HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCB WTS 20-01 Intercollegiate Athlete Compensation and Rights
SPONSOR(S): Workforce Development & Tourism Subcommittee
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Workforce Development & Tourism Subcommittee	14 Y, 0 N	Willson	Barry

SUMMARY ANALYSIS

The National Collegiate Athletic Association (NCAA) is a nonprofit organization whose voluntary membership includes colleges, universities, athletic conferences, and other affiliated organizations. The NCAA regulates intercollegiate athletic competitions in various sports across multiple divisions. As the governing body for the majority of intercollegiate athletic programs, the NCAA provides that its basic purpose is to "maintain intercollegiate athletics as an integral part of the educational program and the athlete as an integral part of the student body and, by so doing, retain a clear line of demarcation between intercollegiate athletics and professional sports." NCAA rules prohibit student-athletes from being paid for the use of their names, images, and likenesses.

The bill authorizes intercollegiate athletes to earn compensation for their name, image, likeness, or persona (NILP). The bill seeks to preserve the integrity, quality, character, and amateur nature of intercollegiate athletics while maintaining a clear distinction between amateur and professional sports by:

- Providing that compensation for athletic performance or attendance at a particular institution remains prohibited.
- Allowing NILP compensation only if it is provided by a third party unaffiliated with the athlete's postsecondary educational institution.

The bill prohibits postsecondary educational institutions receiving state aid (Florida College System institutions, State University System institutions, and private colleges and universities) from:

- Preventing or unduly restricting an intercollegiate athlete from earning NILP compensation.
- Preventing or unduly restricting an intercollegiate athlete from obtaining professional representation for purposes of seeking NILP compensation.
- Revoking or reducing grant-in-aid awards for an intercollegiate athlete who earns compensation for his or her NILP.

The bill specifies that the terms of a contract for NILP compensation may not conflict with the terms of the intercollegiate athlete's team contract or extend beyond the time of the athlete's participation in an athletic program at a postsecondary educational institution.

In addition, the bill requires each postsecondary educational institution receiving state aid to:

- Provide intercollegiate athletes with health and disability insurance and a death benefit of $25,000.
- In the event of a sports-related injury, continue providing such insurance for the time it takes the athlete to recover from the injury, subject to certain conditions.
- Maintain grant-in-aid for intercollegiate athletes until the athlete graduates, under certain circumstances.
- Conduct a financial and life skills workshop at the beginning of the intercollegiate athlete's first and third academic years.

The bill will have an indeterminate fiscal impact on certain postsecondary educational institutions.

The bill provides an effective date of July 1, 2020.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

National Collegiate Athletic Association

The National Collegiate Athletic Association (NCAA) is a nonprofit organization whose voluntary membership includes colleges, universities, athletic conferences, and other affiliated organizations. The NCAA regulates intercollegiate athletic competitions in various sports across three divisions (Division I, Division II, and Division III). As the governing body for the majority of intercollegiate athletic programs, the NCAA provides that its basic purpose is to "maintain intercollegiate athletics as an integral part of the educational program and the athlete as an integral part of the student body and, by so doing, retain a clear line of demarcation between intercollegiate athletics and professional sports."[1]

The NCAA issues and enforces rules governing athletic competitions among its member schools. The rules are developed by a member-led governance system in which members introduce and vote on proposed rules. The rules for student-athletes vary by division. In general, the NCAA's amateurism rules prohibit student-athletes from being paid for their athletic abilities, including being paid for commercial endorsements if the reason for being chosen for the commercial endorsement is because of the student's athletic ability. This prohibition includes compensation for the use of a student-athlete's name, image, and likeness in live games, telecast, videogames, and other footage.

Student-athletes are allowed to receive scholarships, or "grants-in-aid," which may cover tuition and fees, room and board, required course-related books, food, and cash stipends to help defray the actual cost of attending school. However, NCAA rules prohibit a student's grant-in-aid from exceeding the cost of attendance at their school.[2]

The NCAA, along with member colleges and universities, award nearly $3.5 billion in athletic scholarships every year to more than 180,000 student-athletes. According to the NCAA, they also provide almost $100 million each year to support student-athletes' academic pursuits and assist them with the basic needs of college life, such as a computer, clothing or emergency travel expenses.[3]

Florida Intercollegiate Athletic Programs

In Florida, 13 schools participate in NCAA Division I athletics, of which 7 compete in the Football Bowl Subdivision, 4 compete in the Football Championship Subdivision, and 2 do not field football teams. There are 13 NCAA Division II athletic programs located in the state, and no NCAA Division III athletic programs. Additionally, Florida is home to 25 institutions participating in the National Junior College Athletic Association (NJCAA), 10 institutions participating in the National Association of Intercollegiate Athletics (NAIA), and 3 institutions participating in the National Christian College Athletic Association (NCCAA).

NCAA Division I Intercollegiate Athletic Programs[4]

[1] NCAA Bylaw 1.3.1. https://web3.ncaa.org/lsdbi/reports/getReport/90008 (last visited Jan. 23, 2020).
[2] NCAA Bylaw 2.13.
[3] NCAA, *Finances*, https://www.ncaa.org/about/resources/finances (last visited Jan. 23, 2020).
[4] *See generally*, U.S. Department of Education, *Equity in Athletics Data Analysis*, https://ope.ed.gov/athletics/#/customdata/search (last visited Jan. 23, 2020).

