

THE NIL ARMS RACE: WILL THE “SHOW-ME” STATE COME OUT ON TOP?

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ABSTRACT

Missouri’s name, image, and likeness (NIL) legislation positions the state as a leader in the evolving landscape of student-athlete compensation. Building on the momentum of *NCAA v. Alston*, Missouri’s law introduces innovative provisions, including allowing in-state, high school athletes to monetize their NIL, permitting the use of institutional intellectual property, and empowering coaches to facilitate NIL deals. These state reforms aim to attract talent and retain in-state athletes while also fostering economic growth. This Note argues that Missouri’s NIL policy sets a benchmark for other state schemes and offers a balance of deregulation and opportunity. Still, Missouri’s model depends on successfully navigating NCAA scrutiny, mitigating compliance risks, and adapting to the fluid regulatory environment in collegiate athletics. The Note concludes that Missouri’s proactive approach exemplifies the potential for states to shape the future of NIL in the absence of federal uniformity.

INTRODUCTION

Get with the times or be left behind—this was the sentiment that pushed Missouri legislators, athletic directors, coaches, and athletes to revamp Missouri’s name, image, and likeness (NIL) policy into one of the most revolutionary student-athlete compensation laws yet. “We’re setting the stage for other athletes all across the country,” said Governor Mike Parson

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in August 2023 as he signed the bill into law.¹ The change is less restrictive and contains provisions enticing in-state prospective collegiate athletes to sign with Missouri postsecondary educational institutions.² The law also allows student-athletes to apply for licenses to use an institution's intellectual property for NIL promotion and marketing purposes.³ Additionally, it gives coaches the opportunity to have a seat at the table during NIL deal negotiations.⁴

In 2021, collegiate athletics changed forever when the Supreme Court prohibited education-related limits on student-athlete compensation in *NCAA v. Alston*. Justice Kavanaugh's concurrence signaled future antitrust trouble for the National Collegiate Athletic Association (NCAA) if it continued to restrict compensation unrelated to education.⁵ Rather than risk future litigation, the NCAA has implemented an interim NIL policy that is highly unregulated and gives great deference to state lawmakers.⁶ While federal legislation has been proposed, it varies widely in scope and could take years for Congress to reach a consensus.⁷ In the meantime, the ever-evolving NIL landscape has sparked competition among states to create laws that favor deregulation and encourage student-athlete compensation. Because of this, student-athletes received almost a billion dollars for NIL-related activities in the first year of the NIL era alone.⁸ In turn, states with

1. Brandon Haynes, *Gov. Parson Signs NIL Bill, Ushering in New Era of In-State Recruiting*, COLUMBIA MISSOURIAN (Aug. 15, 2023), <https://www.columbiamissourian.com/sports/gov-parson-signs-nil-bill-ushering-in-new-era-of-in-state-recruiting/articlea97efe14-3bb7-11ee-bd0c-df144331f37a.html> [https://perma.cc/EM7N-JHS7] (signing House Bill 417 into law).

2. See MO. REV. STAT. § 173.280 (2023).

3. *Id.*

4. See Emily Manley, *Parson Signs Off on New, One of Its Kind NIL Law for High School, College Athletes*, FOX 2 NOW (Aug. 15, 2023, 9:36 PM), <https://fox2now.com/news/missouri/parson-signs-off-on-new-one-of-its-kind-nil-law-for-high-school-college-athletes/> [https://perma.cc/B2JD-D6KE].

5. *NCAA v. Alston*, 594 U.S. 69, 108 (2021) (holding that while NCAA's compensation limits do have the procompetitive effect of protecting and maintaining the differences between collegiate athletics and professional athletics, the NCAA could achieve this end using less restrictive means); see *Alston*, 594 U.S. at 106–12 (Kavanaugh, J., concurring) (writing NCAA's business model would be “flatly illegal” in almost any other industry and “the NCAA is not above the law”).

6. See *Interim NIL Policy*, NCAA (July 2021), https://ncaaorg.s3.amazonaws.com/ncaa/NIL/NIL_InterimPolicy.pdf [https://perma.cc/57UT-M7DX] (set of loose guidelines for student-athletes, coaches, administrators, attorneys, and agents' compliance).

