

Michigan Introduces Legislation to Permit Likeness/Image Compensation for Student Athletes

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The Michigan House of Representatives introduced legislation that would allow college athletes to receive compensation for the use of their name, image, likeness rights or athletic reputation.

Michigan House Bill No. 5217 (HB 5217), introduced on Nov. 7, 2019, comes on the heels of California's Fair Pay to Play Act, which would similarly allow college athletes to receive compensation for the use of their name, image and likeness. Similar bills are being considered by federal legislators and in several states including Florida, New York and New Jersey.

The NCAA is also considering changes to its amateurism bylaws that would permit student-athletes the opportunity to "benefit" from the use of their name, image and likeness "in a manner consistent with the collegiate model." Michigan's proposed legislation contains an effective date of July 1, 2020, which is the earliest effective date of any of the bills passed or under active consideration.

Michigan's bill, like others throughout the country, raises a host of potential legal issues for institutions of higher education should their student-athletes begin to receive compensation from their name, image, likeness, or athletic reputation. HB 5217 prohibits any school or conference from penalizing either the athlete or the institution when the athlete receives compensation allowed under the bill. Further, students' scholarships are prohibited from being removed or reduced as a result of receiving such compensation.

The bill also specifically prohibits an institution, association, conference or other group from compensating a prospective college athlete who will attend a college or university. However, the bill is silent as to whether the institutions may compensate athletes directly once they have enrolled in school. An institution's decision to directly compensate student-athletes, if the bill were to become law, would have to be weighed carefully, after thoughtful consideration of the many potential legal implications.

The likelihood that one or more of the bills passed or under consideration will actually go into effect requires institutions and other athletics organizations to start considering how the changes could affect their relations with student-athletes. Under the bill's current language, key questions include whether an institution should provide permitted compensation directly to student-athletes, and what other attendant legal concerns exist, such as those involving contracts, intellectual property, taxes, Title IX, and potentially applicable labor and employment laws.

The bill is in the early stages of the legislative process and may look very different from the final version, should it pass. Miller Canfield will continue to monitor this area for developments. In the meantime, if you have any questions, would like more information or have concerns about how this might affect you, your clients, or your organization please contact any of the authors or your Miller Canfield attorney.