Institution Name	Classification	Total Undergraduates	Total Expenses	Total Revenue
Florida State University	FBS	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	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
FAMU	FCS	6,852	$ 9,922,955.00	$ 9,922,955.00

Florida Postsecondary Education System

There are various forms of financial assistance available to students in Florida's postsecondary intuitions.[5] These include:[6]

- Gift Aid: Type of financial assistance that does not have to be paid back.
- Grant: A type of student financial assistance, usually based on financial need, designed to assist with educational costs and which has no repayment conditions.
- Loan: A type of student financial assistance that must be repaid.
- Scholarship: A type of student financial assistance based on specific criteria which does not have to be repaid.

Florida Statutes identify a number of publicly funded academic, need, and workforce based scholarships.[7] However, athletic scholarships are not provided for in Florida Statutes. Individual schools award athletic scholarships and grants-in-aid to student athletes.[8] This financial assistance may not exceed the cost of attendance.[9] "Cost of attendance" is defined as the average cost for a student to attend a postsecondary institution for one academic year, which includes the cost of tuition and fees, books and supplies, room and board, transportation, and personal expenses.[10] In Florida's State University System, the average cost of attendance per semester in the 2019-20 school year was $11,232.[11]

[5] Office of Student Financial Assistance, *Financial Aid Terms and Definitions*, https://www.floridastudentfinancialaidsg.org/pdf/TermsAndDefinitions.pdf (last visited Jan. 23, 2020). "Post-secondary institution" is defined as an institution providing educational training opportunities beyond the high school level and awarding degrees, diplomas, or certificates.
[6] *Id*.
[7] *See* ss. 1009.40-1009.894, F.S.
[8] NCAA Recruiting Facts, http://www.ncaa.org/sites/default/files/Recruiting%20Fact%20Sheet%20WEB.pdf. (last visited Jan. 23, 2020).
[9] NCAA Bylaw 15.01.6.1.
[10] Office of Student Financial Assistance, *supra* at 2.
[11] State University System of Florida, *2019-2020 Cost of Attendance*, https://www.flbog.edu/wp-content/uploads/Cost-Attendance-2019-20-FINAL.pdf. (last visited Jan. 23, 2020).

State University System of Florida

Fall/Spring Cost of Attendance On-Campus for Full-Time Undergraduate Florida Residents 2019-20

University	Tuition & Fees	Books & Supplies	Room & Board	Transportation	Other Expenses	Total
FAMU	$4,554	$1,138	$10,986	$1,356	$5,398	$23,432
FAU	5,432	1,248	11,950	2,172	5,210	26,012
FGCU	6,118	1,200	9,672	1,700	1,700	20,390
FIU	6,558	1,350	11,136	2,202	2,612	23,858
FLPoly	4,940	1,200	11,471	2,000	2,000	21,611
FSU	5,666	1,000	10,780	1,180	3,830	22,456
NCF	6,916	1,200	9,529	1,100	2,170	20,915
UCF	5,954	1,200	10,010	1,866	3,104	22,134
UF	6,380	850	10,220	1,110	2,650	21,210
UNF	6,590	1,200	9,720	2,823	1,247	21,580
USF St. Petersburg	5,821	1,100	11,836	1,600	2,500	22,857
USF Tampa	6,410	1,100	11,836	1,600	2,500	23,446
UWF	6,360	1,600	10,062	1,800	2,300	22,122
Average Cost per Semester:	**$2,988**	**$592**	**$5,354**	**$866**	**$1,432**	**11,232**

Source: Annual Survey of SUS Institutions

Notes: Costs that make up the "Other Expense" category can include but are not limited to the following: clothing maintenance/laundry, computer/cell phone, student health insurance, and other personal costs.

USF-Sarasota Manatee is not included in this table because this institution does not have residential students.

NCAA Report on 2018 Division I Revenues and Expenses[12]

In 2018, over 1,100 NCAA schools spent more than $18 billion on athletics while generating only $10.3 billion in revenues. Of the total expenditures in 2018, $3.5 billion went toward financial aid for student-athletes and $3.4 billion was spent on coaches' compensation. In total, only 29 athletic departments had revenues that exceeded expenditures - all of them Power 5 schools[13] - with an average surplus of $9.3 million. In 2018, Power 5 schools accounted for 73% of all NCAA revenues and 43% of total spending. As a whole, Division I schools accounted for 97% of all NCAA revenues and 83% of spending.

