the folks who adapted those laws, to make sure what they are trying to do is consistent with the state action.

As I said, all the other bylaws remain in place, so I am going to touch on a few of the bylaws that are specific to the interim policy and mention some of the bylaws that remain in place that are impacted by or related to the NIL interim policy:

- We still have a bylaw that says you cannot have pay-for-play. What that means in the context of NIL—this is very narrow and very specific—is that you cannot pay a student athlete based on the number of free throws made. You cannot pay a student athlete based on the number of touchdowns, passes thrown, or the number of

homerun hits. That is the pay-for-play that is not permissible under this interim policy;

- We also have an interim policy rule that says you cannot have improper recruiting inducements. That means schools and boosters cannot pay high school students to come to their school. That remains in place, and we will enforce those provisions;
- There are a bunch of other rules that are related to NIL. For example, our employment rules are still in play. They say the work must be performed. You cannot pay a student athlete to do something, and if the athlete does not do it and you still pay, that would not be permissible;
- Same thing for a quid pro quo—there has to be quid pro quo. The student athlete must perform service for the payment from the NIL provider;
- We also have a rule that surrounds whether boosters can be involved in the NIL opportunities. At its foundation, boosters can be involved. Just because you are a booster of UNR, does not mean you cannot be involved in NIL activities, but what you cannot do is engage with the prospect and promise an NIL agreement if you attend the UNR. That would be impermissible contact by a booster;
- Finally, we have financial aid requirements that are still in play. I think it was Karyna who mentioned the BYU case earlier—that is a good example. We are not going to get involved in activities that are consistent with state law, as long as they do not, obviously, violate our rules. We must be careful that when we answer questions from our schools, we do it with full understanding of the facts before we make those decisions.

You heard from, I think it was Sebastian, he talked about Opendorse providing information—that is where he got a lot of his information. This information is from Opendorse and INFLCR, which is another vendor in this space. I want to be clear that the information you see on slide 9 is a bit stale. The numbers you see on the screen are not the important thing. As you can see, these are the first 90 days of the policy and now we are eight to nine months into the policy. The numbers themselves are not important, but the trends are. The trends are things we are focusing on, or at least paying attention to. For example: (1) what are the opportunities for men compared to the opportunities for women; and (2) who is earning this money. Is it a small segment of student athletes? Is everybody involved? As you will hear from Scott in just a minute, we have found that student athletes in all sports are benefiting from this—men, women, wrestlers, volleyball participants. In fact, within the first three months, women's volleyball was the number two sport in total dollars earned. It has changed a little bit because of some high-dollar NIL agreements in women's basketball, for example, and in men's basketball, but we are seeing fluctuations. Now, football remains at the top, for the most part, but we are seeing fluctuations among other sports and among student athletes to demonstrate that this is an active environment. It is an organic environment if you are benefitting from being engaged.

I think that is it for my time. I will be happy to answer questions when that time comes but Scott is going to run through some of the benefits and challenges from his perspective.

Mr. Bearby:

You heard some very good testimony earlier so I will try not to be repetitive. The fact of the matter is, there is a lot of good happening around NIL. Student athletes are benefiting, and

they are doing it in a variety of ways. The intent of the policy was and is for the regular student and student athlete to benefit in similar ways. The tremendous opportunities of social media, digital platforms, the ability for small business incubators—much of this is fueled by higher education across the spectrum from community college to graduate school. The idea of NIL being allowed was really to put the student athlete even with the regular student body and that would be, not only highlighting athletics, but also other talents and other interests that can merge and create some very interesting hybrid opportunities as influencers and as entrepreneurs. It is an opportunity—and the state statute covers the idea of education being very important for a student athlete and for a student generally—to learn financial skills and to have resources available to the students so that their businesses can flourish. It is to harness not only those on campus but those who might be in their social community, but, importantly, for those financial skills and reliance on others where they do not have that skill themselves so that good decisions are being made and real benefits are occurring.

Again, you heard many good comments. Let me offer some perspectives at the student athlete level, the institution level, and at the national level around the present state of NIL and what we think the future state might be.

For the student athlete, going back to the educational component and the need to surround oneself with professional service providers to help make decisions, what we are going to see this year. The tax year for 2021 has ended—we saw some significant NIL activity—the tax burden. Our students prepared for the fact that the revenue earned, by and large, came as contracts, came as revenue that was not taxed on the front end of the transaction, and that is reportable income. There are concerns around whether there will be surprise and the inability for students to meet their tax burdens; The impact on financial aid. It is the case for many student athletes on full-ride and on custom attendance, they already are achieving their athletics-based aid, and that may have an impact on other aid available to them. For other students, the fact that this income is being earned may have an impact on their financial aid being provided by the school based on need and the eligibility for Pell Grants.

