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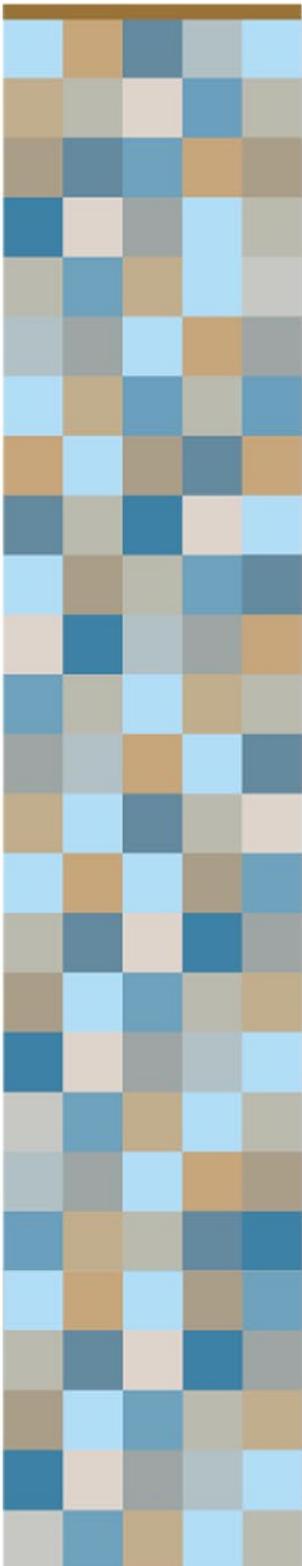
New York Joins the Game in Collegiate Sports NIL Compensation

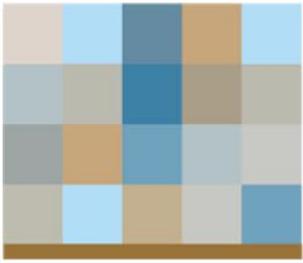
By: Lauren Bernstein & Dan Lust

On November 21, 2022, Governor Hochul signed the New York Collegiate Athletic Participation Compensation Act (the “NY NIL Law”) establishing New York as the 32nd state to allow student-athletes to generate compensation for their name, image and likeness (“NIL”) while protecting their access to athletic scholarships and academic eligibility.

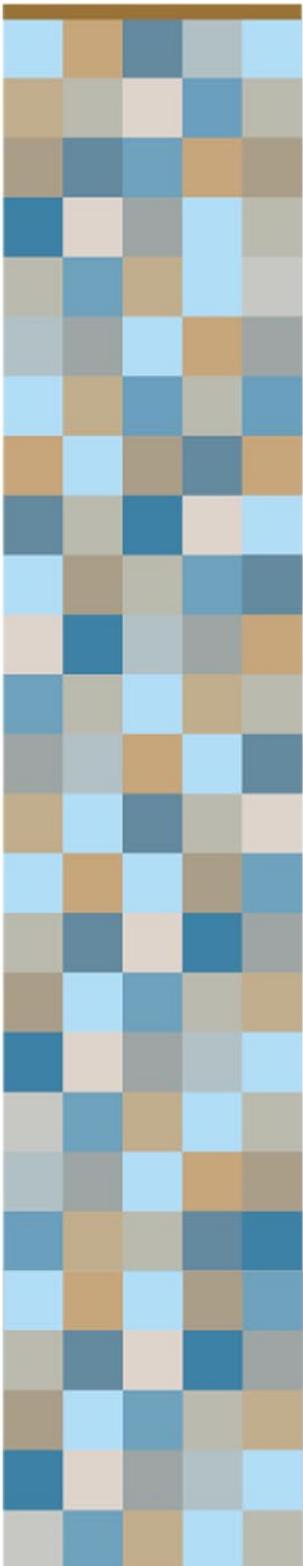
The NY NIL Law provides that student-athletes cannot be prevented by rule, requirement or other limitation, from earning compensation as a result of the use of their NIL or from obtaining representation in NIL contracts or legal matters through athletic agents or attorneys. It also prevents athletic associations such as a colleges’ conference or the NCAA from prohibiting a college from participating in athletics based upon allowing a student-athlete to earn NIL compensation. It should be noted that a college, athletic association, conference or organization with authority over intercollegiate sports cannot provide a prospective student-athlete with NIL compensation, however, the NY NIL Law expressly excludes academic scholarships from the category of NIL compensation.

While the NY NIL Law is similar to other states’ NIL laws, an important distinction is that the NY NIL Law requires a student-athlete to disclose a prospective NIL contract to their college prior to executing same. Thereafter, the college may prohibit the student-athlete from entering into the contract in the event that the proposed contract would “cause a conflict” or “reasonably be judged to cause financial loss or repetitional damage to the college.” The NY NIL Law provides a list of examples of when a proposed NIL contract may “cause a conflict” such as if the contract causes a violation of team rules or the college’s code of conduct, conflicts with an existing contract or sponsorship the college participates in (whether that be directly, or indirectly such as a competitor of a colleges’ sponsor), or would require the use of the college’s name, brand or other intellectual property. Theoretically, assuming that a college has the best interests of their student-athletes in mind, requiring disclosure to the college prior to execution of the NIL contract could be beneficial to both parties — a college will have the ability to evaluate a NIL contract to ensure it will not affect their reputation or financial interests and a student-athlete will be forced to slow the process down and evaluate the pros and cons to the proposed contract.





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Lastly, while the NY NIL law applies to all colleges (not just Division 1 NCAA colleges), the NY NIL Law specifically requires that Division 1 NCAA programs offer additional student assistance programs to athletes such as programs designed to support student-athletes with completing their degrees, mental health, financial literacy, career development, development of leadership qualities and training on sex-based discrimination and harassment, to name a few.

While the Act will take effect immediately, the substantive provisions of the law as discussed above will take effect beginning January 1, 2023. With NIL rights now firmly established in New York State, the NY NIL Law provides a winning formula for both colleges and student-athletes.

The co-authors of this article are extremely knowledgeable in the NIL arena and are ready willing and able to assist schools and student athletes in navigating this new area of the law (along with any matters at the intersection of Sports and the Law). If there are any questions relating to this area, please feel free to contact **Lauren Bernstein** or **Dan Lust** at 516-873-2000 or at lbernstein@moritthock.com or dlust@moritthock.com, respectively.

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