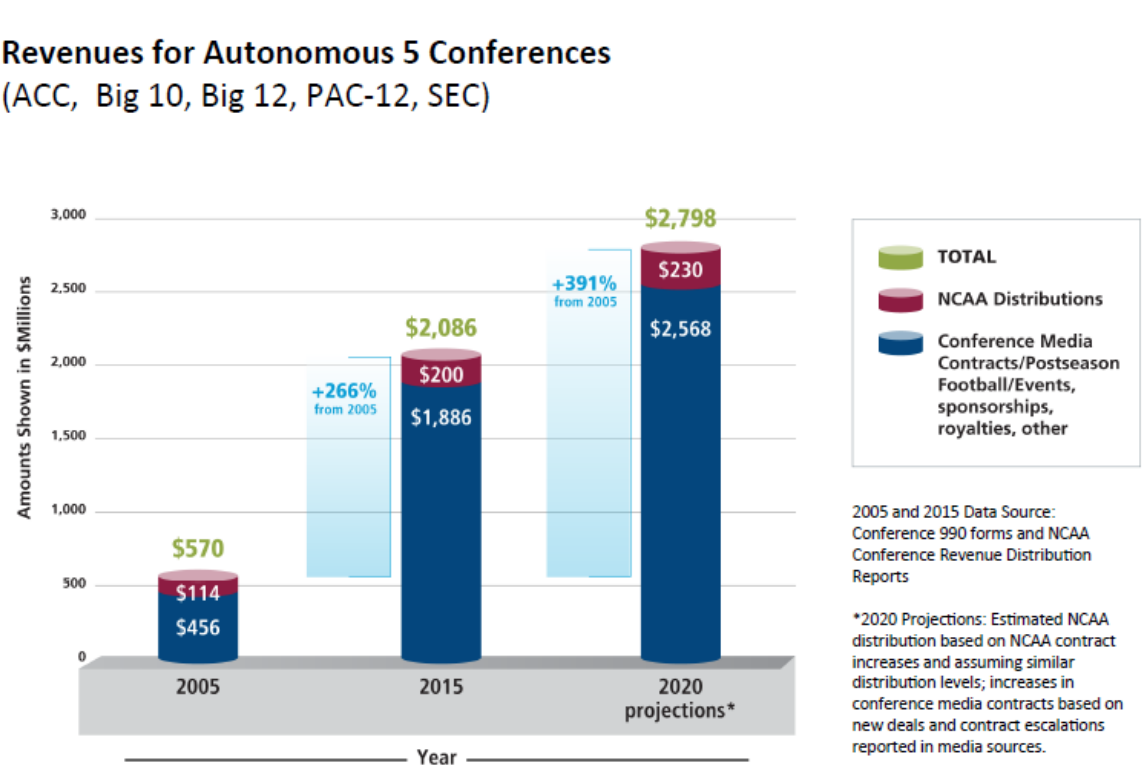
In 2018, median athletic expenses exceeded revenues by $2.6 million at Power 5 schools, approximately $22 million at non-Power 5 Division I schools, and $13.3 million at Division I schools without football.[14] Expenses exceeded revenues at every FCS institution as well.[15] Schools subsidize athletic deficits with student activity fees, direct support from the university, and other means.

[12] NCAA, *Finances of Intercollegiate Athletics*, http://www.ncaa.org/about/resources/research/finances-intercollegiate-athletics (last visited Jan. 23, 2020).

[13] In 2014, the NCAA granted certain autonomy to five athletic conferences and their 65 member institutions, known as the "autonomy" or "Power 5" conferences. NCAA Bylaw 5.3.2.1. The "Power 5" or "autonomy" conferences are comprised by the Atlantic Coast Conference, Big Ten Conference, Big 12 Conference, Pac-12 Conference and Southeastern Conference. Power 5 schools compete in the Football Bowl Subdivision (FBS) and they generate the most revenue (from ticket sales, broadcast rights, NCAA and conference distributions, etc.) in college athletics.

[14] NCAA, *Finances of Intercollegiate Athletics*, http://www.ncaa.org/about/resources/research/finances-intercollegiate-athletics (last visited Jan. 23, 2020).

[15] *Id.*



Source: Knight Commission on Intercollegiate Athletics[16]

Amateurism

Notwithstanding the substantial revenues involved in intercollegiate athletics today, amateurism remains central to the NCAA model. The NCAA Constitution states:

> The Principle of Amateurism. Student-athletes shall be amateurs in an intercollegiate sport, and their participation should be motivated primarily by education and by the physical, mental and social benefits to be derived. Student participation in intercollegiate athletics is an avocation, and student-athletes should be protected from exploitation by professional and commercial enterprises.[17]

The NCAA Constitution further specifies that, relating to "amateur status," an individual loses amateur status and is not eligible for intercollegiate competition in a particular sport if the individual:

> (a) Uses his or her athletics skill (directly or indirectly) for pay in any form in that sport;
> (b) Accepts a promise of pay even if such pay is to be received following completion of intercollegiate athletics participation;
> (c) Signs a contract or commitment of any kind to play professional athletics, regardless of its legal enforceability or any consideration received, except as permitted in Bylaw 12.2.5.1;
> (d) Receives, directly or indirectly, a salary, reimbursement of expenses or any other form of financial assistance from a professional sports organization based on athletics skill or participation, except as permitted by NCAA rules and regulations;
> (e) Competes on any professional athletics team per Bylaw 12.02.12, even if no pay or remuneration for expenses was received, except as permitted in Bylaw 12.2.3.2.1;
> (f) After initial full-time collegiate enrollment, enters into a professional draft (see Bylaw 12.2.4); or
> (g) Enters into an agreement with an agent.[18]

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[16] Knight Commission on Intercollegiate Athletics, *Finances of College Sports* https://www.knightcommission.org/wp-content/uploads/2016/10/2015-conferencerevenues.pdf (last visited Jan. 23, 2020).
[17] NCAA Bylaw 2.9.
[18] NCAA Bylaw 12.1.2.

