



Uniform Law Commission

NATIONAL CONFERENCE OF COMMISSIONERS ON UNIFORM STATE LAWS

111 N. Wabash Ave.
Suite 1010
Chicago, IL 60602
(312) 450-6600 tel
(312) 450-6601 fax
www.uniformlaws.org

January 18, 2024

The Honorable Cathy McMorris Rodgers
Chair, House Energy and Commerce
Committee
2125 Rayburn House Office Building
Washington, DC 20515

The Honorable Frank Pallone
Ranking Member, House Energy and
Commerce Committee
2125 Rayburn House Office Building
Washington, DC 20515

The Honorable Gus Bilirakis
Chair, Innovation, Data and Commerce
Subcommittee
House Energy and Commerce Committee
2125 Rayburn House Office Building
Washington, DC 20515

The Honorable Jan Schakowsky
Ranking Member, Innovation, Data and
Commerce Subcommittee
House Energy and Commerce Committee
2125 Rayburn House Office Building
Washington, DC 20515

RE: NIL Hearing & FAIR College Sports Act

Dear Chair Rodgers, Ranking Member Pallone, Chair Bilirakis, and Ranking Member Schakowsky:

Thank you for the opportunity to comment on the FAIR College Sports Act on behalf of the Uniform Law Commission (ULC).

The purpose of the ULC, also known as the National Conference of Commissioners on Uniform State Laws, is to promote uniformity in state law when uniformity is desirable and practicable. The ULC seeks to improve the law by providing states with non-partisan, carefully considered, and well-drafted legislation that brings clarity and stability to critical areas of the law. To accomplish this, Commissioners participate in drafting acts and endeavor to secure enactment of approved acts in the various states.

Since its organization in 1892, the ULC has drafted more than 300 uniform laws on numerous subjects and in various fields of law, including the Uniform Commercial Code, the Uniform Anatomical Gifts Act, the Uniform Interstate Family Support Act, acts on declaratory judgments and enforcement of foreign judgments, electronic transactions, real property and trust

and estate law, and on a range of other subjects. The ULC is headquartered in Chicago and is comprised of more than 350 practicing lawyers, governmental lawyers, judges, law professors and lawyer-legislators, who are appointed by each state, the District of Columbia, Puerto Rico and the U.S. Virgin Islands to research, draft and promote enactment of uniform state laws in areas of state laws where uniformity is desirable and practical.

With the development of interstate transportation and electronic transactions, the states have become increasingly interdependent socially and economically. Confusion or variation of laws among the several states may present, in some fields, a deterrent to the free flow of goods, credit, services, technologies, and persons among the states; restrain full economic and social development; disrupt personal planning; and generate pressures for federal intervention to compel uniformity. The ULC seeks to alleviate these problems in areas of law traditionally left to the states.

The ULC is a strong federalist organization and, as a general matter, we prefer state to federal action. However, we recognize the lack of uniformity in existing state name, image, and likeness (“NIL”) laws presents significant challenges for educational institutions, athletic associations, conferences, coaches, administrators, college athletes, and high school athletes attempting to select which university to attend. Although the existing state laws share many similarities, there are significant differences among the laws that create inconsistent and conflicting NIL regulations across states. For example, some state laws expressly prohibit college athletes from using the marks and logos of their institution during NIL activity, while other states permit such use. Some state laws expressly prohibit institutional involvement in college athlete NIL activity, while other states implicitly permit institutions to arrange or facilitate NIL opportunities for college athletes. Athletes in states without NIL laws have been

able to engage in a wide variety of NIL activities that are prohibited under the laws of other states. This patchwork of state laws has thus led to disparate NIL benefits and opportunities for college athletes dictated almost entirely by the state law, if any, that governs their institution. These differences have become even more magnified as varying NIL laws have impacted the recruiting cycle and influenced the enrollment decisions of prospective college athletes and the transfer decisions of current college athletes.

The decentralized NIL system has also prevented the creation of a uniform mechanism for the oversight, monitoring, and enforcement of college athlete NIL activity, and for educating college athletes about the potential risks and opportunities presented by the new NIL landscape. This lack of enforcement and education has compounded the issues created by the inconsistent NIL laws across states and has heightened the risk that NIL activity will be used as a cover for pay-for-performance or as a recruiting inducement. Without uniform regulation of NIL, it appears increasingly likely that the NCAA and other athletic organizations will be unable to prevent illegitimate NIL activity that threatens to upend the collegiate model of sports.

The importance of having a uniform set of rules governing intercollegiate athletic competitions is well established, as is the notion that intercollegiate sports cannot effectively function with conflicting or inconsistent rules from state to state. Given the interdependence of educational institutions and collegiate athletic programs across the country, the impact of a change in one state's laws could have a ripple effect on schools and athletes in other states. A uniform law across all states would prevent this instability and ensure that schools in each state are playing under the same general rules.