7. See Kristi Dosh, *4 New Federal NIL Bills Have Been Introduced in Congress*, FORBES (July 29, 2023, 9:31 AM), <https://www.forbes.com/sites/kristidosh/2023/07/29/4-new-federal-nil-bills-that-have-been-introduced-in-congress/?sh=454d5fd24d46> [https://perma.cc/XS94-5DZ6].

8. See Josh Lens, *NIL Compliance*, 103 B.U. L. REV. ONLINE 69, 71, 90–94 (2023) (guidance

less restrictive NIL policies have excelled in recruiting top players who are seeking to monetize their name, brand, and talents.⁹ Missouri is no exception. Its NIL policy includes some of the most comprehensive and progressive language to date.¹⁰ Has Missouri catapulted to the forefront of NIL? And if so, what are the implications of leading the pack? This note considers these questions, analyzes the policy, and resolves whether Missouri got it right.

Part I chronicles the history of student-athlete compensation preceding the landmark decision in *Alston*, the NCAA's swift response, and the chaos that is state-by-state NIL legislation. Part II examines trends in state legislation, as well as developments in technology and analytics. Part III discusses Missouri's recently amended law, focusing on its novel provisions like allowing in-state high schoolers to monetize their NIL and granting coaches the authority to facilitate deals on behalf of athletes.¹¹ Part IV analyzes the strength of Missouri's amendment compared to other states and looks for potential roadblocks to success before ultimately concluding that Missouri's updated NIL policy is an out-of-the-park home run.

I. LEGAL HISTORY

To understand the modern patchwork of NIL laws and the controversy that surrounds compensating student-athletes, it is imperative to start at the beginning.

A. Background of Student-Athlete Compensation

The NCAA was created in 1910 to regulate and provide uniformity in college football.¹² Today, it includes around 1,100 member schools and organizes its schools into three divisions—Division I, Division II, and

for institutions regarding NCAA Interim NIL Policy and suggested monitoring activities).

9. See Matthew Postins, *Mizzou's Drinkwitz: Schools Throwing Out 'Crazy' NIL Numbers for Recruiting Flips*, SPORTS ILLUSTRATED (Dec. 21, 2023), <https://www.si.com/fannation/name-image-likeness/news/mizzous-drinkwitz-schools-throwing-out-crazy-nil-numbers-for-recruiting-flips-matt9#:~:text=But%20like%20most%20major%20athletic,branding%20agency%20of%20Mizzou%20Athletics> [https://perma.cc/N33C-B7YN].

10. See MO. REV. STAT. § 173.280 (2023).

11. See *id.*

12. See *History*, NCAA (2024), <https://www.ncaa.org/sports/2021/5/4/history.aspx> [https://perma.cc/5V8S-4KLE].

Division III.¹³ Division I schools have the largest athletics programs and the resources to provide the largest scholarships to student-athletes.¹⁴ At its inception, the NCAA enacted “amateur rules,” which stipulated that student-athletes must be enrolled in college full time and restricted any type of outside compensation.¹⁵ These rules were loosely enforced until after World War II, when the commercialization of college sports incentivized schools to invest in athletics and generate as much revenue as possible.¹⁶ During this transformative period, the NCAA tightened its eligibility requirements, including limiting the number of times student-athletes could transfer and punishing “gifts” and other side payments.¹⁷ In 2014, the NCAA announced it would allow its member schools to increase scholarship packages to encompass the “full cost of attendance” rather than solely tuition.¹⁸ However, amateur rules still prevented additional outside compensation, compensation based on performance, interaction with professional sports leagues, and signing contracts or hiring agents.¹⁹

The NIL controversy in college athletics emerged in 2008, when former UCLA basketball player Ed O’Bannon discovered that his name and likeness were used in a video game.²⁰ His name, jersey number, and college team were displayed on an avatar without his consent *and* without receiving compensation for it.²¹ Thus, in 2009, O’Bannon and other current and former college athletes collectively sued the NCAA for violating antitrust laws.²² O’Bannon argued that the NCAA violated the Sherman Antitrust Act when it restrained trade in relation to players’ NIL.²³ The trial court ruled in O’Bannon’s favor, determining that the NCAA’s compensation rules were subject to antitrust scrutiny and plaintiffs were injured because of the restrictions.²⁴ The NCAA was enjoined

13. *Id.*

14. See Daniel E. Lazaroff, *The NCAA in Its Second Century: Defender of Amateurism or Antitrust Recidivist?*, 86 OR. L. REV. 329, 334 (2007); *O’Bannon v. NCAA*, 802 F.3d 1049, 1053 (9th Cir. 2015).