Notably, the NCAA lacks a clear or consistent definition for the term "amateurism." Courts have observed that the NCAA's definition is "malleable, changing frequently over time in significant and contradictory ways" and have even gone so far as to say that amateurism is not "a core principle of the NCAA."[19] Examples of permissible income under NCAA rules include:

- NCAA rules allow two-sport athletes to be paid professionals in one sport while competing in a different college sport, such as Kyle Parker's $1.4 million baseball signing bonus while serving as Clemson's quarterback in 2010.
- University of Texas swimmer Joseph Schooling received a $740,000 bonus from Singapore for winning a gold medal at the 2016 Olympics.
- Tennis players can receive up to $10,000 per year in prize money (and additional cash on a per-event basis) before or during college.
- College football players can receive bowl gifts up to $550 in value, which can involve players selecting high-tech electronics from a gift suite or receiving a Visa gift card.
- Schools have student-assistance funds to help athletes financially, including insurance policies for elite athletes who want to protect their professional futures.[20]
- Student-athletes are permitted to accept Pell grants above and beyond their cost of attendance.[21]

However, a University of Central Florida football kicker was recently ruled ineligible by the NCAA because of the income that he receives from his monetized YouTube channel.[22]

Name, Image, and Likeness

Individuals have a property right in their name, image, and likeness.[23] However, the NCAA prohibits student-athletes from being paid for the use of their names, images, and likenesses.[24] Many student-athletes generate significant value in their name, image, and likeness and could receive significant compensation for them in an open market.[25] In recent years, the NCAA's policy of prohibiting student-athletes from receiving compensation for the use of their names, images, and likenesses has attracted legal challenges, which alleged that the NCAA's prohibition is an unlawful restraint of trade and violates antitrust laws.

In general, federal and state antitrust laws are intended to promote and foster competition in the marketplace and prevent anticompetitive mergers and business practices. The NCAA and its member institutions have traditionally been viewed by the courts as different from professional leagues, and for this reason have been allowed to implement certain restrictions on competition that many argue are necessary for intercollegiate athletics to exist.[26]

In *O'Bannon v. NCAA*, the U.S. Court of Appeals for the Ninth Circuit found that student-athletes may be injured as a result of the NCAA rules excluding athletes from the market for their names, images,

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[19] *O'Bannon v. National Collegiate Athletic Ass'n*, 802 F.3d 1049, 1058-9 (9th Cir. 2015).
[20] Jon Solomon, *The History Behind the Debate Over Paying NCAA Athletes* (April 23, 2018), https://www.aspeninstitute.org/blog-posts/history-behind-debate-paying-ncaa-athletes (last visited Jan. 23, 2020).
[21] *O'Bannon*, 802 F.3d at 1059.
[22] Katherine Mannion, *NCAA Amateurism Rules Promote Integrity at a Price*, JURIS Magazine (Oct 21, 2017). http://sites.law.duq.edu/juris/2017/10/21/ncaa-amateurism-rules-promote-integrity-at-a-price (last visited Jan. 23, 2020).
[23] Gabe Feldman, *The NCAA and "Non-Game Related" Student-Athlete Name, Image and Likeness Restrictions*, Knight Commission on Intercollegiate Athletics (May 2016) at 3. https://www.knightcommission.org/wp-content/uploads/2008/10/feldman_nil_white_paper_may_2016.pdf (last visited Jan. 24, 2020).
The "right of publicity" is intended to assure an individual the right to own, protect, and commercially exploit his or her name, likeness, or persona. This right is part of the common law right of privacy now codified in s. 540.08, F.S. *See*, Robert C. Sanchez, *Unauthorized Appropriation of an Individual's Name or Likeness-Florida's Appellate Courts and 540.0*, Florida Bar Journal Vol. 72, No. 7, at 57. (Jul./Aug. 1998).
[24] *O'Bannon*, 802 F.3d at 1052.
[25] Feldman, *supra* at 3.
[26] Feldman, *supra* at 3.

and likenesses, but concluded that the NCAA is only required to "permit its schools to provide up to the cost of attendance to their student athletes."[27]

Recent Developments

On September 11, 2019, the California Legislature passed SB 206, the "Fair Pay to Play Act", the first law of its kind in the U.S. allowing college student-athletes to benefit financially from their name, image and likeness, beginning January 1, 2023.

On the same day, the NCAA Board of Governors responded, in part: "We urge the state of California to reconsider this harmful and, we believe, unconstitutional bill and hope the state will be a constructive partner in our efforts to develop a fair name, image and likeness approach for all 50 states."[28] When SB 206 was signed into law a few weeks later, the NCAA released a statement which acknowledged the need for changes in its approach to the name, image, and likeness rights of its student-athletes.[29]

On October 29, 2019, the NCAA's top governing board voted unanimously to permit students participating in athletics the opportunity to benefit from the use of their name, image and likeness in a manner consistent with the collegiate model.[30] Specifically, the board stated that modernization should occur within the following principles and guidelines:

- Assure student-athletes are treated similarly to non-athlete students unless a compelling reason exists to differentiate.
- Maintain the priorities of education and the collegiate experience to provide opportunities for student-athlete success.
- Ensure rules are transparent, focused and enforceable and facilitate fair and balanced competition.
- Make clear the distinction between collegiate and professional opportunities.
- Make clear that compensation for athletic performance or participation is impermissible.
- Reaffirm that student-athletes are students first and not employees of the university.
- Enhance principles of diversity, inclusion and gender equity.
- Protect the recruiting environment and prohibit inducements to select, remain at, or transfer to a specific institution.[31]

Athlete Agents

Background

The licensing and regulation of athlete agents in Florida is a state government function administered by the Department of Business and Professional Regulation (DBPR). DBPR processes licenses and responds to consumer complaints and inquiries in addition to monitoring activities and compliance within the athlete agent industry.

