

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Rules

BILL: CS/CS/SB 646

INTRODUCER: Innovation, Industry, and Technology Committee; Education Committee; and Senator Mayfield

SUBJECT: Intercollegiate Athlete Compensation and Rights

DATE: February 24, 2020

REVISED: _____

| | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION |
|----|------------|----------------|-----------|--------------------|
| 1. | Dew, Brick | Sikes | ED | Fav/CS |
| 2. | Oxamendi | Imhof | IT | Fav/CS |
| 3. | Dew, Brick | Phelps | RC | Pre-meeting |

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 646 establishes the right of intercollegiate athletes and the responsibilities for postsecondary educational institutions concerning an intercollegiate athlete's right to be compensated for her or his name, image, or likeness (NIL). Specifically, the bill:

- Authorizes an intercollegiate athlete to earn compensation for the use of her or his NIL.
- Prohibits a postsecondary educational institution from adopting or maintaining a requirement that unduly restricts an intercollegiate athlete from earning compensation for the use of her or his NIL.
- Prohibits a postsecondary educational institution and an entity whose purpose includes benefiting a postsecondary educational institution or its athletic program (or an employee, officer, or director of such entity) from compensating a current or prospective intercollegiate athlete for the use of her or his name, image, or likeness (NIL).
- Requires a postsecondary educational institution to conduct a financial literacy and life skills workshop at the beginning of the intercollegiate athlete's first and third academic years and specifies conditions for the workshop.
- Prohibits a postsecondary educational institution from unduly restricting an intercollegiate athlete from obtaining professional representation by a licensed athlete agent or an attorney in good standing for the purpose of securing compensation for the use of such athlete's NIL.
- Specifies that an intercollegiate athlete may not enter into a contract for compensation for the use of NIL if a term in such contract conflicts with a term in the athlete's team contract.

- Requires an intercollegiate athlete who enters into a contract for compensation for the use of her or his NIL to disclose the contract to the postsecondary educational institution at which she or he is enrolled, in a manner designated by the institution.

The bill has no impact on state revenues or expenditures. The bill may have a negative, indeterminate fiscal impact on postsecondary educational institutions.

The bill takes effect July 1, 2021.

II. Present Situation:

National Collegiate Athletic Association

The National Collegiate Athletic Association (NCAA) is a nonprofit organization comprised of voluntary members, including colleges and universities, athletic conferences, and affiliated organizations. As the governing and regulatory body for the majority of intercollegiate athletic programs for Division I, Division II, and Division III sports, the NCAA describes its basic purpose as maintaining and retaining:¹

- Intercollegiate athletics as integral to educational programs;
- Athletes as integral to student bodies; and
- A clear line of demarcation between intercollegiate athletics and professional sports.

The NCAA issues and enforces rules governing athletic competitions for member schools. The rules are developed by a governance system in which members introduce and vote on proposed rules, which vary for student athletes by division.

Amateurism and Eligibility

A student athlete must receive an amateurism certification before being deemed eligible to compete in intercollegiate athletics. The NCAA defines the principle of amateurism to require that student athletes must be:²

- Motivated primarily by education and the derived physical, mental, and social benefits of intercollegiate athletic participation; and
- Protected from exploitation by professional and commercial enterprises.

A student athlete can lose amateur status, as determined by the NCAA, by engaging in certain activities, including:³

- Receiving payments from a sports team to participate;
- Using a recruiting agency, agent, or scouting service;
- Accepting prize money based on performance;
- Being represented or marketed by a professional sports agent; or
- Promoting or endorsing a commercial product or service.

¹ NCAA Bylaw 1.3.1, *Division I Manual 2019-20 NCAA* (Jan. 28, 2020), available at <https://web3.ncaa.org/lstdbi/reports/getReport/90008>, at 1 (last visited Feb. 12, 2020).

² NCAA Bylaw 2.9, *Division I Manual*, *supra* note 1, at 3.

