

Legislative Analysis



HIGH SCHOOL STUDENT ATHLETE NAME, IMAGE, AND LIKENESS (NIL) COMPENSATION

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House Bill 4816 (H-5) as passed by the House
Sponsor: Rep. Jimmie Wilson, Jr.
Committee: Higher Education
Complete to 10-23-23

Analysis available at
<http://www.legislature.mi.gov>

SUMMARY:

House Bill 4816 would create a new act, the Compensation of High School Athletes Act, to provide guidelines for high school student athletes and their ability to receive compensation for their name, image, or likeness (NIL).

Specifically, the bill would prohibit a *high school* from upholding any rule, requirement, standard, or other limitation that prevents a student athlete of that high school from fully participating in high school athletics based on the student athlete's earning compensation from use of their NIL rights.

High school would mean a public or nonpublic school that offers at least one of grades 9 to 12.

The bill would also prohibit a high school, or any officer, director, or employee of a high school, including a coach or member of the coaching staff or any other individual associated with the high school athletic department, from doing any of the following in regard to a student athlete's NIL rights or athletic reputation:

- Identifying or otherwise assisting with opportunities for a student athlete to earn compensation from their NIL or athletic reputation.
- Serving as a student athlete's agent.
- Receiving compensation from the student athlete or a third party for facilitating or enabling those opportunities.
- Attempting to influence the student athlete's high school enrollment or choice of professional representation related to those opportunities.
- Attempting to reduce a student athlete's opportunities from competing third parties.
- Attending any meeting at which a contract for compensation from those opportunities is negotiated or completed between the student athlete and a third party.

This prohibition would not apply to an individual who is acting in their capacity as the student athlete's parent or legal guardian.

Allowable forms of NIL agreements

The bill would allow a high school student athlete to earn NIL compensation from such activities as any of the following:

- Commercials.
- Product endorsements.
- Personal appearances.
- Autograph sessions.

- Merchandise or apparel sales.
- Group licensing.
- Acting as a social media influencer.

A high school student athlete could not receive NIL compensation from activities involving any of the following products and services:

- An adult entertainment product or service.
- An alcohol product.
- A tobacco or electronic smoking product or device.
- A controlled substance.
- Any form of gambling, including sports betting and horse racing.
- A weapon, firearm, or ammunition.
- A nutritional supplement

A high school student athlete also would be prohibited from entering into a written agreement or contract with a third party to earn NIL compensation if any of the following apply:

- The third party is an entity formed for the express purpose of receiving or pooling funds to provide NIL opportunities for student athletes.
- The written agreement or contract is contingent on the student athlete's athletic performance or achievement.
- The written agreement or contract requires the student to miss school or instructional time to meet its provisions.
- The written agreement or contract is an apparel contract that requires the student athlete to display a sponsor's apparel, or otherwise advertise for a sponsor, during an official team activity.

Prohibited actions by entities with authority over high school sports

The bill also would prohibit an *athletic association*, conference, or other group or organization with authority over high school athletics from doing either of the following:

- Preventing a high school student athlete from fully participating in high school athletics based on their earning compensation from their use of their NIL rights.
- Preventing a high school from fully participating in high school athletics without penalty based on a student at that school's use of their NIL rights.

Athletic association would mean an entity that operates for the purpose of developing common rules for the eligibility and competition of high school student athletes in Michigan.

The bill would also prohibit a high school, athletic association, conference, or other *group* or organization with authority over high school athletics from doing any of the following:

- Providing a student athlete of a high school or a prospective student athlete of a high school with compensation in relation to the student athlete's NIL rights.
- Preventing a student athlete of a high school from obtaining professional representation in relation to contracts or legal matters regarding opportunities to be compensated, including representation provided by an athlete agent or legal representation provided by an attorney.
- Preventing a high school student athlete from earning compensation (here including food, shelter, medical expenses, insurance, cash, barter, free products, and discounts) from a third party as a result of the student's NIL rights, or athletic reputation, as long

as the student's contract with the third party does not require the student to advertise for a sponsor in person during an official, mandatory team activity.

Group would include a booster club, a dad's club, or an athletic foundation.

A high school, athletic association, conference, or other group or organization with authority over high school athletics could not interfere with or prevent a student athlete from fully participating in high school athletics based on the student's obtaining professional representation in relation to contracts or legal matters regarding their opportunities to earn compensation, including representation provided by an athlete agent or financial advisor or legal representation provided by an attorney.

An athletic association, conference, or other group or organization with authority over high school athletics also could not prevent a high school from fully participating in high school athletics without penalty as a result of a student of the high school's obtaining professional representation in relation to contracts or legal matters regarding the student's opportunities to earn compensation, including representation provided by an athlete agent or financial advisor or legal representation by an attorney.