An "athlete agent" is a person:

- who, directly or indirectly, recruits or solicits a student athlete to enter into an agent contract, or
- who, for any type of financial gain, 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, or

[27] *O'Bannon*, 802 F.3d at 1079.
[28] NCAA, *NCAA responds to California Senate Bill 206* (Sept. 11, 2019) http://www.ncaa.org/about/resources/media-center/news/ncaa-responds-california-senate-bill-206 (last visited Jan. 23, 2020).
[29] NCAA, *NCAA statement on Gov. Newsom signing SB 206* (Sept. 30, 2019) http://www.ncaa.org/about/resources/media-center/news/ncaa-statement-gov-newsom-signing-sb-206 (last visited Jan. 23, 2020).
[30] NCAA, *Board of Governors starts process to enhance name, image and likeness opportunities* (Oct. 29, 2019) http://www.ncaa.org/about/resources/media-center/news/board-governors-starts-process-enhance-name-image-and-likeness-opportunities (last visited Jan. 23, 2020).
[31] *Id.*

- who, with any promoter, markets or attempts to market the student athlete's athletic ability or athletic reputation.[32]

The term "athlete agent" includes all employees and other persons acting on behalf of an athlete agent who participate in the activities included under this subsection. The term does not include a spouse, parent, sibling, grandparent, or guardian of the student athlete or an individual acting solely on behalf of a professional sports team or professional sports organization.

A "student athlete" is any student who:
- resides in Florida and participates or formally intends to participate in a college or university's intercollegiate athletics; or
- does not reside in Florida, but participates or formally intends to participate in a Florida college or university's intercollegiate athletics.[33]

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.[34] In order to be valid, such contract is specifically required to include any fees paid to the agent and indicate how such fee is 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. The contracts are generally voidable by the student athlete within 14 days of execution.[35]

In order to be licensed as an athlete agent, an applicant must be at least 18 years of age, of good moral character, and have 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.[36]

Athlete agents must establish and maintain complete business and financial records. The athlete agent is required to "save each entry into a financial or business record for at least 5 years from the date of entry."[37] 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.

Athlete agents are subject to disciplinary action for violating practice requirements set forth in statute. Violations include:
- commingling money or property of another person with the athlete agent's money or property,[38]
- committing mismanagement or misconduct which causes financial harm to a student athlete or college or university,[39] and
- 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.[40]

An unlicensed person is generally prohibited from acting as an athlete agent.[41] Section 468.453(3), F.S., allows an unlicensed individual to act as an athlete agent if:
- a student athlete or person acting on the athlete's behalf initiates communication with the individual; and
- within 7 days after an initial act as an athlete agent, the individual submits an application for licensure.

[32] S. 468.452(2), F.S.
[33] S. 468.452(5), F.S.
[34] S. 468.452(1), F.S.
[35] S. 468.454, F.S.
[36] R. 61-24.004, F.A.C.
[37] S. 468.4565, F.S.
[38] S. 468.456(1)(d), F.S.
[39] S. 468.456(1)(h), F.S.
[40] S. 468.456(1)(k), F.S.
[41] S. 468.4561, F.S.

In Fiscal Year 2018-2019, there were 321 licensed athlete agents in Florida. DBPR received 2 complaints related to athlete agents, but did not take any disciplinary action.[42]

NCAA Athletic Injury Insurance Requirements and Options[43]

Primary Basic Medical Insurance

The NCAA requires member institutions to certify that student-athletes in intercollegiate sports are insured for athletically related injuries[44] sustained while participating in "covered events."[45] A "covered event" includes:

- Any intercollegiate sports activity, including team travel, competition, practices and conditioning sessions during the playing season;
- An NCAA-sanctioned competition in which the insured person is an official competitor; or
- Practice and conditioning sessions that are authorized, organized or directly supervised by athletics department personnel at the member institution other than during the playing season. Such sessions must occur on campus or at approved off-campus facilities as part of an intercollegiate athletics activity. For insured student-athletes or prospective student-athletes who compete in individual sports, off-campus intercollegiate athletics activities must be authorized by athletics department personnel at the participating school and take place at approved locations.[46]

The required insurance must be able to satisfy the deductible of the NCAA Catastrophic Injury Insurance Program.[47] The NCAA also requires that the institution provide medical coverage for at least two years following either graduation or separation of the student-athlete from the institution, whichever occurs first.[48] Compliant insurance may be provided by:

- Parents' or guardians' insurance coverage;
- The student-athlete's personal insurance coverage; or
- The institutions insurance program.