³ NCAA, *Amateurism*, <http://www.ncaa.org/student-athletes/future/amateurism> (last visited Feb. 12, 2020); and NCAA Bylaw 12.1.2, *Division I Manual*, *supra* note 1, at 63-68.

Compensation for Student Athletes

The NCAA, along with member colleges and universities, awards nearly \$3.5 billion in athletic scholarships every year to more than 180,000 student athletes.⁴ The NCAA also provides almost \$100 million each year to support student athletes' academic pursuits and assist with basic needs of college life, such as computers, clothing, or emergency travel expenses.⁵

Student athletes are permitted to receive scholarships or grants-in-aid from individual postsecondary educational institutions,⁶ which may cover the cost of tuition and fees, books and supplies, room and board, transportation, and personal expenses.⁷ However, a student athlete's grant-in-aid must not exceed the cost of attendance at the student athlete's institution.⁸

Penalties for violation of NCAA bylaws may include financial sanctions, repayment of moneys received from competition, forfeiture of contents, and expulsion from the association.⁹

Name, Image, and Likeness (NIL)

The NCAA's rules prohibit student athletes from receiving compensation for the use of the student athlete's NIL to advertise or promote the sale or use of any kind of commercial product or service.¹⁰ Student athletes who use their NIL to promote sale or use of a commercial product or service are held ineligible to participate in intercollegiate athletics.¹¹ The NCAA has expressed concerns with the potentially harmful consequences from compensating student athletes for use of NIL, including the concern that a patchwork of different state rules may make it impossible for the NCAA to conduct intercollegiate athletics at a national level and undermine its commitment to provide student-athletes with broad-based offerings and comprehensive support.¹²

On October 28, 2019, the NCAA's Board of Governors voted to permit students participating in intercollegiate athletics to benefit from the use of their NIL in a manner consistent with the collegiate model.¹³ The Board of Governors directed each of the NCAA's three divisions to consider updates to relevant bylaws and policies, with the addition of new rules no later than

⁴ NCAA, Big East Conference Commissioner Val Ackerman and Ohio State Athletic Director Gene Smith, *Statement from Federal and State Legislation Working Group co-chairs on name, image and likeness efforts* (Jan. 23, 2020), available at <http://www.ncaa.org/about/resources/media-center/news/statement-federal-and-state-legislation-working-group-co-chairs-name-image-and-likeness-efforts> (last visited Feb. 12, 2020).

⁵ NCAA, *Finances*, <https://www.ncaa.org/about/resources/finances> (last visited Feb. 12, 2020).

⁶ NCAA, *NCAA Recruiting Facts*, <http://www.ncaa.org/sites/default/files/Recruiting%20Fact%20Sheet%20WEB.pdf>, (last visited Feb. 12, 2020).

⁷ Office of Student Financial Assistance, *Financial Aid Terms and Definitions*, <https://www.floridastudentfinancialaidsg.org/pdf/TermsAndDefinitions.pdf> (last visited Feb. 12, 2020), at 2.

⁸ NCAA Bylaw 2.13, *Division I Manual*, *supra* note 1, at 3.

⁹ *See Division I Manual*, *supra* note 1.

¹⁰ NCAA Bylaws 12.4.2.3, 12.5.1.3, and 12.5.2.1, *Division I Manual*, *supra* note 1, at 74, 75, and 77.

¹¹ NCAA Bylaw 12.5.2.1, *Division I Manual*, *supra* note 1, at 77.

¹² NCAA, *Statement from Federal and State Legislation Working Group co-chairs on name, image and likeness efforts*, *supra* note 4.

¹³ NCAA, *Board of Governors starts process to enhance name, image and likeness opportunities* (October 29, 2019), available at <http://www.ncaa.org/about/resources/media-center/news/board-governors-starts-process-enhance-name-image-and-likeness-opportunities> (last visited Feb. 12, 2020).