Again, I think schools are doing a very good job trying to educate their students about these issues, and you have subject matter experts on your panel and in the room who can speak to this better than I can in terms of the efforts being made. I have mentioned the need for quality advisors and how students may go about selecting those advisors and the role that institutions can appropriately play in directing students to people who are looking out for their interests. The final issue that has been raised, including by our Student Athlete Advisory Committee (SAAC) at the national level—the NCAA has a variety of student athlete input coming in through these SAACs and they have seats at the table for our committee discussions around policy—is the stress of mental health challenges around NIL—the feeling that one may not be keeping up with their teammates on NIL opportunities, self-worth issues, and the stresses of time; these are time-consuming activities and may have an impact on their ability to engage in academics and the like. From the student athlete's perspective directly, it is an interest in learning more about what stresses are occurring because of NIL and understanding that there, again, are many good things happening.

At the institution level—these are issues that I know also could be addressed by those in the room and on your panel—but the fact is that the placement of the institution by state law create ethical, contractual, and perhaps other legal risks. When we speak of disclosure around student athlete transactions, it is managing who has that relevant information and how that is being protected. The ethics of providing advice to a student on a business matter—this is not specific to NIL—the campuses must deal with that but is a student relying on a coach or an athletics administrator to inform them on what they might do, what

NIL activity they might engage in, who they might hire, and what is the appropriate amount of assistance being given there. Understanding that there is reliance on what the institution or a coach may say needs to be worked through from a legal counsel perspective and from a compliance perspective. Many campuses are engaging in third-party representation, making sure that those agency relationships are very clear about who is representing the student, who is representing the institution, and who is representing a third party that is interested in NIL activity.

There are going to be inevitable contract disputes, and it will be very important for students, again, to have appropriate representation but also to make sure that campuses are tracking those issues. There may be arguments that contracts are one-sided, that they were unfair, that they were onerous, and perhaps even unlawful. Inevitably, the contract disputes will arise. Regarding the use of marks—university trademarks, slogans, and mascots—there is a quality control licensing issue that also needs to be vetted by campuses and visibility given to students about what those limitations are. It has been mentioned, but I will say it one more time, the impact of gender equity and minority representation in NIL activities to the extent that a school gets involved in creating or facilitating opportunities. Are there gender Title IX consequences to that, as an example.

Finally, the lack of uniformity across the 50 states remains a concern at the national level. You have heard about repeal efforts, amendments, and inconsistency, which creates great confusion. Again, our national SAAC members spoke to that confusion and expressed concern around the lack of uniformity. Even with an interim policy laid over, it still leaves an awful lot of variances. Many of the state statutes do not deal with the preenrollment recruiting space, of which there were questions earlier, and that also creates ambiguity. Where there is ambiguity there is, perhaps, legal risk.

I am happy to answer questions along with my colleagues.

Chair Miller:

Thank you all so much for that very good and informative presentation. Do we have any questions from the Committee members?

Mr. Nepomuceno:

Dave, Scott, Dawn, thank you very much for all that information. I am curious as a compliance officer at my university, with respect to the NCAA, do they currently have an active NIL committee that is going through what potentially could be a recommended model for us on-campus practitioners to have some sort of guidelines with respect to the execution and expectation of NIL on campus?

Mr. Schnase:

That is a good question. Division I Council just appointed a working group to study NIL issues. We are eight to nine months into this, as I said. The working group is going to look at a variety of things—the positives that are going on; some of the challenges that Scott mentioned; and, possibly, best practices. How that plays out, I think it is still a little bit too early to tell, but with the next (probably) four to six weeks, we will know a lot more.

Mr. Nepomuceno:

I have a couple more questions, thanks.

I know that NIL is new right now, so everyone is hyper-focused on what it can do and how it can impact athletics, but where I struggle as an on-campus practitioner, is I see the future of NIL just being another employment opportunity. We are not currently tracking other employment opportunities for student athletes. I do not disagree that we need to have some sort of intentionality as we go through this space, because it is new, and we have highlighted where there are going to be some pitfalls. Do you see the future of NIL being another section to our bylaws or manuals, if you will, or do you see this as something that we are going to track and then either default to federal/state legislation and call that what it is, or is the NCAA going to come over the top and create some sort of model here for us to follow?

