Bipartisan Name, Image, and Likeness Bill Introduced in U.S. House

By Curry Sexton and Greg Whiston

On Thursday, Reps. Anthony Gonzalez (R-Ohio) and Emanuel Cleaver (D-Mo.), alongside three Republican and three Democrat cosponsors, introduced a bill that would provide clarity and uniformity to the ongoing battle over the name, image, and likeness ("NIL") rights of college athletes. The bill is the second NIL-related bill introduced in Congress, but it is the first with bipartisan support. This bill is thought to be more player-friendly than the legislation introduced this summer by Sen. Marco Rubio (R-Fla.).

Under the proposed bill, athletes would be permitted to receive endorsement deals and could engage representatives to negotiate and solicit such deals. Further, athletes would not be prohibited from receiving endorsements that conflict with their respective schools' sponsorship agreements.

Nonetheless, the bill meets several NCAA requests, including preemption and restriction. If passed, the bill would preempt all state NIL laws (including those already passed in California, Colorado, Florida, Nebraska, and New Jersey, with Florida's law set to go into effect on July 1, 2021) and would restrict athletes from receiving endorsement deals from certain companies, including those associated with alcohol, tobacco, vaping, marijuana or drug dispensaries, gambling, and adult entertainment. Additionally, the bill would prohibit boosters, i.e., those who provide "substantial financial assistance or services" to schools, from providing "any funds or thing of value as an inducement for a student-athlete to enroll or remain at a specific institution."

The antitrust language in this bill is likely not as expansive as the NCAA would hope. Though the bill's guidance states that none of its provisions can form the basis for an antitrust lawsuit, it is not nearly as strongly worded as Rubio's proposal that states "no cause of action shall lie or be maintained in any court" against the NCAA or schools related to the adoption of new NIL legislation.

Interestingly, this bill calls for enforcement and oversight of NIL to be handled by the Federal Trade Commission. If passed, the FTC would be tasked with adjudicating athlete complaints. The bill would also lead to the creation of a commission that would continue studying NIL and would report to Congress annually.

Gonzalez, a former Ohio State and NFL wide receiver, told USA TODAY Sports, "There are things that everybody's going to see that they like and some things that they wish were different. But I think that's the sign of a good bill. And, frankly, that's the hallmark of a bipartisan bill. It's never everything that any one individual, or one group, wants. It's always a collaboration." However, he acknowledged that it is

unlikely this bill will pass this year but hoped that it would be tackled before the effective date of Florida's NIL law.

Stay tuned for future developments related to NIL, for which we will keep you updated.

The authors of this article, Curry Sexton and Greg Whiston, are members of Seigfreid Bingham's Sports and Entertainment Group and routinely represent clients in collegiate athletics. If you or your organization have questions about the impact of the NCAA's most recent announcement, please contact either author at 816-421-4460.

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