January 2021.¹⁴ On January 23, 2020, representatives of the NCAA voiced concerns about harmful influences and effects relating to use of NIL, particularly regarding recruitment and national parity in intercollegiate athletics.¹⁵ The NCAA's Federal and State Legislation Working Group¹⁶ will provide ongoing guidance to members of the NCAA on modifications to permitted uses of a student athlete's NIL.¹⁷

Representation of Student Athletes

A student athlete is defined as a student whose enrollment was solicited by a member of the athletics staff or other representative of athletics interests with a view toward the student's ultimate participation in the intercollegiate athletics program.¹⁸ Under NCAA rules student athletes are not permitted to agree to be represented by an agent or organization to market the student athlete's ability or reputation until the completion of the student athlete's last intercollegiate contest. NCAA rules also forbid a student athlete or his or her representative from negotiating or signing a playing contract in any sport in which the student athlete intends to compete, or marketing the student athlete's name or image.¹⁹

Contracts for Minors

A contract made or proposed to be made by a minor, or a minor's parent or guardian on behalf of a minor, under which the minor is to perform or render artistic or creative services, including rendering services as a participant or player in professional or semi-professional athletics, may be approved by the probate division of the circuit court, or any other division of the circuit court that has guardianship jurisdiction, if the minor is a resident of this state or the services of the minor are to be performed or rendered in this state. A contract for the services of a minor may not extend for a period of more than 3 years.²⁰

Licensing of Athlete Agents

The licensing and regulation of athlete agents in Florida is administered by the Department of Business and Professional Regulation (DBPR), which processes licenses, responds to consumer complaints and inquiries, and monitors activities and compliance within the athlete agent industry. An athlete agent is a person who:²¹

- Recruits or solicits a student athlete to enter into an agent contract, directly or indirectly;

¹⁴ State University System of Florida, *Agency Bill Analysis for SB 646* (2020), at 2.

¹⁵ *Statement from Federal and State Legislation Working Group co-chairs on name, image and likeness efforts*, *supra* note 4.

¹⁶ The NCAA State and Federal Working Group was appointed by the president and Board of Governors of the NCAA to examine issues related to student athlete NIL and make recommendations to maintain the demarcation between professional and college sports. See *infra* note 33.

¹⁷ *Statement from Federal and State Legislation Working Group co-chairs on name, image and likeness efforts*, *supra* note 4.

¹⁸ NCAA Bylaw 12.02.14, *Division I Manual*, *supra* note 1, at 62. Any other student becomes a student athlete only when the student reports for an intercollegiate squad that is under the jurisdiction of the athletics department. *Id.* Florida law defines student athlete as any student who participates or formally intends to participate in intercollegiate athletics. Section 468.452(5), F.S.

¹⁹ NCAA Bylaw, Article 12, *Division I Manual*, *supra* note 1, at 60.

²⁰ Section 743.08, F.S.

²¹ Section 468.452(2), F.S.

- Procures, offers, promises, or attempts to obtain employment or promotional fees or benefits for a student athlete with a professional sports team or as a professional athlete, for any type of financial gain; or
- Markets or attempts to market the student athlete's athletic ability or athletic reputation with any promoter.

An agent contract is the contract or agreement in which a student athlete authorizes an athlete agent to represent the student in the marketing of the student's athletic ability or athletic reputation.²² In order to be valid, such contract must include any fees paid to the agent and indicate how such fees are calculated. The athlete agent is also required to follow certain procedures during the contracting process, such as alerting the athletic director of the educational institution of the existence of the agent contract. A contract with an athlete agent is generally voidable by the student athlete within 14 days of execution.²³

In order to be licensed as an athlete agent, an applicant must be at least 18 years of age, be of good moral character, and submit a completed the application form with fingerprints for a background check. Applicants must remit to DBPR an initial application fee of \$250, an initial licensure fee of \$375, an unlicensed activity fee of \$5, and a biennial renewal fee of \$220.²⁴

Athlete agents must establish and maintain complete business and financial records,²⁵ and athlete agents are subject to disciplinary action for violating practice requirements, including:

- Commingling money or property of another person with the athlete agent's money or property.²⁶
- Committing mismanagement or misconduct which causes financial harm to a student athlete or college or university.²⁷
- Violating or aiding and abetting another person to violate the rules of the athletic conference or collegiate athletic association governing a student athlete or student athlete's college or university.²⁸

An unlicensed person is generally prohibited from acting as an athlete agent.²⁹ However, an unlicensed individual may act as an athlete agent if:³⁰

- A student athlete or person acting on the student athlete's behalf initiates communication with the individual; and
- The individual submits an application for licensure within seven days after an initial act as an athlete agent.