Mr. Bearby:

The environment for the NCAA to regulate at a national level has been limited and that has been through court actions. While there are many in the membership who, I think, would love for national rules to be put in place, those are going to be restrained from happening. And thus, you have the need for local decision-making until there is a federal solution through Congress that would allow for national regulation or some willingness by Congress to let the NCAA create some of those rules because the rules cannot restrain the economic opportunities for NIL, nor should we. There are many good things happening. It does require an examination of campus policies that speak to some of the concerns raised that not only involve NCAA rules violations, but does it create institutional exposure, does it create legal exposure, and how a school feels about that.

There is the issue of complying with state law and who is responsible for complying with state law. The national level cannot and should not get into whether your campus is in compliance with Nevada state law. That has to be done at a local level until there is a broader solution. It is the intent, through the committee that Dave mentioned, to provide guidance where we can around those current rules. It is around behavior of boosters and whether those individuals are representing the institution in some way that would be inappropriate.

I am not optimistic you are going to see the type of national rulemaking that our schools are used to, at least until there is some resolution of this at a federal level.

Mr. Schnase:

One last point to what Scott just articulated. This is, I think, a space for the compliance administrators' association across the country to talk about best practices and perhaps a way to help institutions work through this.

Mr. Nepomuceno:

Thank you, and I do not disagree with that, but as you can only imagine, we are all over the place because of our state laws or lack thereof. There are a lot of areas in our state laws that are silent on the actual day-to-day operations of this.

The last question I had—and Scott you touched on this—is about the liability that is presented to the institutions based on their engagement with NIL transactional deals. There are certain general councils—I know the Big Ten Conference is one of them—that have talked about what you mentioned regarding tax implications. What liability falls on the institution should they identify this to the student athlete and then the student athlete does not follow through, or if they neglect to identify that responsibility to the student athlete?

We are now having, as a compliance practitioner, debate with our legal counsel in terms of what we can and cannot do. That actually has not been the case up until now. They have always been very supportive and advocates of rule following but now they are pulling out a liability card, and I do not know how much you have all heard on this, but that is a real issue for me on campus.

Mr. Bearby:

We are hearing that as well. There is a national association of college lawyers. You have a panelist who is a part of that. The issue of NIL is being debated and discussed among the higher education legal community, and not specific to the NCAA, but across all higher education, which the National Association of College and University Attorneys (NACUA) has membership for. A rule of thumb I share is: How are your policies related to the regular student body? Are you following those policies? Do you provide advice to the regular student body? If you are not, it seems, to me, to be reasonable to ask the question, "What is it about student athletes that would cause you to intervene more?" Those are judgement and reputation questions that institutions must make. By and large, you are going to be judged by the interaction with your regular student body relative to your student athlete body, and you should document where you are providing advice, where you are providing reliance by the student, even including recommending professional advisors and the implications of that. There are steps you can take, and I know are being taken, but at the end of the day, it is a reputational and legal risk question that schools are going to have to answer.

Mr. Irvin:

Thank you, gentlemen, for answering some of these questions. One of the questions we have is about transfer students who may have already engaged in activities. They might have had a deal at a four-year school, and then they transferred to a two-year school—the 4-2-4 transfer, the 2-4 transfer. How do all those transfers affect their eligibility and how do we regulate those?

The other question I have is—it is new—do we know how much time student athletes are really spending on this at any point during a day, a week? The rumors or some of the things we hear are very concerning about how much time student athletes are spending outside the classroom, outside the practice time, which is controlled, on the agreements with other providers.

Mr. Schnase:

I will take your second question. We do not, at least we do not at the national office. There is no central repository for all of these NIL activities. Some of the states and institutions require that but we do not. Everything we have is hearsay. We do know—or we have heard—that it is taking quite a bit of time, especially for the sweat equity kind of activities—whether it is running a camp or providing lessons—those kinds of things that really require big time commitment. As you probably know, a lot of the social media activities require a lot of time to make it worthwhile. We are paying attention to that. Our student athlete advisory committees are paying attention to that, but without a consistent data push, we do not have that.

Mr. Irvin:

Is there a policy relative to transfer students and their potential deals for a transition from a two-year school to a four-year school or from 2-4 and back to 2? Obviously, there are all

sorts of transfer scenarios, but there is a pretty open landscape right now to young people moving to institutions—whether it is at the NCAA level or at the junior college level.

