

# CLIENT ALERTS

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## State House Passes Bill Allowing College Athletes to be Compensated for Use of their Name, Image, and Likeness

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On Wednesday, May 27, the State of Michigan moved a step closer to adopting name, image, and likeness (“NIL”) legislation for post-secondary athletes.

The bill had broad bipartisan support, passing the House by a vote of 92-15. The bill now moves to the Michigan State Senate. If passed by the Senate it would need to be signed by the governor to become law.

If enacted, this law would allow post-secondary student-athletes in Michigan to receive compensation from a third party in exchange for use of their name, image, or likeness. Currently, college and university athletes are forbidden by the NCAA from receiving such compensation based on their NIL and would be ruled ineligible to participate in intercollegiate athletics. Furthermore, colleges and universities currently face potential penalties from athletic governing bodies such as the NCAA. But last month, the NCAA proposed its own NIL plan, which – if passed – will go into effect at the start of the 2021-22 academic year. The Michigan House bill also comes on the heels of California and Colorado having recently passed similar legislation.

The full text of the bill can be found [here](#).

The issue of college and university athletes receiving compensation based on their name, image, and likeness has been brewing for years. In 2014, a California District Court Judge found in favor of plaintiff Ed O’Bannon, a former basketball player at UCLA who challenged the NCAA’s use of the images of its former student-athletes for commercial purposes. The Court held that the NCAA’s rules and bylaws operate as an unreasonable restraint of trade, in violation of antitrust law. The Ninth Circuit Court of Appeals affirmed the ruling of the District Court in part and the U.S. Supreme Court denied *certiorari*.

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The Michigan House bill, similar to the recently enacted California law regarding NIL, would allow college athletes to hire attorneys to negotiate endorsement contracts on their behalf as long as there is no conflict with any endorsement agreements entered into by the university. The bill package also allows agents and attorneys to enter into contracts directly with student-athletes, something currently impermissible.

If passed into law, the bill could result in significant changes in major college athletics throughout Michigan, and could be helpful in efforts for colleges and universities to recruit and retain student-athletes. Last month, a star basketball recruit for an institution in Michigan de-committed from that institution to instead pursue a professional career overseas. Recently, the NBA has provided an option for elite high school athletes to join its Gatorade League in lieu of attending college at a salary of \$125,000.00 per year.

Michigan is also home to Emoni Bates, the 2020 Gatorade National Player of the Year for basketball—the first student to ever receive that honor as a high school sophomore. The proposed legislation would surely have a major impact on the earning potential of such promising young athletes, while still allowing them to participate in college sports.

Please contact the authors of this alert or any of Butzel Long's Education Industry Practice Group regarding the latest changes in the law (including monitoring House Bills 5217 and 5218).

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