

## NCAA Leaders Back Suspension Of Name, Image Rules

By **Zachary Zagger**

*Law360 (June 28, 2021, 4:30 PM EDT)* -- The NCAA Division I Council on Monday greenlighted an interim suspension of amateurism rules that restrict college athletes' ability to profit from the use of their names, images and likenesses until a federal law or new NCAA rules are enacted.

The D-I Council, a group of school athletic directors, administrators and faculty members responsible for the day-to-day operations of the highest level of college sports, voted to recommend the proposal to the D-I Board of Directors, which meets Wednesday, the NCAA said.

The current name, image and likeness, or NIL rules, prohibit college athletes from being paid for sponsorships or endorsements, among other things. If adopted, the suspension would remain in place until a federal law or new NCAA rules are enacted.

The move comes as at least seven state laws allowing college athletes to monetize their NIL are set to take effect on July 1. More than a dozen other state laws are set to follow in the coming years.

It further comes a week after the U.S. Supreme Court ruled that the NCAA should not get special protection from antitrust suits, exposing the organization to litigation challenging rules restricting the compensation and benefits of college athletes.

According to a statement from the NCAA, the proposed policy provides guidance to schools and college athletes that athletes will be allowed to monetize their NIL "consistent with the law of the state where the school is located" and that schools are responsible for making sure any activities are consistent with state laws.

Athletes at schools in other states would also be allowed to monetize their NIL without violating NCAA rules and athletes will be allowed to use "professional services providers" to do so. Athletes are also advised that they must report NIL deals to their school or conference, if required by state law.

The NCAA said schools and conferences may choose to adopt their own policies in the interim. Last week, the University of Florida promulgated an NIL policy that says athletes can accept NIL pay that is a fair market value and is not in exchange for attending the school. Florida is one of the states set to legalize NIL pay on July 1.

The D-I Council's recommendation of the proposal is a watershed moment for college sports, as you

have the college athletic directors and the administrators formally endorsing the concept of college athletes being allowed to be paid by third parties while playing college sports.

The NCAA has long maintained strict restrictions preventing college athletes from being paid for the use of their NIL or even using their names in promoting their own businesses out of concern that it would turn college athletes into professionals.

"It is an enormous moment and a turning point for college sports, the NCAA and its ability to govern and the whole definition of amateurism," attorney Baird Fogel of Morgan Lewis & Bockius LLP, who represents a variety of sports clients and has been following the NCAA issues, told Law360. "There has always been this line of demarcation between what makes a professional athlete and what constitutes an amateur athlete and that line is being blurred."

"It is a big pivot and things like this don't tend to go backwards," he added.

More than a year ago, the NCAA said it would relax rules to allow athletes to benefit from use of their NIL with certain "guardrails" to prevent pay for play. However, the organization has failed to move forward with such changes as the NCAA v. Alston case was pending before the Supreme Court and as it lobbied Congress to pass a federal law to preempt the varying state laws.

In the meantime, 20 states have passed laws to allow college athletes to be paid for use of their NIL in some form, and many others are considering similar bills.

The NCAA is further facing increasing pressure from public opinion and a series of losses in court in challenges to its rules, including June 21's NCAA v. Alston decision in which Justice Brett Kavanaugh warned the NCAA that it "is not above the law."

Also last week, a federal judge in California rejected the NCAA's bid to toss litigation alleging that even its proposed relaxed NIL rules are antitrust violations.

"The most prudent way forward for the NCAA right now and to avoid litigation is to sort of stand down for now and leave it up to the states and the schools," Fogel said. "That appears to be the position they are now adopting. It is the safest route for them right now."

--Editing by Michael Watanabe.