

# SENATE BILL REPORT

## ESSB 5942

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As Passed Senate, February 10, 2022

**Title:** An act relating to the uniform college athlete name, image, or likeness act.

**Brief Description:** Enacting the uniform college athlete name, image, or likeness act.

**Sponsors:** Senate Committee on Law & Justice (originally sponsored by Senators Frockt, Pedersen and Hunt; by request of Uniform Law Commission).

**Brief History:**

**Committee Activity:** Law & Justice: 1/27/22, 2/03/22 [DPS, w/oRec].

**Floor Activity:** Passed Senate: 2/10/22, 44-5.

**Brief Summary of Engrossed First Substitute Bill**

- Allows college athletes to receive compensation for their name, image, or likeness.
- Provides for certain limitations to name, image, or likeness activities and compensation.
- Imposes a disclosure requirement for college athletes related to name, image, or likeness agreements and exempts such disclosures from the Public Records Act.
- Establishes a right of action for college athletes and colleges and establishes civil penalties for violations of the Uniform College Athlete Name, Image, or Likeness Act.

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### SENATE COMMITTEE ON LAW & JUSTICE

**Majority Report:** That Substitute Senate Bill No. 5942 be substituted therefor, and the substitute bill do pass.

Signed by Senators Dhingra, Chair; Trudeau, Vice Chair; Padden, Ranking Member;

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*This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not part of the legislation nor does it constitute a statement of legislative intent.*

McCune, Assistant Ranking Member; Kuderer, Pedersen and Salomon.

**Minority Report:** That it be referred without recommendation.

Signed by Senators Honeyford and Wagoner.

**Staff:** Ryan Giannini (786-7285)

**Background:** The National Collegiate Athletic Association (NCAA) is a nonprofit organization whose voluntary membership includes colleges, universities, athletic conferences, and other affiliated organizations. The NCAA regulates intercollegiate athletic competitions in various sports across three divisions.

The NCAA issues and enforces rules governing athletic competitions among its member schools. The rules are developed by a member-led governance system in which members introduce and vote on proposed rules. The rules for student-athletes vary by division. Until recently, the NCAA's rules prohibited college athletes from receiving benefits for the use of their name, image, or likeness (NIL) while still maintaining athletic eligibility.

NIL refers to a person's right of publicity which entitles a person to prevent unauthorized use of one's NIL by a third party for commercial benefit.

The NCAA adopted guidelines in 2021 that allow individuals to engage in NIL activities consistent with the law of the state where the school is located. College athletes who attend a school in a state without an NIL law can engage in NIL activity without violating NCAA rules. Institutions located in states without NIL laws were given permission to create their own NIL policies, as long as the policies prohibited NIL compensation to be used for pay-for-performance or as a recruiting inducement.

The Uniform Law Commission (ULC) is a state-supported, nonpartisan, nonprofit organization that drafts and proposes specific statutory language that may be adopted by states. In 2021, the ULC drafted the Uniform College Athlete Name, Image, or Likeness Act (Act) to provide uniformity across state NIL laws. While several states have passed their own NIL laws, the Act has not been adopted in any other state.

**Summary of Engrossed First Substitute Bill:** The Act applies only to college athletes and intercollegiate sports and does not create an employment relationship between a college athlete and the athlete's college.

The Act authorizes the Washington Student Achievement Council, upon request of at least one college, to convene a meeting of representatives from colleges within the state that oversee at least one intercollegiate athletics program to adopt rules to administer and implement the Act.

A college, conference, or athletic association may not prevent college athletes from

receiving NIL compensation, entering into NIL agreements, engaging in NIL activities, obtaining services from an NIL agent, creating or participating in a group license, or participating in an intercollegiate sport because the college athlete exercises their NIL rights. Receipt of NIL compensation may not affect eligibility of a college athlete or the duration, amount, or renewal of an athletic scholarship.

College athletes may not use colleges', conferences', or athletic associations' intellectual property in college athletes' NIL activities unless permitted under intellectual property law and approved by the organization in question. NIL compensation may not attempt to influence the college athlete to attend, continue attending, or transfer to a college or college in a conference. NIL compensation must be for use of a college athlete's name, image, or likeness or for work actually performed, and may not include compensation for the college athlete's enrollment at a specific institution or participation in an intercollegiate sport. NIL compensation may not include compensation for the college athlete's endorsement of a banned substance or of sports wagering. A college may adopt policies to prevent a college athlete from engaging in NIL activity that is illegal or has adverse impact on the college's reputation. A college may adopt and enforce rules of conduct related to NIL activities when the college athlete is engaged in an official team activity.

A college may assist a college athlete in evaluating, understanding, and networking in relation to a college athlete's NIL rights. A college and its employees, agents, and independent contractors may not provide compensation to a college athlete for the athlete's NIL; assist a college athlete in selecting, arranging for, or providing payment to an NIL agent; or, assist with selecting, arranging for, or collecting payment from a third party engaged in specific NIL agreements with a college athlete or athletes.

In addition to any applicable college policy, a college athlete shall provide or disclose to a college-designated individual or office details related to NIL agreements.

NIL agents are required to register in Washington State as an athlete agent before engaging in NIL conduct.

Third parties are prohibited from intentionally giving materially false or misleading information or make a materially false promise or representation with the intent of influencing a college athlete, parent or guardian of the athlete, or another person in relation to NIL agreement, compensation, or activity. The Act further prohibits a third party from providing anything of value to a college athlete or another person if doing so results in loss of the athletes' eligibility to participate in the athlete's sport. A third party may not predate or postdate an NIL agreement.

A college or college athlete has a cause of action for damages against an NIL agent or third party if the college or athlete is adversely affected by an act or omission of the agent or third party. The attorney general and Washington Student Achievement Council may assess a civil penalty against an NIL agent or third party not to exceed \$50,000 for a violation of the

Act.

College athlete disclosures related to NIL activity are exempt from disclosure under the Public Records Act.

**Appropriation:** None.

**Fiscal Note:** Available.

**Creates Committee/Commission/Task Force that includes Legislative members:** No.

**Effective Date:** Ninety days after adjournment of session in which bill is passed.

**Staff Summary of Public Testimony on Original Bill:** *The committee recommended a different version of the bill than what was heard.* PRO: The recent ruling from the United States Supreme Court regarding student athletes has led to certain NCAA rules concerning compensation of student athletes to be abolished. This allows student athletes to be compensated for their name, image, or likeness. Student athletes are already beginning to engage in name, image, or likeness activities. Universities need a single national standard to bring order and public confidence to this process, but this bill helps fill the void in the absence of such national legislation. The bill provides an important framework for institutions and student athletes to navigate the name, image, or likeness landscape. The bill establishes what activities are permissible and impermissible, allows universities to educate students about the opportunities and challenges, and helps promote student athletes in non-revenue sports that might not otherwise have as much exposure.

**Persons Testifying:** PRO: Senator David Frockt, Prime Sponsor; Chris Mulick, Washington State University; Joe Dacca, University of Washington; Kiley Strong.

**Persons Signed In To Testify But Not Testifying:** No one.