Mr. Bearby:

The issue of transfer and inducement to transfer is one of the areas that the committee that Dave mentioned will look at. But the policy right now would address things like improper inducement to have a student move to another campus. “Improper” meaning that it is entirely based on an NIL transaction, and it does raise some of those contractual dispute questions I mentioned, which are: What happens to the NIL opportunities that the student had at the prior school or in the prior city or community? Does that mean that the student is in breach of that contract? Does that contract terminate? What are the representations being made that are tied to attendance at a particular school or on a particular team versus an NIL that might be a digital social media type transaction? I think there are going to be contractual issues raised that a student may not be focusing on when they are considering a transfer, particularly if a transfer is primarily based on “I can do better NIL at a different place than I can where I am now.” The role of the institution is: Does that mean there is a guaranteed income of some sort that the student is counting on? If the person seeking the NIL deal does not follow through, what are the liability implications of that? Very complicated around transfer right now and I think the members are just trying to understand that landscape.

Ms. Nevarez-Goodson:

Some of the data in the report indicates that individuals are required to report their NIL activities as required under state law, and our state law indicates that student athletes are required to report these activities to the institutions. Is there any institutional mandate up to the NCAA to report this data, or how is the NCAA tracking that data?

Mr. Schnase:

You are right. We are not tracking that data, and you read that slide exactly right. Some schools require disclosure. Some states require disclosure, but the NCAA does not.

Ms. Norris:

I just wanted to bring up some questions on the mental health and gender equity side of the NIL brand deals. Are there any regulations currently in place in other states that are experiencing these new NIL policies to deal with the high volume of brand deals that might be coming at athletes, coming right out the gate? Are there certain policies to make sure things can be equal on both the men’s and women’s sides to reduce the mental stress and the mental toll that might be on athletes as they are trying to get brand deals in the NIL and representing themselves?

Ms. Buth:

I can certainly take the first stab at that. Maybe your previous panelist, Andrew Smalley, might be well positioned to answer this, too, but I am not sure we are seeing a lot of legislation or laws that address the gender equity side of it and NIL. So, I am not sure I can speak to that. I am not sure Scott or David have anything to add, but nothing I have seen.

Mr. Bearby:

No, I have not seen that. The issue of mental health is one that, I think, has been most addressed at the campus levels through the NCAA's student athlete advisory committees. It is managed not by national rule but rather by encouragement to seek whatever advice and counsel that a student needs to address NIL opportunities and contracts, so those resources may take a variety of forms. If you look at the regular student body—there are no restrictions or rules around how much time they can devote to NIL. It raises the question why student athletes would be any different such that a national association would regulate it. A school or athletic department might regulate it. That is their relationship with their students, but the general equation is how does the regular student, the nonathlete student, engage in this space and how can the student athlete do so similarly?

Mr. Lee:

I wanted to answer the question about the time spent on NIL. We must understand that sometimes we get lost in the fact that we get our tuition and our school paid for; people forget that we are human. We are regular people too. Me, personally, I only get paid \$1,500 one time a month for a stipend to play football; so, with your rent and your car payment, or whatever you must do, you do not have that much money left. These NIL deals are really offering you an outlet to where you do not have to take so much time away and have a job and lose focus of your sport to provide for yourself. I feel most NIL deals do not ask too much from you. They do not ask you to do too much or waste too much time. They are based on you and your time, and they are trying to look out for you, in my opinion. When I think about the time that is spent on them, it is not too much time. I would say they are giving us help because everyone says, "They get their tuition paid for. They get *this* paid for," but at the end of the day, we get paid once a month. Once a month and that is just \$1,500. If you have a 40-hour week then you are getting nothing but \$9 an hour, and that is basically minimum wage. You are really trying to stay on task, be the best athlete you can be, but you have athletes, like most of my teammates, who have second jobs. After they do all this work, after they get done with classes that end at 6 p.m., they go to a restaurant to bus some tables. This would really help so we can focus on our sport and everything that we need to do so we do not take too much off the field, or the court, or whatever sport you play.

Chair Miller:

Thank you, Mr. Lee, for that insight. It also makes me think of something that Mr. Nepomuceno mentioned in that we do not track other forms of employment. With that being the case, we do not track student athletes who have second jobs, what those second jobs are, and how much time it consumes. Is that correct, Mr. Nepomuceno?

Mr. Nepomuceno:

Yes, I think that is fair.