15. See NCAA, *supra* note 12.

16. *NCAA v. Alston*, 594 U.S. 69, 76–78 (2021).

17. See Lazaroff, *supra* note 14, at 331.

18. *Alston*, 594 U.S. at 78.

19. *O’Bannon*, 802 F.3d at 1055.

20. See *id.* at 1054.

21. See *id.*

22. See *id.* at 1053.

23. *Id.* at 1056.

24. See *O’Bannon v. NCAA*, 7 F. Supp. 3d 955, 997 (N.D. Cal. 2014).

from enforcing any rules or bylaws that would prohibit its member schools and conferences from offering . . . recruits a limited share of the revenues generated from the use of their names, images, and likenesses in addition to a full grant-in-aid. The injunction will not preclude the NCAA from implementing rules capping the amount of compensation that may be paid to student-athletes while they are enrolled in school; however, the NCAA will not be permitted to set this cap below the cost of attendance²⁵

The NCAA appealed the trial court's decision, and the Ninth Circuit Court of Appeals affirmed in part and vacated in part.²⁶ The court acknowledged that the lower court's decision was novel in holding that the NCAA's amateurism rules violated antitrust law and agreed with the full-tuition scholarship remedy.²⁷ They determined, however, that allowing the NCAA to prohibit *any* extra compensation (like NIL compensation) was permissible under the "rule of reason" analysis.²⁸ The court's reasoning was anchored in antitrust law, specifically the Sherman Antitrust Act of 1890, which prohibits "[e]very contract, combination . . . or conspiracy, in restraint of trade or commerce."²⁹

At a general level, antitrust law promotes efficient business operations, unfettered competition, and low prices for high quality.³⁰ The Sherman Act prohibits unreasonable restraints of trade.³¹ The NCAA attempted to argue that its "eligibility rules" did *not* restrict trade and were, therefore, noncommercial and outside the scope of the Sherman Act.³² However, the court zeroed in on the substance of the restrictions rather than how they were stylized. "And in substance, the rules clearly regulate the terms of commercial transactions between athletic recruits and their chosen schools

25. *Id.* at 1007–08.

26. *See* O'Bannon v. NCAA, 802 F.3d 1049, 1053 (9th Cir. 2015).

27. *See id.* at 1053.

28. *See id.*

29. *Id.* at 1065; 15 U.S.C. § 1 (1890).

30. *See The Antitrust Laws*, FED. TRADE COMM'N, <https://www.ftc.gov/advice-guidance/competition-guidance/guide-antitrust-laws/antitrust-laws> [<https://perma.cc/XZ9F-7TN9>].

31. *Id.*

32. O'Bannon, 802 F.3d at 1065.

. . . [t]here is real money at issue here.”³³ Despite its limited holding and ultimate denial of additional compensation for the use of an athlete’s NIL, *O’Bannon* sparked the debate regarding compensating student-athletes. Further, it helped set the stage for the case that changed the world of college athletics forever—*NCAA v. Alston*.³⁴

In its unanimous decision, the Supreme Court upheld a California district court ruling that the NCAA could no longer limit or place caps on student-athletes’ compensation because the restrictions violated Section 1 of the Sherman Act.³⁵ However, the Court limited its holding to education-related compensation.³⁶ Education-related compensation can include scholarships for graduate or vocational school, technology for school use, paid internships after graduation, and cash awards for various academic achievements or tutoring.³⁷ However, the boundaries of compensation are not well-defined. Limits to compensation unrelated to education, like NIL compensation, were left untouched and open to the NCAA’s discretion.³⁸

Preceding *Alston*, Division I football and basketball players challenged the NCAA and its member conferences for horizontally restricting the compensation they were allowed to receive.³⁹ The restraints “depress compensation for at least some student-athletes below what a competitive market would yield.”⁴⁰ Historically, men’s football and men’s basketball have brought in the most revenue; but, the athletes would not enjoy any of the fruits of their labor.⁴¹ Like in *O’Bannon*, the United States District Court for the Northern District of California heard Shawne Alston (former West Virginia University running back), and other student-athletes’ consolidated

33. *Id.*

34. See Agota Peterfy & Kevin Carron, *Show Me the Money!, NCAA Considering Paying Student-Athletes*, 76 J. MO. B. 68, 70 (2020).