²² Section 468.452(1), F.S.

²³ Section 468.454, F.S.

²⁴ Fla. Admin Code R. 61-24.004.

²⁵ See s. 468.4565, F.S. DBPR has the right to full inspection of such records and may exercise its subpoena powers to obtain the financial and business records of an athlete agent.

²⁶ Section 468.456(1)(d), F.S.

²⁷ Section 468.456(1)(h), F.S.

²⁸ Section 468.456(1)(k), F.S. In addition, s. 468.4562, F.S., establishes civil actions for institutions damaged by a national association, athletic conference, or relevant entity on account of actions by an agent or student athlete.

²⁹ Section 468.4561, F.S.

³⁰ Section 468.453(3), F.S.

In the 2018-2019 fiscal year, there were 321 licensed athlete agents in Florida.³¹

Intercollegiate Athletic Programs in Florida

Athletic programs in Florida include NCAA Divisions I and II, the National Junior College Athletic Association (NJCAA), the National Association of Intercollegiate Athletics (NAIA), and the National Christian College Athletic Association (NCCAA).³² The number of schools in each program includes:

- 13 schools in NCAA Division I.
- 13 schools in NCAA Division II.
- 25 institutions in the NJCAA.
- 10 institutions in the NAIA.
- 3 institutions in the NCCAA.

The NCAA has levied 30 penalties against Division I universities in Florida since 1955. Recent sanctions include recruitment violations at the University of Central Florida in 2010, 2012, and 2019, and improper designations of student eligibility at Florida Agricultural and Mechanical University in 2019.

*NCAA Division I Intercollegiate Athletic Programs*³³

| Institution Name | Classification | Total Undergraduates | Total Expenses | Total Revenue |
|----------------------------------|-------------------|----------------------|-------------------|-------------------|
| Florida State University | FBS ³⁴ | 29,187 | \$ 167,054,375.00 | \$ 177,512,950.00 |
| University of Florida | FBS | 30,887 | \$ 157,240,476.00 | \$ 157,240,476.00 |
| University of Miami | FBS | 10,134 | \$ 94,723,980.00 | \$ 94,723,980.00 |
| University of Central Florida | FBS | 39,685 | \$ 60,069,492.00 | \$ 60,069,492.00 |
| University of South Florida | FBS | 24,342 | \$ 51,710,233.00 | \$ 51,710,233.00 |
| Florida International University | FBS | 26,210 | \$ 31,172,655.00 | \$ 38,240,735.00 |
| Florida Atlantic University | FBS | 15,907 | \$ 27,662,831.00 | \$ 27,662,831.00 |
| Stetson University | FCS ³⁵ | 2,998 | \$ 19,391,731.00 | \$ 19,391,731.00 |
| Jacksonville University | FCS | 2,174 | \$ 17,180,946.00 | \$ 17,180,946.00 |
| Florida Gulf Coast University | (no football) | 10,821 | \$ 15,037,882.00 | \$ 15,037,882.00 |
| Bethune-Cookman University | FCS | 3,751 | \$ 14,397,984.00 | \$ 14,397,984.00 |
| University of North Florida | (no football) | 10,147 | \$ 11,835,623.00 | \$ 12,546,853.00 |

³¹ Florida Department of Business and Professional Regulation, *Fiscal Year 2018-2019 Annual Report*, page 19, available at http://www.myfloridalicense.com/DBPR/os/documents/DivisionAnnualReport_FY1819.pdf (last visited Feb. 12, 2020).

³² There are no NCAA Division III athletic programs in Florida.