Chair Miller:

Okay, thank you. Thank you for adding that context to it, Mr. Lee. I want to thank the NCAA members for joining us.

I do have one quick question before we move on, and this is just to that national conversation. Mr. Smalley mentioned that it seems a bit dormant now with all that is going on, but I can imagine that you all have your ear to the ground knowing what the rumblings

are as soon as they start. I am curious to know if you agree with Mr. Smalley's information on the national and federal perspective as to moving any of this legislation forward. Is it kind of dead right now? Is it moving along? What does that look like from your perspective?

Ms. Buth:

We are about to embark upon an election season so, I think any legislation will be challenging to push forward. One of the challenges amongst federal legislators, I think, is there was vast agreement that a federal solution is not only necessary but important for student athletes, but there are still some discussions about what that vehicle could look like.

Mr. Nepomuceno:

I wanted to chat a little bit about the concept of fair market value. As we talk about employment deals, one of the trends within the NCAA is that we are establishing a fair market value. I recently saw a deal for \$8 million tied to NIL. Is there any notion that the NCAA would track said fair market value for some of these deals that they are seeing? And then I will take that a step further: What is the institution's obligation in that space, if any at all?

Mr. Bearby:

The issue of fair market value is one that—by its economic restriction of the idea of something being too valued—has real concerns to be set at a national level and to be carefully tracked in an organized way at a national level. The Association is not collecting financial information. There are groups in the business, like Opendorse and others, that are receiving some of that information, and they may well be trying to establish for anyone who may be a client of theirs what fair market value is.

We know that the concept of fair market value, particularly in this day and age, is very challenging. We see viral moments creating extraordinary market value for a short amount of time. We see things called nonfungible tokens (NFTs) that have an incredibly large value, and there are those who say it is now overinflated. There is the issue of cryptocurrency and what that means relative to market value. The challenges are not specific to student athlete NIL; the challenge, generally, is what the market is willing to pay for something.

The concerns from campuses, of course, is when that market value is tied to an athletic performance. That is when the examination of current rules and whether those rules are being violated comes in. In my mind, the responsibility of a campus is, "Does your state law deal with fair market value?" I do not believe yours does, but other states do attempt at some notion of fair market value. If that transaction does not have a quid pro quo, if the disclosure seems incomplete, the institution must make decisions around whether further inquiry is necessary. That may have an NCAA implication, but it may have other legal implications for your campus.

In summary, fair market value is almost impossible right now to define, even if the National Association could and was in power to do so. It really does fall, for better or for worse, on the campus to, through that disclosure, to understand what is behind that transaction as best they can.

Chair Miller:

Thank you all so very much for your time and for answering all our questions and the information that you provided. I hope we can reach out to you in the future if we need to.

At this time, we are going to move on to our next presentation with the NJCAA.

Jeff White, Esq., M.B.A., Vice President of Compliance, Legal, Diversity, and IT, NJCAA:

Thank you, Mr. Chair, and members of the Committee. Along with me today, I have Keil Huber. I am going to briefly turn it over to Keil to introduce himself.

Keil Huber:

Good afternoon. I am currently a third-year law student at Belmont University College of Law in Nashville, Tennessee. I have had the privilege this semester of serving as a legal extern of the NJCAA through our school's field placement program. I have experience with NJCAA dating back to my childhood. My dad was involved with the organization as a junior college athletic director in Moline, Illinois, as a region director of NJCAA Region 4, which covers about 24 schools in northern Illinois and southern Wisconsin, and he was also heavily involved with the organization on the national level. I have done a lot of research on NIL policies throughout law school, and I am excited to be here. Thank you, Committee, for having us.

Mr. White:

Just a couple of comments I would like to make before switching over to the PowerPoint presentation. In light of the information that has already been shared, we will probably move pretty quickly through our deck, but I would be remiss if I did not at least acknowledge that I have been chomping at the bit looking to jump in on some of the conversation with all of the questions that have come up. I want to add that I have had the pleasure and opportunity to work with a variety of work groups across the United States doing exactly what this group has set out to do, and I have asked some of the same fundamental questions. I hear the questions about assessing fair market value and the logistics of tracking compliance; I guess the question that, of course, you are working to determine is: Why is the state legislature making that a requirement for member institutions? That requirement does not exist for nonathletes. Why does it exist for athletes? I am not here to suggest that I have the answer for that. I certainly have my opinions on that, but it is the state legislators that have created these complexities. Those complexities just are not in place for the music major who plays the trumpet and the science of music recording deal and has gigs on the side. They are not getting those approved. There is no oversight of that. There is no disclosure necessary because the state legislature has not said, "We need to know what kind of other work that you are doing."

