

Missouri Enacts Progressive Name, Image, and Likeness Law

By: Tate Thompson and Curry Sexton

In the absence of uniform laws from Congress or a more robust policy from the NCAA, states continue to look for ways to help their institutions compete in the name, image, and likeness (NIL) “arms race.” One way is for states to implement progressive NIL laws. Effective August 28, 2023, Missouri institutions will be able to arm themselves with arguably the most progressive state NIL law in the country. H.B.417, which was recently signed by Governor Mike Parson, significantly amends Missouri’s prior NIL law. As a result, Missouri institutions and the student-athletes who attend them, will likely benefit greatly following the most recent amendment.

Section 173.280. Compensation of Student-Athletes Permitted, When?

Throughout the NIL era, Missouri has been among the most aggressive states in removing barriers for student-athletes to profit off of their NIL. After the NCAA first permitted student-athletes to benefit from their NIL in July 2021, the Missouri legislature quickly enacted Section 173.280 into the Missouri Code. The original version of the statute allowed student-athletes not only to profit off their NIL, but also permitted them to hire agents and other advisors to help them maximize their NIL opportunities.

However, like many early state NIL laws, Section 173.280 included some restrictions on how student-athletes could benefit from their NIL. Most notably among these restrictions were prohibitions against any school official providing any NIL benefit or assistance to student-athletes. Additionally, any NIL benefits were restricted to student-athletes at the collegiate level (i.e., high school athletes could not benefit from their NIL without risking their college eligibility). The law was modified in August 2022 to allow some participation from school officials on behalf of college student-athletes, but several guardrails remained in place.

H.B. 417: Revising Section 173.280 and Taking the Next Step

H.B. 417 eliminates these barriers and then some. The amendment significantly expands Section 173.280 and, in many ways, goes further than other states in guaranteeing student-athletes’ NIL rights. The most significant changes include:

- (1) the law will allow schools to actively participate in NIL deals;
- (2) the law will allow high school athletes to receive NIL compensation from a Missouri institution once they have signed a letter of intent; and
- (3) the law challenges the NCAA and others’ ability to enforce any NIL restrictions.

First, as amended, Section 173.280.4(b) allows coaches and other members of the school’s athletic department “to identify, create, facilitate, negotiate, support, enable, or otherwise assist” student-athletes in profiting off their NIL. Schools can capitalize by directing coaches and recruiters to work alongside businesses, NIL collectives, and other third parties to maximize recruits’ and current student-athletes’ NIL opportunities. Athletic departments may go one step further by establishing dedicated offices for the procurement and development of NIL opportunities and relationships. Effectively, athletic departments

have been given the green light to maximize student-athletes' NIL opportunities.

Another significant change is the law now permits high school athletes to receive NIL compensation from a Missouri institution or related collective. This change is significant, as most other states' NIL laws do not extend such rights to high school athletes. The law only extends to Missouri high school athletes who have signed a letter of intent with a Missouri institution. Though limited, this is a significant change and will likely provide a massive benefit to Missouri institutions.

Additionally, the amendment challenges the NCAA's authority to regulate NIL deals. Specifically, "[a]n athletic association, athletic conference, or any other organization with authority over varsity intercollegiate athletics" is prohibited from preventing or penalizing student-athletes from profiting off their NIL. Similarly, such regulatory bodies may not prevent Missouri institutions from participating in NIL activities or take any action to investigate or penalize them for doing so. Missouri has firmly planted its flag in support of the view that any NIL rules adopted by the NCAA or the conferences are subordinate to Missouri law.

Other notable provisions of the law include the following:

- *Licensing Rights.* Subsection 5 allows schools to license their "unique identifiers" (logos, emblems, mottos, school colors, etc.) to student-athletes in connection with NIL deals. Similar provisions have been adopted in other states, but the granting of these "co-branding" rights significantly boosts the marketability of Missouri student-athletes in NIL deals.
- *NIL Contract Terms.* Subsection 7 places certain limits on the composition of NIL deals. First, any NIL deal may not condition the student-athlete's compensation on athletic performance. Conversely, NIL deals *may* be conditioned on the student-athlete attending a particular school. In essence, this allows the payor to pull an NIL deal if the student-athlete decides to transfer to a different school.
- *Educational Workshops.* Subsection 8 expands and clarifies the schools' obligations in providing "educational workshops" to student-athletes. Schools will be required to provide a minimum of two unique workshops per year "that may include topics such as financial literacy, life skills, time management, and entrepreneurship."
- *Enforcement Rights.* Subsection 11 expands the rights of student-athletes to pursue civil claims against anyone who interferes with their ability to pursue an NIL deal. Importantly, however, subsection 14 protects school officials against such claims for any alleged damages "resulting from decisions or actions routinely taken in the course of intercollegiate athletics." For example, a student-athlete will not be able to go after a coach for costing him NIL opportunities by benching him.
- *No Effect on Other Laws.* Several provisions of the amended law aim to prevent the law from affecting other existing laws related to college athletics. For example, subsection 15 provides that the revised law has no effect on student-athlete protections under Title IX. Additionally, subsection 4(2)(c) aims to preserve the student-athletes non-employee status. Lastly, subsection 7(2) permits 501(c)(3) organizations to pay student-athletes through NIL deals.

Conclusion

There is a lot to unpack in the most recent amendment to Section 173.280. The amendment can fairly be described as an aggressive step in the direction of promoting NIL rights for Missouri student-athletes. Unless Congress steps in to adopt a federal law governing NIL rights, states will likely continue to outline what student-athletes can and cannot do to maximize their NIL. At least for now, Missouri remains at the vanguard of expanding athletes' NIL rights.

This article is general in nature and does not constitute legal advice. The authors of this article, Tate

Thompson and Curry Sexton are members of Seigfreid Bingham's Sports and Entertainment Industry Group and routinely represent clients in collegiate athletics. If you or your organization have questions about the impact of these developments, please contact Tate or Curry at 816.421.4460.