³³ See generally, U.S. Department of Education, *Equity in Athletics Data Analysis*, <https://ope.ed.gov/athletics/#/customdata/search> (last visited Jan. 23, 2020).

³⁴ NCAA Football Bowl Championship Subdivision (formerly Division I-A). See NCAA, *Divisional Differences and the History of Multidivision Classification*, available at <http://www.ncaa.org/about/who-we-are/membership/divisional-differences-and-history-multidivision-classification> (last visited Feb. 12, 2020).

³⁵ NCAA Football Championship Subdivision (formerly Division I-AA). See *supra* note 34.

| Institution Name | Classification | Total Undergraduates | Total Expenses | Total Revenue |
|------------------------|----------------|----------------------|-----------------|-----------------|
| Florida A&M University | FCS | 6,852 | \$ 9,922,955.00 | \$ 9,922,955.00 |

Annual Submission of Disclosures

Each institution of higher education which receives federal funding and is attended by students receiving athletically related student aid must annually submit detailed disclosures with respect to athletically related student aid to the Secretary of the U.S. Department of Education.³⁶ The law allows a similar report required by the NCAA to substitute for the requirements of the federal report.

Recent Developments

NCAA Working Group

In 2019, the president and Board of Governors of the NCAA appointed a federal and state legislation working group to examine issues related to compensating student athletes for use of their NIL and to make recommendations to maintain the demarcation between professional and college sports.³⁷ The NCAA's Board of Governors charged the working group with writing a set of overarching principles to guide each division to develop consistent legislation regarding NIL payments.³⁸

Legislation in Other States

California recently passed the first law of its kind allowing college athletes in that state to hire agents and earn compensation for the use of NIL, which will go into effect January 2023.³⁹ Other states including Illinois, New York, North Carolina, and Washington have proposed legislation relating to compensation for use of a student athlete's NIL,⁴⁰ and a federal bill is proposing to rescind tax-exempt status from any organization that denies an athlete compensation for use of NIL.⁴¹

Relevant Litigation

Since 2009, numerous former college athletes sued the NCAA for violating antitrust law by limiting the amount of compensation a college athlete may receive for performance. Courts have ruled that:

³⁶ 20 U.S.C. s. 1092.

³⁷ Michelle Brutlag Hosick, NCAA, *NCAA working group to examine name, image and likeness* (May 14, 2019), available at <http://www.ncaa.org/about/resources/media-center/news/ncaa-working-group-examine-name-image-and-likeness>.

³⁸ NCAA, *NCAA Board of Governors Federal and State Legislation Working Group* (2019), available at https://ncaaorg.s3.amazonaws.com/committees/ncaa/exec_boardgov/BOG_FederalStateLegWGFINAL.pdf, at 1.

³⁹ Cal. Educ. Code § 67456 (West). Legislation undertaken in the state of California does not go into effect until 2023, allowing time for consideration and alignment of NCAA bylaws and legislation in other states.

⁴⁰ H.B. 3904, 2019 Leg. (Ill. 2019); S.B. 6722A, 2019 Leg. (N.Y. 2019); S.B. 335, 2019 Leg. (N.C. 2019); H.B. 1084, 2019 Leg. (Wash. 2019). See also National Conference of State Legislatures, *Pay for Play for College Athletes?* (Sept. 30, 2019), available at <https://www.ncsl.org/blog/2019/09/30/pay-for-play-for-college-athletes.aspx>.

⁴¹ H.R. 1804, 116th Cong. (2019).

- The NCAA must allow an institution to provide an athlete with financial aid at least equal to the cost of attendance.⁴²
- The NCAA may prohibit a college athlete from contracting to profit from his or her NIL without violating antitrust law.⁴³
- A student athlete is not an employee and is not entitled to protection under the Fair Labor Standards Act.⁴⁴

III. Effect of Proposed Changes:

The bill creates s. 1006.74, F.S., to establish the right of intercollegiate athletes and the responsibilities for postsecondary educational institutions concerning an intercollegiate athlete's right to be compensated for her or his NIL. The bill also authorizes an athlete agent to represent an intercollegiate athlete, notwithstanding athletic conference or collegiate athletic association rules, bylaws, regulations, and policies to the contrary.