With that, I will jump into our PowerPoint presentation ([Agenda Item VI B](#)). Again, we will probably move through it a bit more quickly since much of it has already been addressed.

Here you can see the NJCAA's mission statement. The NJCAA has a long history of equity and inclusion. Many people are not familiar with the NJCAA, so Mr. Huber is going to spend some time talking a bit more about our history, but suffice it to say, we are pretty old and large and offer a really diverse and robust student body. We are going to walk through our NIL policies and discuss the implications of NIL, and—as Mr. Irvin mentioned earlier—for us, we are in a unique position in that we have many transfer students. It is critically important that we understand that the decisions we make impact students as they transfer on to their four-year schools, for those that do, of course.

Mr. Huber:

The NJCAA was founded in 1938. It is currently the second largest governing body for collegiate athletics, the largest for junior college athletics. There are over 500 member schools across the vast majority of the continental United States. It is organized somewhat uniquely in that there are 24 regions primarily designed to encourage regional competition as opposed to some of the NCAA Division I schools, which may do a little more traveling until you get to the national championship stage. Our schools will mostly compete within the region. We also sanction a wide variety of sports from the more traditional football, basketball, softball, and baseball to some sports you may not think about such as men's and women's bowling and also, more recently, eSports, which I know Jeff was also heavily involved with and is definitely something that is going to be pretty prominent in the future going forward.

There are a lot of notable NJCAA alumni, and one that I have listed on slide 4, Bryce Harper, is very relevant to the State of Nevada—born and raised in Las Vegas and also an alum of the College of Southern Nevada, I believe it was. He is someone who certainly—if he had been in junior college coming up these days—could have capitalized on NIL, I am pretty certain, for a good chunk of change considering he was on *Sports Illustrated* when he was in high school. That is a unique situation for a junior college athlete. Some of the other prominent professionals, such as Jimmy Butler or Tyreek Hill, are names you probably would not have heard about in high school and were somewhat late bloomers, but there is the occasional athlete, like Bryce Harper, who goes the junior college route after having a very successful amateur career in high school.

The NJCAA seeks to foster a national program of athletic participation and equitable opportunities for member colleges and athletes, as Jeff stated in the mission statement.

Mr. White:

I just want to mention some specific numbers. The NJCAA has 520 member colleges across the United States. and about 65,000 student athletes, and a little over one-third of those student athletes are first generation college students. I would be remiss if I did not highlight that.

Mr. Huber:

Getting into the NJCAA's NIL history: A new bylaw was passed in June of 2021, right around the same time as the NCAA, that will promote and provide NIL opportunities for student athletes at the junior college level. This policy change was prompted by the changing landscape of collegiate athletics with the intersection of student athletes' rights and athletic participation. This was prompted, as discussed previously, with the changing state laws, the talk of federal legislation, as well as policy changes at other collegiate governing bodies.

Mr. White:

Slide 6 is a listing of our actual bylaws; they are straightforward. I want to highlight the last bullet, "receiving compensation in accordance with state law." From our perspective, rather than further muddying the waters and creating any additional requirements or obligations on behalf of the institutions—and it sounds similar to the approach that the NCAA is taking—we have not placed any additional requirements in terms of reporting or tracking or anything of the sort as it relates to our members. We have found, as I mentioned, that the states seem to be doing a good enough job of creating what some would suggest is an unnecessary level of overview or oversight. I think Mr. Irvin mentioned this earlier, but

one significant difference between the two-year space and the four-year space is that, often, four-year schools have a compliance department and professionals whose only responsibilities are adherence with national governing body bylaws. That is not the case at most two-year institutions. There are certainly some that offer that but, generally speaking, it falls on the shoulders of existing staff. From our perspective, we wanted to be mindful of any additional burden we would be placing on our members and the faculty and staff who work directly with the student athletes. Again, I think about the question that came up regarding fair market value and reviewing and approving contracts and arguably, you are probably, at some of these institutions, placing individuals in a position to do that kind of work who may have never really received adequate training or oversight or do not have that kind of experience to do that kind of work. When those requirements are put in place, it really can be unduly burdensome on a lot of our members. That is something of which we were mindful.

Suffice it to say, that despite adherence to state laws, employees, schools, and school representatives cannot make direct payments to student athletes, and direct payments from the institution, I guess as an extension, in exchange for athletic performance, are also prohibited. The best summary I can provide of the approach that the NJCAA took was to defer to the states and, obviously—it has been said multiple times—at this point, it would be cleanest and easiest for everyone if the federal government would step in and develop or create a national standard. Until that happens, rather than continuing to muddy the waters, we essentially defer to each institution to do what is necessary to comply with state laws.

Mr. Huber:

Now we are going to go into the part of our presentation on future policy considerations for NIL policies. The first thing that we need to consider as an organization is policy changes made by other collegiate athletic governing bodies—the NCAA and the National Association of Intercollegiate Athletics (NAIA), specifically. This is uniquely important for our organization given that a lot of NJCAA athletes do transfer and we are a two-year organization. They can continue to play their extra two years. I was a junior college athlete. I stopped after two years but several of my teammates continued to go on and play at four-year schools. We must have standards that are somewhat consistent and not contradictory with those other four-year collegiate governing bodies. Another issue is policy changes made by legislative bodies—as has been heavily discussed over the last couple of hours—both at the state and federal level if the federal government chooses to involve itself in this area eventually and with state laws that are currently in place and will continue to be passed. Changes in societal standards is something that I came across heavily in my NIL research when I wrote my paper on it last year. A lot of these state laws include exemptions for certain areas where endorsements are not encouraged or not necessarily permitted, albeit alcohol or tobacco, sorts of things that these colleges or governing bodies may not want to be associated with. As far as social standard goes, that is another thing to potentially consider.

The implications of NIL changes on student athletes at the NJCAA level. The first NIL deal for a junior college athlete was Dominic Brown of Southwest Mississippi Community College. He is a freshman point guard and it was signed shortly after the new bylaw went into place. Several other NJCAA athletes have followed in Brown's footsteps and signed NIL deals. Although you will not see, for the most part, NJCAA maybe signing the mega deals that you will see from a University of Alabama football player—speaking from experience, growing up around junior college athletics—a lot of these small towns rally around these teams. I can tell you specifically, remembering from visiting basketball games, there is one school in Freeport, Illinois—Highland Community College—with a very successful NJCAA Division

I basketball program. That gym was packed every time I went in there. I am sure there are local businesses that are just waiting to offer these athletes opportunities. Community college football in Kansas is huge. You see schools like Garden City Community College. These small towns, they are no Louisiana State University (LSU) or University of Alabama, but they really rally around these junior college athletes, and I am sure there will be a lot of opportunities for those athletes going forward.

Mr. White:

It is probably the understatement of the year to say that the landscape is changing in the world of collegiate athletics. Monitoring compliance with amateur rules certainly is part of our ongoing responsibilities as a national governing body. Again, Mr. Irvin mentioned this earlier, the concept or idea of classifying student athletes as employees would be the death for collegiate athletes at a number of schools, and it would not just be two-year schools. The cost of insurance and everything associated with employment would really have a negative impact. I have read and heard that there is consideration, if it were to come to pass, that there would be a specific carve out because, as has been mentioned multiple times, the real focus of this NIL really is the Power Five—football, and men's and women's basketball. Regarding vigilance and staying updated on state laws, one of the benefits of our bylaw is that we have deference to the states and obviously to the members, more specifically, to do what is necessary to adhere to state laws. For us, quite honestly, as Keil had mentioned earlier, it is more about keeping tabs and keeping track of what the NCAA and the NAIA are doing to ensure that we are not inadvertently jeopardizing the eligibility of any of our student athletes.

What I would say—and I know Mr. Irvin had asked this question earlier regarding the impact on transfer students—interestingly, is a lot of the institutional policies and some of the state laws that I have seen say that the NIL deal automatically expires when the student athlete leaves the school, which is interesting to me. I have spent a fair amount of time trying to identify other contracts where a nonparty to the contract, not even a third-party beneficiary, approves the contract. It is just not something you see that often. It is interesting that the institution is telling a company that wants to give NIL money to a student athlete that it cannot give it to them anymore when they graduate. That just does not make a whole lot of sense to me if they are not using the marks of that institution. Why would that be prohibited or precluded?

That concludes our presentation, and I am happy to answer any questions.

Chair Miller:

Thank you, gentleman, very much for your presentation. Do we have any questions from members?