35. See *NCAA v. Alston*, 594 U.S. 69, 106–07 (2021).

36. See 15. U.S.C. § 1 (1890) (restraint of trade or commerce among states is illegal); see also Comment, *NCAA v. Alston*, 135 HARV. L. REV. 471, 474 (2021).

37. See *Alston*, 594 U.S. at 83–89 (the district court concluded that education-related benefits would not be confused with salaries reminiscent of professional athletes); see also Lens, *supra* note 8, at 72–73 (NCAA interim policy is “minimalist . . . barebones,” and “has also led to uncertainty, chaos, and a free-for-all”).

38. See *Alston*, 594 U.S. at 83–85.

39. See *id.* at 80–81.

40. *Id.* at 69–72.

41. See Andrew Zimbalist, *Analysis: Who is Winning in the High-Revenue World of College Sports?*, PBS NEWS (Mar. 18, 2023, 7:14 PM), <https://www.pbs.org/newshour/economy/analysis-who-is-winning-in-the-high-revenue-world-of-college-sports> [<https://perma.cc/DDX6-YEJA>] (college football and basketball rake in billions of dollars a year for the NCAA).

actions to determine whether the NCAA violated the Sherman Act.⁴² The district court applied the same three-step rule of reason test used in *O'Bannon*, which first requires the plaintiff to show the restriction has a "significant anticompetitive effect."⁴³ If the plaintiff succeeds on the first point, the second step of the test shifts the burden to the defendant to produce evidence that the restraint has procompetitive effects.⁴⁴ The third and final step in the rule of reason framework requires the plaintiff to show that the alleged procompetitive benefits could be achieved in a "substantially less restrictive manner."⁴⁵ In its analysis, the court recognized that while the NCAA's compensation limits *do* have the procompetitive effect of protecting and maintaining the differences between collegiate athletics and professional athletics, the NCAA *could* achieve this end using less restrictive means.⁴⁶ For example, while education-related compensation does not parallel professional athletes' salaries, NIL compensation, pay-for-play, and other compensation unrelated to education more closely resembles a professional occupation. The district court was unwilling to further blur the line between amateur and professional status, thus leaving the NCAA's limitations on compensation unrelated to education in place.⁴⁷

The Ninth Circuit affirmed.⁴⁸ On appeal, the NCAA did not dispute the district court's findings as to the first step of the rule of reason.⁴⁹ The NCAA's rules have significant anticompetitive effects on the collegiate athletics market because student-athletes are prohibited from receiving compensation that accurately reflects the value of their athletic services.⁵⁰ However, the NCAA challenged the district court's application of the second step, arguing that all compensation restrictions were necessary to differentiate amateurs from professionals and maintain the identity

42. See *In re NCAA Athletic Grant-in-Aid Cap Antitrust Litig.*, 375 F. Supp. 3d 1058, 1061–62 (N.D. Cal. 2019) (cases brought by several plaintiffs consolidated into one case during pretrial proceedings).

43. *O'Bannon v. NCAA*, 802 F.3d 1049, 1070 (9th Cir. 2015).

44. *Id.*

45. *Id.*

46. See *In re NCAA Athletic Grant-in-Aid Cap Antitrust Litig.*, 375 F.3d at 1062.

47. See *id.*

48. See *In re NCAA Athletic Grant-in-Aid Cap Antitrust Litig.*, 958 F.3d 1239, 1240 (9th Cir. 2020) (holding that district court struck right balance between preventing anticompetitive harm and serving procompetitive purpose of preserving the brand of collegiate athletics).