An intercollegiate athlete may earn compensation for the use of her or his NIL. Such compensation must be commensurate with the market value of the authorized use of the athlete's NIL, may not be provided in exchange for athletic performance or attendance at a particular institution, and may only be provided by a third party unaffiliated with such athlete's postsecondary educational institution.

An intercollegiate athlete who enters into a contract for compensation for the use of her or his NIL must disclose the contract to the postsecondary educational institution at which she or he is enrolled, in a manner designated by the institution. An intercollegiate athlete may not enter into a contract for compensation for the use of her or his NIL if a term of the contract conflicts with a term of the intercollegiate athlete's team contract.⁴⁵ A postsecondary educational institution asserting such conflict must disclose each relevant contract term in conflict to the intercollegiate athlete or her or his representative.

The bill requires an athlete agent representing an intercollegiate athlete for the purposes of securing compensation for the use of NIL to be licensed under Florida law. Similarly, the bill requires an attorney representing an intercollegiate athlete for such purposes to be a member in good standing with The Florida Bar. The duration of a contract for representation of an intercollegiate athlete for compensation for the use of such athlete's NIL may not extend beyond such athlete's participation in an athletic program at a postsecondary educational institution. An intercollegiate athlete under 18 years of age must have any contract for compensation for the use of her or his NIL approved as provided under Florida law.⁴⁶

An athlete agent may represent an intercollegiate athlete in securing compensation for the use of such athlete's NIL, notwithstanding athletic conference or collegiate athletic association rules, bylaws, regulations, and policies to the contrary.

⁴² *O'Bannon v. Nat'l Collegiate Athletic Ass'n*, 802 F.3d 1049 (9th Cir. 2015).

⁴³ *Id.*

⁴⁴ *Berger v. Nat'l Collegiate Athletic Ass'n*, 843 F.3d 285, 293 (7th Cir. 2016).

⁴⁵ The term "team contract" is not defined.

⁴⁶ See ss. 743.08 and 743.09, F.S.

The bill establishes responsibilities for postsecondary educational institutions. A postsecondary educational institution may not:

- Adopt or maintain a contract, rule, regulation, standard, or other requirements that prevents or unduly restricts an intercollegiate athlete from earning compensation for the use of her or his NIL. Earning such compensation may not affect the intercollegiate athlete's grant-in-aid or athletic eligibility.
- Prevent or unduly restrict an intercollegiate athlete from obtaining professional representation by an athlete agent or attorney engaged for the purpose of securing compensation for the use of her or his NIL.

Under the bill, a current or prospective intercollegiate athlete may not be compensated, or cause to be compensated, for the use of her or his NIL by:

- A postsecondary educational institution; or
- An entity whose purpose includes benefiting a postsecondary educational institution or its athletic program (or an employee, officer, or director of such entity).

Under the bill, grant-in-aid awarded to an intercollegiate athlete by a postsecondary educational institution is not compensation as it relates to the student athlete's NIL and may not be revoked or reduced as a result of an intercollegiate athlete earning compensation or obtaining relevant professional representation.

The bill requires a postsecondary educational institution to conduct a financial literacy and life skills workshop at the beginning of the intercollegiate athlete's first and third academic years. The workshop must be for a minimum of 5 hours, and at a minimum, include information or skills related to financial aid, debt management, marketing, advertising, referral, or solicitation by providers of financial products or services. It also must include time management skills and academic resources. The workshop may not include any marketing advertising referral or solicitation by providers of financial products or services.

The bill defines:

- "Athletic program" to mean an intercollegiate athletic program at a postsecondary educational institution.
- "Intercollegiate athlete" to mean a student who participates in an athletic program.
- "Postsecondary educational institution" to mean a state university, Florida College System institution, or private college or university receiving state financial aid or tuition assistance.

The bill requires the Board of Governors of the State University System and the State Board of Education to adopt relevant regulations and rules.