In the event that the student-athlete is uninsured or has insurance that does not meet the NCAA requirement, the NCAA sponsors two insurance products for coverage of the student-athlete. These products are voluntary and separately underwritten for each institution by the Mutual of Omaha insurance company.

The NCAA Group Basic Accident Medical Program is an insurance product sponsored by the NCAA for member institutions to secure group coverage of their student-athletes. This program is coordinated with the NCAA Catastrophic Injury Insurance Program to offer access to the NCAA's catastrophic injury benefits at a lower deductible. The premium for the Group Basic program is paid by the member institution and the student-athlete participates as a member of the institution's group. The NCAA also sponsors the NCAA Primary Accident Program for uninsured student-athletes whose institution does not provide a group insurance option for their student-athletes. Both the Group Basic and Primary

[42] Florida Department of Business and Professional Regulation, *2018-2019 Annual Report*, pp.19, 90.
[43] http://www.ncaa.org/about/resources/insurance/ncaa-student-athlete-medical-insurance-legislation (last visited?)
[44] Athletically related injuries are injuries that are a direct result of participation in a covered event. NCAA Bylaw 3.2.4.9.2.
[45] For NCAA Championships, the NCAA provides basic athletics-injury, catastrophic-injury, and accidental death and dismemberment insurance for participants. NCAA Bylaws 31.7.4.2 (Div. III) and 31.7.4.3 (Div. I and Div. II).
[46] NCAA Bylaw 3.2.4.9.3.
[47] The NCAA Catastrophic Injury Insurance Program begins coverage after the cost of the injury has reached a minimum $75,000, for institutions participating in the NCAA Group Basic Accident Medical Program, or a minimum $90,000 for injuries to covered student-athletes from institutions that are not participating in the NCAA Group Basic Accident Medical Program. NCAA, *NCAA Catastrophic Injury Insurance Program, Benefit Summary for the Period of 8/1/19 through 7/31/21*, https://ncaaorg.s3.amazonaws.com/ncaa/insurance/2019-21INS_NCAACatastrophicBenefitSummary.pdf, (last visited Jan. 23, 2020).
[48] NCAA Bylaw 16.4.1. Each institution has the discretion to determine the method by which it will provide medical care, the method by which it determines whether an injury is athletically related and any policy deemed necessary for implementing the medical care.

Accident programs offer insurance plans that can be tailored to desired benefit and cost levels, i.e., minimum coverages, Health Maintenance Organizations, Preferred Provider Networks, varying deductibles and copays, selected sub-limits,[49] etc. The premiums and costs vary depending on the details of the policy purchased.

NCAA Catastrophic Injury Insurance Program[50]

The NCAA sponsors a catastrophic injury insurance program for active member institutions. This program is offered to member institutions at no additional cost. The insurance covers any student-athlete who is catastrophically injured while participating in a covered intercollegiate athletic activity. The policy has a $90,000 deductible ($75,000 for those institutions that participate in the NCAA Group Basic Accident Medical Program) and provides benefits in excess of any other valid and collectible insurance. Any student-athlete injury with medical expenses exceeding the applicable deductible will trigger the program's coverage.

The NCAA Catastrophic Injury Insurance Program covers students who are athletes, coaches, managers, trainers, and cheerleaders who are catastrophically injured in a covered event.[51] This program provides a $20 million maximum benefit with specified annual or service limits on selected benefit types. It provides various benefits, including medical, dental, rehabilitation, custodial care, disability (cash payments),[52] and death[53] related to the covered catastrophic injury.

Coverage Behavior at NCAA Division I Institutions

In 2016, the NCAA reported on a survey it conducted of head athletic trainers at NCAA Division I institutions.[54] Seventy percent (232 institutions from 32 separate conferences) were reported to have responded to the survey. Notable findings include:

<u>Insurance Coverage</u>

- 68 percent of schools have a primary insurance requirement;
  - If the student-athlete was uninsured, 70 percent provided insurance to them;
- On average, more than 400 student-athletes were covered per institution, regardless of the method of coverage chosen by the institution;

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[49] A sub-limit is a limitation in an insurance policy stating the coverage maximum of a particular type of benefit, but is lower than and contributes to the overall policy limit. https://www.merriam-webster.com/legal/sublimit (last visited Jan. 26, 2020). For example, the NCAA Catastrophic Injury Insurance Program has maximum lifetime coverage amount of $20,000,000. Within that coverage are annual sub-limits of $100,000 for Custodial Care and Home Health Care and $250,000 for Combined Private Duty Nursing, Custodial Care, and Home Health Care. NCAA, *NCAA Catastrophic Injury Insurance Program, Benefit Summary for the Period of 8/1/19 through 7/31/21*, https://ncaaorg.s3.amazonaws.com/ncaa/insurance/2019-21INS_NCAACatastrophicBenefitSummary.pdf, (last visited Jan. 23, 2020). Once the sub-limit is reached, no additional reimbursement is available for that period, even if the policy's maximum overall coverage limit has not been reached.