49. See *id.* at 1240.

50. See *id.* at 1256–57.

associated with college sports.⁵¹ The court disagreed with this assertion and upheld the district court's determination that only restrictions on compensation unrelated to education served a procompetitive purpose.⁵²

Concerned that the decision would diminish its role as the “superintendent” of college sports, the NCAA appealed to the Supreme Court.⁵³ The Court affirmed, and in his opinion, Justice Gorsuch concluded that the district court's injunction honored antitrust principles like enhancing competition and providing the NCAA and its member schools with “considerable leeway.”⁵⁴ However, Justice Kavanaugh concurred separately to question the NCAA's restrictions on compensation unrelated to education—like NIL deals.⁵⁵ While the Supreme Court did not rule on this issue, Justice Kavanaugh said the remaining compensation restraints “raise serious questions under the antitrust laws” and seemed to warn the NCAA about potential future antitrust litigation for its compensation rules still on the books.⁵⁶

Kavanaugh emphasized three points in particular: the Court's decision did not address the legality of the unrelated-to-education compensation rules; these remaining restrictions would be analyzed under the rule of reason; and that the compensation rules were already on shaky ground under this framework.⁵⁷ He did not mince words when he refuted the NCAA's argument regarding protecting the distinction between amateurism and professionalism in athletics. He compared the U.S. collegiate athletics industry to other industries in America and said the NCAA's business model would be “flatly illegal” in almost any other industry.⁵⁸ Student-athletes generate billions of dollars in revenue but see none of it, Justice Kavanaugh concluded, and “the NCAA cannot avoid the consequences of price-fixing labor by incorporating price-fixed labor into the definition of the product . . . [t]he NCAA is not above the law.”⁵⁹

51. *See id.*

52. *See id.*

53. *Id.* at 1263.

54. NCAA v. Alston, 594 U.S. 69, 103–04 (2021).

55. *Id.* at 108–12 (Kavanaugh, J., concurring).

56. *Id.* at 106–10.

57. *See id.*

58. *Id.* at 110–12.

59. *Id.*

B. NCAA's Implementation of Interim Policy

Days after the *Alston* decision, the NCAA updated its NIL compensation policy likely due to a combination of antitrust litigation fears and increasing pressure from states like California.⁶⁰ The interim policy is a set of loose guidelines for athletes seeking to monetize their NIL without jeopardizing their NCAA eligibility. This “right of publicity” guarantees college athletes the right to control the commercial use of their identities.⁶¹ The guidelines apply to both current and prospective student-athletes and are effective until federal legislation or new NCAA rules are enacted.⁶² The interim policy is highly deferential to states and leaves room for states to develop their own policies and dictate the elasticity of the NCAA’s vague parameters.⁶³

Under this decentralized model, there are only a few actions that are expressly prohibited. This includes: “impermissible inducements,” like NIL compensation contingent upon enrollment at a particular school or future athletic achievement; pay-for-play policies; and NIL agreements without quid pro quo.⁶⁴ While institutions themselves cannot provide NIL compensation, or dictate how student-athletes spend their earnings, athletes are allowed to consult “professional service providers” like agents, attorneys, and tax advisors to help with policy compliance.⁶⁵

60. See NCAA, *supra* note 6.

61. John R. Vile, *Right of Publicity*, FREE SPEECH CTR. AT MIDDLE TENNESSEE STATE UNIV. (last updated July 2, 2024), [https://firstamendment.mtsu.edu/article/right-of-publicity/#:~:text=fair%20use%2C%20Wikipedia\)-,The%20right%20of%20publicity%20is%20a%20right%20to%20legal%20action,case%20of%20Haelean%20Laboratories%2C%20Inc](https://firstamendment.mtsu.edu/article/right-of-publicity/#:~:text=fair%20use%2C%20Wikipedia)-,The%20right%20of%20publicity%20is%20a%20right%20to%20legal%20action,case%20of%20Haelean%20Laboratories%2C%20Inc) [<https://perma.cc/97NQ-LKR8>] (right of publicity is a property right “largely designed to protect the commercial value of the image that a person has cultivated in becoming a celebrity”).

62. See NCAA, *supra* note 6.

63. See Gregory A. Marino, *The NCAA Declares Independence from NIL Restrictions*, FOLEY & LARDNER LLP (Aug. 20, 2021), <https://www.foley.com/insights/publications/2021/08/ncaa-declares-independence-nil-restrictions/> [<https://perma.cc/B77W-LHCY>].