The bill takes effect July 1, 2021.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:Commerce Clause

The bill includes regulations governing participation in intercollegiate athletics at postsecondary educational institutions. These requirements may affect interstate commerce. The U.S. Constitution confers authority upon the federal government to regulate commerce among the states.⁴⁷ Nondiscriminatory state laws affecting interstate commerce are valid unless the burdens imposed on interstate commerce clearly outweigh the local benefits.⁴⁸

Contract Clause

The Florida Constitution includes a prohibition against laws impairing the obligation of contracts.⁴⁹ The U.S. Constitution includes a similar provision against the substantial impairment of contracts.⁵⁰ The bill may affect the obligations of postsecondary educational institutions to uphold existing contracts prohibiting students participating in intercollegiate athletics from earning compensation through the use of name, image, or likeness. Substantial impairments to existing contracts may be acceptable if the degree of the impairment is both “reasonable and necessary to achieve a valid state interest.”⁵¹

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

Violations of National Collegiate Athletic Association (NCAA) bylaws may impact the eligibility of student athletes in the state to participate in intercollegiate athletics, and different laws in effect in different states may make it difficult to adopt a uniform

⁴⁷ U.S. Const., Art. 1, s. 8, cl. 3.

⁴⁸ *Dep’t of Revenue of Ky. v. Davis*, 553 U.S. 328, 338–39 (2008).

⁴⁹ Art. 1, s. 10, Fla. Const.

⁵⁰ U.S. Const., Art. 1, s. 10.

⁵¹ *Nat’l Collegiate Athletic Ass’n v. Roberts*, TCA 94-40413-WS, 1994 WL 750585 (N.D. Fla. Nov. 8, 1994) (citing *Nat’l Collegiate Athletic Ass’n v. Miller*, 795 F. Supp. 1476, 1486 (D. Nev. 1992)).

approach to supporting student athletes.⁵² The anticipated update to the NCAA's bylaws and policies in January 2021 may place additional pressures on student athletes to attend only institutions in compliance with NCAA rules and bylaws in order to participate in intercollegiate athletics for the 2020-2021 academic year.

C. Government Sector Impact:

The bill may have a negative, indeterminate fiscal impact on postsecondary educational institutions. The bill may require university boards of trustees and related staff to amend university policies and regulations and draft related documents.⁵³ Additional athletics staff to provide oversight on student athlete compensation at each institution may also need to be hired.⁵⁴

VI. Technical Deficiencies:

None.

VII. Related Issues:

The bill provides that an intercollegiate athlete may not enter into a contract for compensation for the use of her or his NIL if a term of the contract conflicts with a term of the intercollegiate athlete's team contract. The term "team contract" is not defined. The term may relate to "student athlete behavior contracts" in which a student athlete is required to meet specified academic and behavioral standards.⁵⁵

The effective date of the bill is July 1, 2020. The NCAA is currently considering updating its bylaws and policies related to the issues presented in this bill. The updated bylaws and policies are anticipated to be released by the NCAA in January 2021. It is not clear how this bill will affect the rights and responsibilities of Florida's NCAA-member educational institutions and the institution's student athletes.

VIII. Statutes Affected:

This bill substantially amends section 468.453 of the Florida Statutes.

This bill creates section 1006.74 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS/CS by Innovation, Industry, and Technology on February 17, 2020:

⁵² State University System of Florida, *Agency Bill Analysis for SB 646* (2020), at 4. (on file with the Senate Committee on Innovation, Industry, and Technology).

⁵³ *Id.*, at 3.

⁵⁴ *Id.*

⁵⁵ See Study.com, *Athlete Behavior Contract Template*, available at: <https://study.com/academy/lesson/athlete-behavior-contract-template.html> (last visited Feb. 12, 2020).