[50] *See* http://www.ncaa.org/about/resources/insurance/ncaa-catastrophic-injury-insurance-program; http://www.ncaa.org/about/resources/insurance; http://www.ncaa.org/about/resources/insurance/ncaa-student-athlete-medical-insurance-legislation; http://www.ncaa.org/about/resources/insurance/ncaa-insurance-legislation-faqs (last visited?)
See also Nicole Kline, *Bridging the NCAA's Accident Insurance Coverage Gaps? A Deep Dive into the Uncertainties of Injury Coverage in College Contact Sports, and the Impact that has on Athletes' Future Physical and Financial Comfort*, 31 J.L. & Health 55 (2018) *available at* https://engagedscholarship.csuohio.edu/jlh/vol31/iss1/7 (last visited?)

[51] The NCAA's catastrophic insurance policy goes into more detail on various defined terms than the NCAA Constitution does. Please refer to NCAA's benefit summary of the catastrophic injury insurance program for definitions of important terms. NCAA, *NCAA Catastrophic Injury Insurance Program, Benefit Summary for the Period of 8/1/19 through 7/31/21*, https://ncaaorg.s3.amazonaws.com/ncaa/insurance/2019-21INS_NCAACatastrophicBenefitSummary.pdf, (last visited Jan. 23, 2020).

[52] The minimum total disability benefit is $400 per month for the first 12 months and $2700 per month for each month thereafter. The minimum partial disability benefit is $270 per month for the first 12 months and $1,800 per month for each month thereafter. Total disability and partial disability under the catastrophic injury insurance program is based upon physical function loss combined with impacts on activities of daily living. It is not based on a vocational standard. *Id.*

[53] The death benefit is $25,000. *Id.*

[54] NCAA, *NCAA Division I Student-Athlete Insurance Coverage Overall Findings – February 2016*, https://www.ncaa.org/sites/default/files/2016DI-SA-Insurance-Survey_20160525.pdf (last visited Jan. 23, 2020).

- Methods of Coverage:
  - 67 percent purchase insurance;
  - 23 percent self-insure;
  - 6 percent require the student-athlete to obtain personal coverage; and
  - 4 percent make alternate financial arrangements.[55]
- Insurance purchasers (about 155 institutions):
  - Nearly 60 percent had policy premiums between $100,000 and $500,000;
  - 45 percent had insurance deductibles between $0.00 and $1,000;
  - More than 75 percent provided a benefit period of 104 weeks; and
  - 87 percent of accidental insurance policies had no sub-limits;
- Self-insurers (about 53 institutions):
  - 72 percent stated student-athletes and families bear no costs;
  - 59 percent provided a benefit period of 104 weeks; and
  - 85 percent had no sub-limits.
- Student-athlete sourced personal coverage (about 14 institutions), these institutions:
  - Do not review the student-athlete's policies;
  - Provide guidance to the student-athlete regarding deductibles; and
  - Verify the student-athlete's personal coverage.

Costs for Injuries not Covered by Insurance

- 84 percent covered 100 percent of the uninsured injury cost through the athletic program;
- Out of pocket costs to the institution for uninsured injuries varied from a few hundred dollars to millions of dollars; and
- 86 percent reported that the student-athlete had no out of pocket expenses for uninsured injuries.

Other Coverages

- 56 percent covered illness/medical that is unrelated to athletic program activities, most through student health centers.
- 31 percent provide coverage for athletic related injuries after the student-athlete leaves school or exhausts her or his NCAA athletic eligibility (duration not specified), while another 43 percent provide coverage under certain conditions (conditions not specified); and
- 87 percent do not provide enhancements to basic coverage like additional death benefits or higher policy limits.

NCAA Exceptional Student-Athlete Disability Insurance Program[56]

In the early 1990s, the NCAA began a program to allow student-athletes with favorable professional prospects to protect their anticipated high future earnings from potential loss due to injury. The NCAA Exceptional Student-Athlete Disability Insurance Program began with participants in football and men's basketball and over the course of the decade expanded to include baseball, men's hockey, and women's basketball.

To qualify, the student-athlete must have NCAA athletic eligibility remaining in the applicable sport and have demonstrated professional potential, as follows:

- Football – selection in the first two rounds of the upcoming National Football League draft;
- Basketball – selection in the first round of the upcoming National Basketball Association or Women's National Basketball Association, as applicable;
- Baseball – selection in the first round of the upcoming Major League Baseball draft;

[55] The nature of the alternate financial arrangements was not specified.
[56] NCAA, *Exceptional Student-Athlete Disability Insurance Program*, http://www.ncaa.org/about/resources/insurance/exceptional-student-athlete-disability-insurance-program (last visited Jan. 24, 2020).

- Men's Hockey – selection in the first two rounds of the upcoming National Hockey League draft; or
- Other Sports – underwritten on a case-by-case basis.

If the student-athlete is determined to be eligible, she or he is deemed eligible for a premium finance loan. The loan must be repaid when the student-athlete signs a professional contract, a claim is made for a covered injury, or the coverage expires and the loan comes due.

The following maximum coverages apply:

- Football – $10 million;
- Men's Basketball – $10 million;
- Women's Basketball – $250,000;
- Baseball – $5 million;
- Men's Hockey – $3 million; or
- Other Sports – underwritten on a case-by-case basis.