In July 2021, the ULC approved the Uniform College Athlete Name, Image, or Likeness

Act (“Uniform Act”).¹ The Uniform Act was drafted with the input of athlete agents, current and former college athletes, coaches, college athletic department administrators, representatives of the players associations of the National Football League, the National Hockey League, the NCAA, the National Federation of State High School Associations, the NAIA, social media companies, and other stakeholders.

When we formally approved the Uniform Act, we were hopeful that this model would serve as a unifying framework that states could adopt in order to bring stability and clarity to state law. Our goal was to level the playing field and prevent states from racing to the bottom in the absence of robust association or conference rules. Like many of the individual state laws, the Uniform Act created a set of rules and restrictions to ensure that college athletes could benefit from the use of their NIL without hurting their eligibility to compete. With the Uniform Act, we sought to strike a balance between providing more rights to college athletes while maintaining the integrity of intercollegiate sports.

Since the 117th Congress, the ULC has briefed a number of House and Senate offices and congressional committees about our efforts and discussed how the Uniform Act could complement federal NIL legislation. In our conversations, we provided an overview of how a possible cooperative federalism model for NIL legislation would provide a general federal legislative framework working in tandem with the uniform state law. This type of cooperative federalism model, where Congress and the ULC work to create federal and state NIL laws that operate in tandem, may be the optimal solution for achieving uniformity and flexibility for NIL legislation. However, we also recognize that this is a fast-moving situation in which quick coordinated action by all the states to implement a cooperative federalism model may be

¹ <https://www.uniformlaws.org/committees/community-home?CommunityKey=540d3a4a-82de-4b1a-bb1f-3abd6a23b67b>

impossible. To that end, the ULC supports the work of this subcommittee, in large part because the discussion draft of the FAIR College Sports Act borrows considerably from the substantial work the ULC did in our attempt to address the issue.

Both the Uniform Act and the FAIR College Sports Act prohibit educational institutions from limiting specific types of NIL activities that the institution determines has an adverse impact on its reputation *unless* the institution complies with the same policy with respect to its sponsorships and advertising deals. Some state laws list categories of NIL activity that are prohibited in all instances (i.e., alcohol, tobacco, marijuana, and gambling) while others allow the institution to ban any NIL activity that it determines has an adverse impact on its reputation. The approach used in both the Uniform Act and the FAIR College Sports Act has the effect of allowing an institution to prohibit college athletes from entering NIL deals with, for example, an alcohol distributor, *only* if the institution refrains from engaging in sponsorships or similar commercial activity with alcohol distributors. This provides greater fairness to college athletes seeking to exercise their NIL rights.

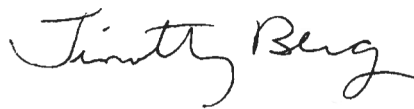
In addition, both the Uniform Act and the FAIR College Sports Act create a registration framework for third parties that mirrors the framework found in many states' existing athlete agent registration statutes. The third-party registration framework provides a mechanism for certifying and regulating third parties who provide compensation to college athletes for the use of their NIL. These third-party registration provisions, which are unique to the Uniform Act and the FAIR College Sports Act, would provide the tools necessary to oversee the booming and potentially abusive NIL industry.

We also want to note, with great appreciation, that the FAIR College Sports Act does not

preempt the work the ULC has done in regulating athlete agents.² The ULC's work in this space—the Uniform Athlete Agents Act (2000)³ and the Revised Uniform Athlete Agents Act (2015) (2019)⁴—has seen widespread success with enactments in 40 states, the District of Columbia, and the U.S. Virgin Islands. By protecting state regulation of athlete agents and agency contracts, the FAIR College Sports Act will serve as a good example of cooperative federalism in action.

Thank you for the opportunity to provide input on this important topic. The ULC would welcome the opportunity to serve as a resource for this subcommittee as you work on the FAIR College Sports Act.

Sincerely,

A handwritten signature in black ink that reads "Timothy Berg". The signature is written in a cursive, flowing style.

Tim Berg
President, Uniform Law Commission

² <https://www.uniformlaws.org/committees/community-home?CommunityKey=cef8ae71-2f7b-4404-9af5-309bb70e861e>

³ The [Uniform Athlete Agents Act \(2000\)](#) has been enacted in Arizona, Arkansas, Colorado, Florida, Georgia, Kansas, Louisiana, Maryland, Mississippi, Nebraska, New Hampshire, New Mexico, New York, North Carolina, Rhode Island, South Dakota, Texas, the U.S. Virgin Islands, West Virginia, and Wyoming.

⁴ The [Revised Uniform Athlete Agents Act \(2015\) \(2019\)](#) has been enacted in Alabama, Delaware, the District of Columbia, Hawaii, Idaho, Indiana, Iowa, Kentucky, Minnesota, Missouri, Nevada, North Dakota, Oklahoma, Oregon, Pennsylvania, South Carolina, Tennessee, Utah, Virginia, Washington, and Wisconsin.