The committee Substitute:

- Prohibits an entity whose purpose includes benefiting a postsecondary educational institution or its athletic program (or an employee, officer, or director of such entity) from compensating a current or prospective intercollegiate athlete for the use of her or his name, image, or likeness (NIL).
- Requires a postsecondary educational institution to conduct a financial literacy and life skills workshop at the beginning of the intercollegiate athlete's first and third academic years and specifies conditions for the workshop.
- Extends the effective date of the bill from July 1, 2020 to July 1, 2021.

CS by Education on February 10, 2020:

The committee substitute removes sections addressing contracts made by minors to license name, image, and likeness (NIL) while participating in intercollege athletics and compensation for postsecondary student athletes; amends a section to require an athlete agent to hold a valid license and authorize an athlete agent to represent an intercollegiate athlete in securing compensation for use of NIL; and creates a new section to provide intercollegiate athletes equal opportunity to control and profit from the commercial use of NIL, protected from unauthorized appropriation and commercial exploitation of publicity rights, including NIL. Specifically, the amendment:

- Defines the following terms:
 - "Athletic program" to mean an intercollegiate athletic program at a postsecondary educational institution.
 - "Intercollegiate athlete" to mean a student who participates in an athletic program.
 - "Postsecondary educational institution" to mean a state university, Florida College System institution, or private college or university receiving aid under chapter 1009.
- Establishes compensation and rights for intercollegiate athletes and responsibilities for postsecondary educational institutions as follows:
 - An intercollegiate athlete may earn compensation for the use of such athlete's NIL. Such compensation must be commensurate with the market value of the authorized use of the athlete's NIL, may not be provided in exchange for athletic performance or attendance at a particular institution, and may only be provided by a third party unaffiliated with such athlete's postsecondary educational institution.
 - A postsecondary educational institution may not adopt or maintain a contract, rule, regulation, standard, or other requirements that prevents or unduly restricts an intercollegiate athlete from earning compensation for the use of her or his NIL. Earning such compensation may not affect the intercollegiate athlete's grant-in-aid or athletic eligibility.
 - A postsecondary educational institution may not compensate a current or prospective intercollegiate athlete for the use of her or his NIL.
 - A postsecondary educational institution may not prevent or unduly restrict an intercollegiate athlete from obtaining professional representation by an athlete agent or attorney engaged for the purpose of securing compensation for the use of her or his NIL.
 - An athlete agent representing an intercollegiate athlete for the purposes of securing compensation for the use of NIL must be licensed under part IX of

- chapter 468, and an attorney representing an intercollegiate athlete for such purposes must be a member in good standing of The Florida Bar.
- Grant-in-aid, including cost of attendance, awarded to an intercollegiate athlete by a postsecondary educational institution is not compensation for such purposes and may not be revoked or reduced as a result of an intercollegiate athlete earning compensation or obtaining relevant professional representation.
 - An intercollegiate athlete under 18 years of age must have any contract for compensation for the use of her or his NIL approved under statute.
 - An intercollegiate athlete's contract for compensation for the use of NIL may not violate these rights and responsibilities.
 - An intercollegiate athlete may not enter into a contract for compensation for the use of NIL if a term of the contract conflicts with a term of the intercollegiate athlete's team contract. A postsecondary educational institution asserting such conflict must disclose each relevant contract term in conflict to the intercollegiate athlete or her or his representative.
 - An intercollegiate athlete who enters into a contract for compensation for the use of her or his NIL must disclose the contract to the postsecondary educational institution at which she or he is enrolled, in a manner designated by the institution.
 - The duration of a contract for representation of an intercollegiate athlete or compensation for the use of such athlete's NIL may not extend beyond such athlete's participation in an athletic program at a postsecondary educational institution.
 - Requires the Board of Governors and the State Board of Education to adopt relevant regulations and rules.
 - Specifies that a person must hold a valid license as an athlete agent to act as an athlete agent representing an intercollegiate athlete for purposes of contracts authorized under statute.
 - Authorizes an athlete agent to represent an intercollegiate athlete in securing compensation for the use of such athlete's NIL under statute, notwithstanding athletic conference or collegiate athletic association rules, bylaws, regulations, and policies to the contrary.

B. Amendments:

None.