This program only insures against total disability;[57] it does not provide benefits based on partially reduced professional earning capacity (i.e., if the insured signs a professional athletic performance contract in any amount, there is no coverage). The insured student-athlete must prove permanent total disability, based on specified criteria,[58] or qualify for a presumptive disability benefit.[59]

Effect of the Bill

Compensation for Name, Image, Likeness, or Persona

The bill authorizes intercollegiate athletes to earn compensation for their name, image, likeness, or persona (NILP).[60] The bill seeks to preserve the integrity, quality, character, and amateur nature of intercollegiate athletics while maintaining a clear distinction between amateur intercollegiate athletics and professional sports by:

- Providing that compensation for athletic performance or attendance at a particular institution remains prohibited.
- Allowing NILP compensation only if it is provided by a third party unaffiliated with the athlete's postsecondary educational institution.

The bill prohibits postsecondary educational institutions receiving state aid (Florida College System institutions, State University System institutions, and private colleges and universities) from:

- Preventing or unduly restricting an intercollegiate athlete from earning NILP compensation.

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[57] Accidental death coverage is included in the coverage with a benefit equal to the coverage premium. Additional accidental death coverage up to the maximum total disability coverage is provided for an additional premium.

[58] Permanent total disability is established when the following criteria are met:

1. The student-athlete's disability results from an injury or sickness.
2. The student-athlete's injury or sickness occurs while the policy is in force.
3. The student-athlete is under the regular care of a qualified physician.
4. The student-athlete is unable to engage in sporting activity at the professional level.
5. The applicable elimination period has elapsed (12 months).
6. The student-athlete's total disability prevents the signing of any employment contract with any professional team as a professional athlete in the applicable sporting activity.

Id.

[59] Permanent total disability is presumed when the student-athlete's disability has been medically determined to be the result of entire and irrecoverable loss of sight of both eyes or hearing in both ears; total and irrecoverable loss of use of one hand or one foot; quadriplegia; or paraplegia and that the disability is thus preventing the student-athlete from ever participating in the applicable sporting activity at the professional level. *Id.*

[60] The bill includes the term "persona" to more broadly protect an intercollegiate athlete's right of publicity. "Persona" is defined as "the personality that a person … projects in public." *The Merriam-Webster.com Dictionary*, https://www.merriam-webster.com/dictionary/persona (last visited Jan. 26, 2020).

- Preventing or unduly restricting an intercollegiate athlete from obtaining professional representation for purposes of seeking NILP compensation.
    - For such professional representation, an intercollegiate athlete may retain an athlete agent licensed in Florida or an attorney licensed and in good standing with the Florida Bar.
- Revoking or reducing grant-in-aid awards for an intercollegiate athlete who earns compensation for his or her NILP.

The bill specifies that the terms of a contract for NILP compensation may not conflict with the terms of the intercollegiate athlete's team contract or extend beyond the time of the athlete's participation in an athletic program at a postsecondary educational institution. Athletes under 18 years of age must have any such contract reviewed by a court.

Additionally, the bill allows an athlete agent, or attorney, to represent an intercollegiate athlete in securing compensation for use of her or his name, image, likeness, and persona under s. 1006.72, F.S., regardless of athletic conference or collegiate athletic association rules, bylaws, regulations, and policies to the contrary.

Insurance Requirements and Scholarship Protection

In addition, the bill requires each postsecondary educational institution receiving state aid to:

- Provide intercollegiate athletes with health and disability insurance and a death benefit of $25,000.
- In the event of a sports-related injury, continue providing such insurance for the duration of the time it takes the athlete to recover from the injury. Injuries must be timely reported and the right to benefits ends if no benefits are necessary for 2 years.
- Maintain grant-in-aid (i.e., scholarships) for intercollegiate athletes for:
    - Up to one academic year or until the athlete completes their primary undergraduate degree, whichever is shorter, when the athlete has exhausted athletic eligibility.
    - Up to five academic years or until the athlete completes their primary undergraduate degree, whichever is shorter, when the athlete is determined to be medically ineligible to participate in athletics due to an injury that occurred while participating in an athletic program.
- Conduct a financial and life skills workshop at the beginning of the intercollegiate athlete's first and third academic years.

The bill directs the Board of Governors and the State Board of Education to adopt regulations and rules to implement the provisions of the bill.

B. SECTION DIRECTORY:

Section 1 Creates s. 1006.72, F.S.; providing legislative findings; providing definitions; authorizing certain intercollegiate athletes to earn compensation for their names, images, likenesses, and personas; providing requirements for such compensation; requiring postsecondary educational institutions to maintain certain insurance for intercollegiate athletes; requiring the Board of Governors and the State Board of Education to adopt regulations and rules; prohibiting a postsecondary educational institution from preventing or unduly restricting intercollegiate athletes from obtaining specified representation; requiring athlete agents and attorneys to meet specified requirements; etc.

Section 2 Amends s. 468.453, F.S.; providing requirements for certain athlete agents.

Section 3 Providing for an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

The bill may have a negative, indeterminate fiscal impact on certain postsecondary educational institutions to the extent that additional funds are spent to meet certain insurance requirements as required in the bill.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   Not applicable. The bill does not appear to require counties or municipalities to spend funds or take action requiring the expenditure of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of state tax shared with counties or municipalities.

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

The bill directs the Board of Governors and the State Board of Education to adopt regulations and rules to implement the provisions of s. 1006.72, F.S.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES