

California Clears the Way for College Athletes to Get Their “Fair” Share of Licensing Pie

The Bottom Line

- *The Fair Pay to Play Act is the latest effort in an ongoing battle to reform collegiate athletics. It threatens to upend the NCAA’s efforts to preserve the ideals of amateurism by allowing student athletes to profit from their own name, image and likeness rights. Many argue that it is both fair to athletes and will lift the veil of corruption that permeates college athletics.*
- *While colleges and athletes wait for the NCAA to respond, a few outcomes seem likely:*
 - *More states will follow California’s lead and enact their own legislation;*
 - *Faced with potentially conflicting legislation across multiple states, if the NCAA is unable to prevail in court, it will need to compromise on a uniform approach across states; and*
 - *College sports will retain their popularity.*

Sending shockwaves across the collegiate landscape, California Governor Gavin Newsom signed SB 206, the Fair Pay to Play Act (the Act) on September 30, 2019.

The Act takes aim squarely at the National Collegiate Athletic Association’s (NCAA) amateurism rules which prohibit student athletes from profiting from their athletic skill while in college and threatens to upend the fraught and controversial relationship between colleges and the athletes who represent them on the playing field.

Recognizing that this represents a tectonic shift in the relationship between student athletes and the schools where they play, it is not scheduled to take effect until **January 1, 2023**.

Restrictions on Colleges and Universities

Despite its title, the Act imposes no obligations on either colleges or the NCAA to compensate athletes directly. Advocates in other actions have sought to characterize student athletes as employees and seek compensation and other employment benefits for athletes. Instead, it takes its lead from *O’Bannon v. NCAA* and focuses on the opportunity for student athletes to earn money outside of school.

Specifically, both public and private colleges and universities in California are now prohibited from:

- Preventing any student athlete from earning compensation from the use of the student athlete’s name, image or likeness;
- Compensating student athletes for the use of their name, image or likeness, which prevents schools from conditioning scholarships on a grant of marketing rights to the school; and

- Revoking scholarships as a result of student athletes earning compensation from the use of their name, image or likeness.
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Restrictions Beyond California Schools

The scope of the Act is not limited to colleges and universities. It also prohibits athletic associations, conferences and the NCAA from preventing student athletes from participating in intercollegiate athletics or preventing California colleges and universities from participating in intercollegiate athletics. This provision anticipates the likely response by the NCAA and is likely to be at the center of near certain litigation. The Act further prohibits California colleges and universities, as well as athletic associations, conferences and the NCAA, from preventing student athletes from hiring licensed agents and/or attorneys to represent them in marketing and licensing efforts.

Impact on Athletes

Backers of the Act believe it will enable student athletes to properly earn compensation for the use of their name and likeness. While it is unclear whether there is a market for the name and likeness rights for all but a handful of the most celebrated student athletes, the potential ramifications are more far reaching.

Even where there is no meaningful market for name and likeness rights, there is now a mechanism for outside parties to pay student athletes simply to attend or remain at a school, in ways that were previously forbidden.

Instead of a booster who owns a local car dealership providing a car to an athlete under the table, now the booster can provide the vehicle in an openly transparent transaction. No longer would the transaction jeopardize the athlete's career as well as the school's reputation and athletic records. Rather, the booster would simply be licensing the athlete's name and likeness rights in exchange for the vehicle.

Nationwide Impact

While a growing chorus of voices has advocated for fundamental change in how athletes are compensated for their performance, the Act represents the first concrete step in achieving this goal. However, it is unlikely to be the last step, especially as some await the NCAA's response.

Already, a similar bill has been introduced in New York and Florida, and lawmakers in Pennsylvania, South Carolina, Colorado and Oregon have indicated their states will soon take up similar bills.

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