(For purposes of the above two paragraphs, professional representation by an athlete agent, financial advisor, or attorney would have to be provided by persons licensed in Michigan.)

Required notice of NIL opportunity

A student athlete who intends to enter into a verbal or written opportunity or contract that would provide them compensation for use of their NIL rights would need to obtain the permission of at least one parent or guardian before entering into the agreement. This would not apply if the student is 18 years of age or older or is an emancipated minor.

In addition to obtaining the permission of a parent or guardian, the student athlete would have to disclose the proposed opportunity or contract for review to an official of the Michigan High School Athletic Association (MHSAA) at least seven days before committing to that opportunity.

If the MHSAA identifies a conflict between the student athlete's proposed opportunity or contract, the MHSAA would have to communicate that conflict to the student athlete so the student athlete could negotiate a revision of the opportunity or contract to avoid the conflict. That revision would be subject to additional review and approval by the MHSAA in accordance with these provisions.

A policy of a high school's athletic program could not prevent a student athlete from receiving compensation for using their NIL rights for a commercial purpose when the student is not engaged in an official team activity. This would include participating in or being part of an advertisement that was created while the student was not engaged in an official team activity but that could otherwise be broadcasted, displayed, or disseminated at any time.

The above provisions would not apply to a contract entered into, modified, or renewed on or before the effective date of bill. (In other words, those provisions would take effect the day *after* the bill itself takes effect.)

Scope of the act

The bill states that it would not require a high school, athletic association, conference, or other group or organization with authority over high school athletics to identify, create, facilitate, negotiate, or otherwise enable opportunities for a high school student athlete to earn compensation for NIL rights.

The bill also states that it would not establish or bestow the right of a student to use the name, trademarks, service marks, logos, symbols, or any other intellectual property, whether registered or not, of a high school, athletic association, conference, or other group or organization with authority over high school athletics in furtherance of their opportunities to earn compensation for the use of their NIL rights.

The bill also states that it would not limit the right of a high school or athletic association to establish and enforce any of the following:

- Academic standards, requirements, regulations, or obligations for its students.
- Team rules of conduct or other rules of conduct.
- Standards or policies regarding the governance or operation of or participation in high school varsity athletics.
- Disciplinary rules and standards generally applicable to all students of the high school.
- Rules relating to amateur status that do not conflict with the proposed act.

Required reporting

By December 31, 2024, and by December 31, 2025, any nonprofit trade association that represents high schools in this state would have to provide a written summary of any congressional action on legislation on student athlete NIL compensation for each of those years to the chair of the Michigan Department of Education (MDE)

By June 30, 2026, any nonprofit trade association that represents high schools in this state would have to provide to MDE a written summary of the preparedness of the association's respective member high schools in implementing the new act. (Note that the bill does not include a prospective effective date.)

Other provisions

Finally, the bill would stipulate that a legal settlement arising under the act could not permit noncompliance with the act.

Note that the bill does not provide any penalties or remedies for violating any of its prohibitions.

BACKGROUND AND DISCUSSION:

According to sponsor testimony, the intent of the bills is to allow high school students the ability to utilize their popularity as an athlete to earn compensation through use of their name, image, and likeness (NIL) rights while retaining the ability to participate in high school athletics. Presently, the Michigan High School Athletic Association, the entity that oversees high school athletics in Michigan, has prohibitions on student athletes receiving money for

participating in MHSAA tournaments, as well as a \$40 value limit on direct compensation that a student may receive for participating in an MHSAA-sanctioned sport.¹

The bill would not directly overturn these policies but would carve out a path for students to pursue opportunities with third parties to earn compensation in exchange for an action taken on the student athlete's part, such as appearing at an event to sign autographs or agreeing to promote a good, service, or business on social media. While it is expected that only the top-recruited student athletes would likely receive compensation in a significant amount, the bill would also, for example, allow students to receive gift cards from a local restaurant in exchange for doing a series of promotional posts on a social media site such as Instagram or TikTok.

The lines of discussion in committee centered around fairness for high school student athletes to earn compensation in the same way non-athlete students could, whether promoting products and services would detract from school time, and concern that high school student athletes should not be allowed to earn compensation for promoting products or services only available to individuals 18 years of age or older, such as tobacco and alcohol.

FISCAL IMPACT:

The bill would have no fiscal impact on the state and minimal fiscal impact on local school districts, intermediate school districts (ISDs), and public school academies (PSAs). Administrative rules, practices, and materials may have to be updated, but those costs should be minimal and absorbed under current funding levels.

POSITIONS:

The Michigan High School Athletic Association indicated support for the H-3 substitute for the bill. (10-4-23)

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■ This analysis was prepared by nonpartisan House Fiscal Agency staff for use by House members in their deliberations and does not constitute an official statement of legislative intent.

¹ <https://www.mhsaa.com/sites/default/files/2022-06/offguide.pdf>