Mr. Irvin:

Thank you for coming on and representing junior college athletics because it is critical. We are out here in the West. We are in Region 18, which I happen to be the men's director of, that goes all the way from the Canadian border, Oklahoma, Washington, down into southern Nevada. It is a geographically huge area but with pockets of interest from small schools—Snow College, College of Southern Idaho—that have tremendous followings. You are not putting 25,000 people in the arena, but you are putting 5,000 people into a place that has a lot of interest. When those student athletes are transferring, they are coming to Idaho State University, UNLV, and UNR and different places around the country. We have had a number

of inquiries at the College of Southern Nevada, but we have not yet developed our policy because of the fluctuation in what that means in a transfer scenario. We were not sure of that yet. We need more guidance relative to that transfer and what that means to our student athletes as they move along.

Mr. White:

I would like to think that compliance with state law would not negatively affect a student's eligibility. Obviously, if it is an intrastate transfer then you should be okay, but it could get hairy, theoretically, if they were to transfer out of state. Again, many policies and laws that I have seen have said that the deal expires upon graduation or unenrollment, if you will. It would be difficult for me to imagine a scenario where an institution would look at a previous contract as though it may have negatively affected an individual's eligibility.

Ms. Norris:

I had a question concerning international students. I have come to understand in my current junior college career that there is a high presence of international students, especially in my division and colleges, such as Salt Lake Community College and Snow College. These are colleges where a lot of international students go to play, and they take the junior college route to hopefully move on to four-year schools to continue their athletic careers. I was just wondering if there were any differences in providing them opportunities in NIL or if they were similar to the regular athlete.

Mr. White:

Theoretically, because schools are not supposed to play a role in securing NIL opportunities, they should be exactly the same. They should have the same opportunities to connect with any business or organization that is interested in working with the student athlete. Certainly, from the national governing body's perspective, and I would imagine from an institutional perspective, they are not treated any differently.

Mr. Nepomuceno:

I can chime in a little bit on that. We have had a couple of international student athletes have opportunities denied because it impacts the visa they are on, which is an educational visa to learn, versus a working visa for an international individual. We have deferred to our Office of International Students and Scholars (OISS) team because they are the experts in that field. My understanding is that there are some other institutions that are looking at these NIL deals and defining them as "passive income." Again, I am not sure what those implications are and if that is permissible, but we are all trying to identify what the rules are for that international cohort. Although they have opportunities, I am not sure they can take advantage of them as easily as domestic students.

Ms. Norris:

That answers my question because I understand that a lot of these students were on educational visas, so I was just wondering how this additional income from NIL deals would affect that situation.

Chair Miller:

Thank you, Mr. White, and Mr. Huber, for your time today and for the presentation. We really appreciate it. Hopefully our staff can reach out to you for further information if we need it.

AGENDA ITEM VII—PUBLIC COMMENT

Chair Miller:

We are going to open up for our second round of public comment.

[Chair Miller reviewed public testimony protocols. He called for public testimony; however, no testimony was presented.]

I want to thank all members and staff and everyone who testified before the Committee today. An archived version of today's meeting will be available online. Finally, I would like to note to the Committee members that after today's discussions, if any issues pop up on your radar from what we have learned today that you think would be interesting for this Committee to consider or review, please let me know.

Our next meeting will be on Thursday, April 28, at 1 p.m. While I prefer that we all meet in person, we will always extend the virtual option to ensure the maximum amount of participation possible. As we go along, my staff will be reaching out to you for your preference.

That concludes our business for today.

AGENDA ITEM VIII—ADJOURNMENT

There being no further business to come before the Committee, the meeting was adjourned at 3:27 p.m.

Respectfully submitted,

Maria Aguayo
Research Policy Assistant

Alex Drozdoff
Senior Policy Analyst

Jennifer Ruedy
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Jen Sturm
Senior Policy Analyst

APPROVED BY:

Assemblyman Cameron (C.H.) Miller, Chair

Date: _____

MEETING MATERIALS

AGENDA ITEM	PRESENTER/ENTITY	DESCRIPTION
Agenda Item IV	Research Division, Legislative Counsel Bureau	Committee Brief
Agenda Item V A	Andrew Smalley, Policy Associate, Education Program, National Conference of State Legislatures (NCSL)	PowerPoint presentation
Agenda Item V B	Andrew Smalley, Policy Associate, Education Program, NCSL	Follow up information
Agenda Item VI A	National Collegiate Athletic Association	PowerPoint presentation
Agenda Item VI B	Jeff White, Esq., M.B.A., Vice President of Compliance, Legal, Diversity, and IT, National Junior College Athletic Association	PowerPoint presentation

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