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More States Step Up to the Plate With New Legislation to Address Student Athlete Compensation and the NCAA Passes the Ball to Congress

Authors: Nicole Berkowitz Riccio

January 23, 2020

In response to the recent enactment of California's Fair Pay to Play Act, and the NCAA's subsequent approval for a policy change to address compensation to student athletes for the use of their name, image, and likeness, state legislatures across the country are introducing similar bills to address compensation to student athletes; and the NCAA is appealing to Congress to request federal legislation to prevent states from enacting piecemeal legislation, and to ensure uniformity in addressing compensation to student athletes for the use of their name, image, and likeness.

Background – NCAA and California's Fair Pay to Play Act

On September 30, 2019, California Governor Gavin Newsom signed [California's Fair Pay to Play Act](#) into law. The Act will go into effect in January 2023, and it is the first state law permitting compensation to student athletes for the use of their name, image, and likeness. In response to the enactment of California's Fair Pay to Play Act, on October 29, 2019, the NCAA's Board of Governors voted "unanimously to permit students participating in athletics the opportunity to benefit from the use of their name, image, and likeness in a manner consistent with the collegiate model," and set the deadline for the NCAA rule change by January 2021.

Leading the Pack – State Legislatures Rally with Individual State Bills to Address Compensation to Student Athletes

Taking notice of California's enactment of the Fair Pay to Play Act, and the NCAA's approved policy change, a wave of states around the nation are following California's lead and proposing bills to their state legislatures to address compensation to student athletes for the use of their name, image, and likeness. Similar bills are currently under consideration in Florida, Georgia, Illinois, Michigan, Missouri, Oklahoma, South Carolina, and Tennessee – states known for having dominant athletic programs – among others. Legislators have indicated that the goal of this legislation is to ensure that the NCAA adheres to its agreement promise to develop policies surrounding student athlete compensation for name, image, or likeness by January 2021, and we expect that the proposed legislation in these states will be of particular interest and import to the NCAA as it proceeds with its announced policy change.

The proposed legislation in each of these states is largely consistent on the key issues: (1) postsecondary institutions and athletic associations will be prohibited from preventing student athletes from earning compensation based on the use of their name, image, or likeness; (2) these student athletes will be entitled to representation by a qualified agent or lawyer; and (3) student athletes will be required to disclose any contracts to the institution, and such contracts cannot conflict with the institution's own contracts. There are, however, some variations among the proposed legislation, and particularly in whether they prohibit or are silent as to the compensation of prospective student athletes.

Florida. Florida legislators have prepared four bills: [SB 582](#), [SB 646](#), [H 251](#), and [H 287](#), all of which were filed in September or October 2019, were referred to committee, and were introduced on January 14, 2020. SB 582 and H 251 are identical and are consistent with the California Fair Pay to Play Act, with the exception that they do not address whether institutions will be permitted to compensate prospective student athletes. SB 646 and H 287, on the other hand, do prohibit postsecondary educational institutions and athletic associations from

providing or offering to provide a prospective student athlete with compensation for the student's name, image, or likeness. Florida legislators have previously considered legislation addressing student athlete compensation and may have a leg up on other states considering similar bills. If adopted, Florida's proposed legislation could go into effect as early as July 1, 2020, even before the NCAA drafts rules to address the policy change.

Georgia. [House Bill 743](#), "relating to postsecondary education, so as to provide that student athletes participating in intercollegiate athletics at postsecondary educational institutions may receive compensation for the use of the student athlete's name, image, or likeness," was prefiled on November 19, 2019, filed on January 16, 2020. While the legislation proposed in all states is generally ambiguous as to whether the student athlete will be compensated for his or her name, image, or likeness by the institution, or through endorsement deals with third parties, Georgia's House Bill 743 further muddies the issue, providing that "[n]othing in this article shall be construed as requiring or authorizing a postsecondary educational institution to compensate a student athlete for participation in intercollegiate athletics or for a postsecondary educational institution to compensate a student athlete for the use of the student athlete's name, image, or likeness."

Illinois. In Illinois, [HB 3904](#) has already passed in the Illinois House of Representatives and was referred to Assignments in the Senate on December 1, 2019. Illinois Governor J.B. Pritzker has publicly voiced support for this bill. HB 3904 is substantially similar to the California Fair Pay to Play Act and, if adopted, would also go into effect January 1, 2023.

Michigan. Michigan legislators are currently considering two different bills, one in the Senate and one in the House: [SB 0660](#) and [HB 5217](#). Both bills have been referred to committee. Although the legislation proposed in other states has thus far been limited to college student athletes, SB 0660 permits high school student athletes to earn compensation for their name, image, or likeness. It is also silent as to whether prospective student athletes could receive such compensation. On the other hand, HB 5217 limits compensation to college student athletes, but permits them to earn compensation for their "athletic reputation" as well as their name, image, or likeness. The proposed legislation could go into effect in Michigan as early as July 1, 2020.

Missouri. Three separate bills, [HB 1564](#), [HB 1792](#), and [HB 1748](#), have been filed in the Missouri House of Representatives. All three were read for a second time on January 9, 2020, and are in line to be assigned to a committee. HB 1564 and HB 1792 are nearly identical, and both proposed bills permit student athletes to receive compensation for their "name, image, likeness, or athletic reputation." While HB 1564 and HB 1792 do not address whether prospective student athletes could receive such compensation, HB 1748 prohibits universities and athletic associations from compensating prospective student athletes. Each of these proposed bills has an effective date of January 1, 2023.

Oklahoma. Oklahoma [HB 3347](#) was introduced on January 16, 2020, and is scheduled for a first reading on February 3, 2020. HB 3347 is modeled after the California Fair Pay to Play Act and has a proposed effective date of September 1, 2020.

South Carolina. In South Carolina, [S. 935](#) was prefiled on December 11, 2019, and was introduced, read for the first time, and referred to the Committee on Education on January 14, 2020. Although it shares many similarities with the California statute, S. 935 expands upon it substantially. Most notably, S. 935 includes a section requiring institutions to award "stipends" to student athletes based on the total number of hours the student athlete spends associated with the intercollegiate sport and to additionally deposit \$5,000 per year into a trust fund for each student athlete to be paid out after graduation. In the South Carolina House, [H. 4973](#) was introduced on January 21, 2020 and was referred to the Committee on Education and Public Works. H. 4973 appears to oversimplify the issues. It applies only to student athletes at public universities, provides that those public universities and athletic associations cannot prevent student athletes from earning compensation for

their name, image, or likeness, and does not address student athlete representation; compensation of prospective student athletes; or potential conflicts between student athlete contracts and university contracts.

Tennessee. Tennessee legislators are currently considering identical bills in the Senate and House, [SB1636/HB1694](#), which were both introduced on January 16, 2020. The Tennessee bill applies only to public institutions of higher education and athletic associations, but otherwise contains substantially the same limitations as the California Fair Pay to Play Act. Additionally, in light of the James Wiseman controversy, in which now-Memphis Head Coach Penny Hardaway — then a University of Memphis booster and high school coach — donated \$11,500 to Wiseman's mother so that she could move the family from Nashville to Memphis in 2017, Tennessee's proposed legislation prohibits an institution from discriminating against a student athlete based on an athletic coach's donation to the institution. Also under consideration are [SB 1767/HB 1710](#), which were introduced in the Senate on January 21, 2020 and in the House on January 17, 2020. These bills require each public institution that participates in NCAA at the Division I level to establish a student athlete grant fund and to deposit one percent of the gross athletics revenue into the fund each year. These funds will ultimately be used to provide grants to student athletes upon their graduation from the institution.

NCAA Considers Options for Policy and Pushes Back with a Hail Mary to Congress

NCAA Board of Governors Federal and State Legislation Working Group. As states move forward with proposed legislation, the NCAA divisions are preparing proposed changes to their own rules and regulations. According to the [timeline published by the NCAA](#), the NCAA Board of Governors Federal and State Legislation Working Group, which is made up of member representatives from all three NCAA divisions, will continue gathering feedback on the policy change through April 2020. The three NCAA divisions are then expected to continue to discuss various proposals and feedback throughout Spring and Summer 2020. The deadline for Divisions II and III Presidents Councils to sponsor legislation is September 1, 2020, and the deadline for submission of legislative proposals in Division I is November 1, 2020. The divisions are expected to vote on proposed legislative solutions at the NCAA Convention in January 2021. The legislation ultimately adopted by the NCAA divisions will likely guide state legislative solutions for community colleges and high school interscholastic athletics, which are not addressed in the majority of the pending state bills.

NCAA Passes the Ball to Congress. Variations of the proposed state legislation discussed above have led the NCAA to ask Congress to pass federal legislation to create uniformity on a national level. Currently pending in the House is a bill titled the "Student-Athlete Equity Act" ([H.R.1804](#)), which would modify the definition of a tax-exempt amateur sports organization to exclude organizations that substantially restrict a student athlete from using, or being reasonably compensated for the third party use of, the athlete's name, image, or likeness. More recently, in December 2019, the Senate announced that a bipartisan working group was discussing how to fairly compensate college athletes.

Impact of Expected NCAA Policy Changes and State Laws

While most of the impact to universities will occur only after the NCAA divisions articulate and adopt rules implementing the NCAA policy change, there is action to consider in the meantime. Considerations include: (1) auditing all endorsement, sponsorship, and licensing deals to evaluate the impact by the NCAA policy change, and to consider how to best restructure the agreements when the new NCAA policies go into effect; and (2) discussing the objectives of the universities, and potentially submitting commentary or recommendations to the applicable rules committee and/or state legislature.

For more information, or if you have questions regarding the NCAA Policy Changes and State Laws, please contact [Nicole Berkowitz](#) or any member of the [Intellectual Property Team](#).