

Governor Hochul Signs Name, Image, and Likeness (“NIL”) Legislation for Student-Athletes to Receive Compensation

November 23, 2022

On November 21, 2022, Governor Kathy Hochul signed Legislation that allows New York collegiate student-athletes to receive compensation for their name, image, or likeness (“NIL”) without risk of forfeiting scholarships or eligibility to participate in collegiate athletics. This Legislation is effective immediately; provided, however, that amendments to Section 6438-a of the Education Law will take effect on January 1, 2023 and will apply to contracts entered into, modified, or amended on or after such date.

As explained by the official New York State press release, “This legislation will now establish express law in New York allowing students to share in the economic benefits created by their athletic accomplishments, alongside their colleges and universities which may generate revenue through media, ticket sales, and merchandise.”

Colleges, athletic associations, conferences, or other groups and organizations with authority over intercollegiate athletics including, but not limited to, the National Collegiate Athletic Association (“NCAA”), cannot prevent a student-athlete from securing compensation for the use of the student-athlete’s NIL. Further, the Legislation prohibits athletic associations, conferences, or other groups and organizations with authority over intercollegiate athletics from barring colleges from participating in intercollegiate athletics because they allow their student-athletes to pursue NIL compensation. Notably, colleges, athletic associations, conferences, or other groups and organizations with authority over intercollegiate athletics cannot provide a prospective student-athlete with compensation for their NIL.

The Legislation also states a student-athlete may not be prohibited from obtaining professional representation, such as from athlete agents and/or attorneys, in relation to NIL contracts or legal matters. The professional representation must be from someone who is registered and/or licensed by New York State. Scholarships from the college in which a student-athlete is enrolled may not be revoked due to earning compensation for NIL activities or obtaining legal and/or athlete representation in relation to NIL matters. The Legislation also clarifies that college scholarships for cost of attendance are not considered NIL compensation.

Student-athletes who enter contracts for NIL activities are required disclose the contract - in advance of execution - to an official of the college in which the student-athlete is enrolled, as designated by the college. A student-athlete may not enter into a NIL contract if a provision of the contract causes a conflict claimed by the

college including, but not limited to the following:

- the proposed contract would cause the student-athlete to violate the team contract;
- the proposed contract would cause the student-athlete to violate the college's student handbook or code of conduct;
- the proposed contract would conflict with an existing contract or sponsorship the college participates in;
- the proposed contract would cause financial loss or reputational damage to the college;
- the proposed contract would require actions by the student-athlete during team activities;
- the proposed contract would require actions by the student-athlete during classes;
- the proposed contract would use the college's name, brand, copywritten materials, trademarks, service marks, symbols, nicknames, trade dress, insignia, mascot, uniform styles, colors, imagery, campus landmarks, or other intellectual property or indicia; or
- the proposed contract would require the student-athlete to display a sponsor's product, logo, brand or other indicia, or otherwise advertise for a sponsor at any time, and such sponsor is a competitor of, or offers products or services within the same category as a sponsor of the college.

Finally, the Legislation requires that each college athletic program that participates in Division 1 NCAA athletics offer programs designed to provide student-athletes with "tools aimed to enhance their well-being and experiences in the classroom, off the field of play, and beyond their tenure as student-athletes," such as a dedicated financial distress fund, accessibility to mental health services, and broad-based financial literacy training focused on issues specifically relating to student-athlete life, and a degree completion assistance program.

Please note this is a general overview of developments in the law and does not constitute legal advice. Nothing herein creates an attorney-client relationship between the sender and recipient. If you have questions regarding this alert, please contact Jennifer McLaughlin (jmclaughlin@cullenllp.com) at (516) 357-3889, or Dina Vespia (dvespia@cullenllp.com) at (516) 357-3726 or Kevin McDonough (kmcdonough@cullenllp.com) at 516.357.3787.

Thank you to Ciara Villalona, a Law Clerk pending New York bar admission, who assisted in the preparation of this alert.

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