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**LEGISLATIVE EDUCATION STUDY COMMITTEE**  
**BILL ANALYSIS**  
**56th Legislature, 1st Session, 2023**

<b>Bill Number</b>	<u>SB219/aSEC</u>	<b>Sponsor</b>	<u>Moore/Maestas/Baca</u>
<b>Tracking Number</b>	<u>.223232.3</u>	<b>Committee Referrals</b>	<u>SEC/SJC</u>
<b>Short Title</b>	<u>College Student Athlete Endorsements</u>		
<b>Analyst</b>	<u>Condon</u>	<b>Original Date</b>	<u>2/3/2023</u>
		<b>Last Updated</b>	<u>2/27/2023</u>

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**BILL SUMMARY**

Synopsis of SEC Amendment

The Senate Education Committee (SEC) amendment to Senate Bill 219 (SB120/aSEC) strikes language that restricted higher education institutions (HEIs) from prohibiting or discouraging a student athlete from wearing footwear of the student athlete's choice during official, mandatory team activities so long as the footwear does not have reflective fabric or lights or pose a health risk to a student athlete.

The amendment addresses concerns raised by the University of New Mexico (UNM) regarding potential legal issues.

Synopsis of Original Bill

Senate Bill 219 (SB219) amends the Student Athlete Act to remove several prohibitions relating to student athletes and the use of their name, image, and likeness (NIL). SB219 allows a higher education institution (HEI) to arrange for third party compensation for the use of a student athlete's NIL, allows for an HEI to utilize such deals to recruit prospective student athletes, and allows entities and individuals who represented HEIs in the past four years to represent a student athlete who is attending that HEI.

**FISCAL IMPACT**

The bill does not contain an appropriation.

**SUBSTANTIVE ISSUES**

**National Collegiate Athletic Association (NCAA).** The [NCAA](http://www.ncaa.org) is a nonprofit organization that regulates student athletics among 1,098 colleges and universities and 102 athletic conferences. Following 18 deaths and 159 serious injuries during football games in 1904, President Theodore Roosevelt called top football school representatives together to determine how to bring better protections for athletes. By 1906, 62 colleges and universities became charter members of the

Intercollegiate Athletic Association of the United States, and by 1910, the organization was renamed the National Collegiate Athletic Association.

**Legal challenges to NCAA student-athlete compensation rules.** Several high-profile lawsuits in the last decade have brought student athletes into the spotlight and have questioned the control HEIs and NCAA can have in restricting their ability to earn compensation. In 2015, the Ninth Circuit upheld the District Court’s decision in *O’Bannon v. NCAA* that the NCAA’s restrictions on college athletes violated federal antitrust law. Prior to this ruling, NCAA restricted athletes from receiving any compensation, beyond the value of their athletic scholarships, for the use of their names, images, and likenesses in video games, live game telecasts, re-broadcasts, and archival game footage. While it agreed that the NCAA could restrict schools from paying athletes, the Ninth Circuit concluded that any restraints below the full cost of attendance were illegal.

In 2021, *Alston v. NCAA*, the Supreme Court unanimously upheld a ruling by the U.S. Court of Appeals for the Ninth Circuit that struck down NCAA caps on student-athlete academic benefits, such as reimbursements and pay for academic-related expenses, on antitrust grounds. The Alston plaintiffs asked that student-athlete compensation be unrestricted so that it would reflect the value of each student’s athletic services to their school, and in their ruling, the Supreme Court effectively ended the NCAA’s previous “no-pay-for-play” rule. Currently moving through the federal court system, *Johnson, et al., v. NCAA* argues that student athletes are school employees who should be paid for the time they spend related to their athletic activities, as protected under the Fair Labor Standards Act, and that the NCAA is a joint employer.

While the NCAA now permits athletes to profit from their NIL, NCAA rules still prohibit schools from paying athletes or directly participating in NIL deals. In May 2021, the NCAA issued a new set of [guidelines](#) regarding the recruitment of student-athletes indicating that “booster/NIL entities” cannot talk to recruits about enrolling at a school or offer deals based upon whether athletes select a particular school. Further, these guidelines determine that NIL agreements must be based on an independent, case-by-case analysis of the value that each athlete brings to an NIL agreement as opposed to providing compensation or incentives for enrollment decisions, athletic performance, achievement (e.g., starting position, award winner) or membership on a team.

**The Student Athlete Act.** Prior to the *Alston v. NCAA* Supreme Court ruling, many states began enacting their own legislation to determine the parameters for student athlete compensation as the NCAA faced legal challenges. In 2019, [California](#) became the first state to enact legislation guiding student athlete compensation and representation, and as of July 2022, 29 states have passed legislation regulating or otherwise addressing how student-athletes can profit from their NIL.

Laws 2021, Chapter 124, [Senate Bill 94](#) (SB94) created the Student Athlete Endorsement Act, which permits student athletes who engage in intercollegiate sports at post-secondary educational institutions in New Mexico to earn compensation from the use of their NIL.

## **ADMINISTRATIVE IMPLICATIONS**

HEIs would need to modify current rules and procedures relating to student athlete recruitment and representation, and would need to consider if current contracts with their student athletes need to be adjusted to reflect the changes made by SB219/aSEC. It is not clear how many student athletes at New Mexico HEIs currently receive compensation for the use of their NIL.

**SOURCES OF INFORMATION**

- LESC Files
- UNM Agency Analysis

**BEC/cf/mb/cf**