64. *Quick Guide to New NCAA Interim Policy*, NCAA (July 2021), https://ncaaorg.s3.amazonaws.com/ncaa/NIL/NIL_QuickGuideToNewPolicy.pdf [<https://perma.cc/68DK-MKGE>]. Direct payment without actual use of an athlete’s NIL would be an example of an agreement without quid pro quo.

65. *Id.*

II. DEVELOPMENTS AND TRENDS

Since the 2021 implementation of the NCAA's interim policy, the NIL landscape has changed dramatically. Data analytics tailored to NIL have revealed information like which types of deals are more lucrative than others, which conferences fare better for monetizing NIL, and average compensation per position on the field or court.⁶⁶ Moreover, states continue to tweak, amend, and expand their NIL policies to maintain a competitive advantage in collegiate athletics and recruiting.⁶⁷ Part II takes a closer look at these recent developments and trends.

A. State NIL Laws and “Keeping Up with the Joneses”

Thirty-four states have enacted some type of NIL legislation.⁶⁸ California took the lead in 2019 as the first state to enact NIL legislation in the form of the Fair Pay to Play Act.⁶⁹ The Fair Pay to Play Act requires the NCAA to allow California collegiate student-athletes to be compensated for their NILs.⁷⁰ This spurred a domino effect, with other states following suit and putting their own twist on California's Fair Pay to Play Act. For example, some states require athletes to hire agents, take financial literacy courses, or disclose any agreements to their respective institutions.⁷¹ Moreover, some states prohibit teams from helping facilitate NIL deals,

66. See *NIL Insights*, OPENDORSE, <https://biz.opendorse.com/nil-insights/> [<https://perma.cc/SK3L-FL3P>] (provides information and guidance to athletes, schools, brands, and collectives regarding NIL opportunities, activities, and trends; and acts as a marketplace for NIL deals that connects athletes with brands).

67. See Darren Heitner, *The New Race By States To Remove NIL Restrictions on College Athletes*, ABOVE THE LAW (Apr. 27, 2022, 10:48 AM), <https://abovethelaw.com/2022/04/the-new-race-by-states-to-remove-nil-restrictions-on-college-athletes/> [<https://perma.cc/9M5T-P9CV>]. States that had been “leaders in paving the way for athletes to enjoy NIL rights felt as though they were now . . . scrambling to either modify their NIL laws or eradicate them altogether so that they are at least perceived to play on an even field in an industry where perception is paramount.” *Id.*

68. See *State and Federal Legislation Tracker*, TROUTMAN PEPPER HAMILTON SANDERS LLP (Jan. 4, 2024), <https://www.troutman.com/state-and-federal-nil-legislation-tracker.html> [<https://perma.cc/H8QN-XAGZ>].

69. See Cal. S.B. 206 (Sept. 30, 2019) (codified at CAL. EDUC. CODE § 67456 (2024)).

70. See CAL. EDUC. CODE § 67456 (a)(1).

71. See Cate Charron, *The State-by-State NIL Legislation Guide*, STUDENT PRESS LAW CTR. (Feb. 22, 2023), <https://splc.org/2023/02/the-state-by-state-nil-legislation-guide/> [<https://perma.cc/XL25-Z492>].

while others allow coaches to interact directly with collectives.⁷² Illinois, for instance, enacted the Student-Athlete Endorsement Rights Act in July 2021.⁷³ The Student-Athlete Endorsement Rights Act stipulates that while Illinois colleges and universities can arrange compensation and publicity opportunities for student-athletes, any agreements must be recorded and reported.⁷⁴ From there, the state gives discretion to its institutions to determine the appropriate timeframe for such reporting requirements.⁷⁵ Under the current NCAA interim policy and absent any uniform federal legislation, it is evident that states have ample leeway to create policies as they see fit. The result is an uneven playing field for student-athletes—one dependent on the state of their institution.

Along this same vein, if a state has *no* NIL policy, institutions are free to create and enforce their own governing rules and are only bound by the NCAA's interim policy.⁷⁶ A prime example of how a state having no NIL policy can be *more* lenient or athlete-friendly, is Utah's Brigham Young University (BYU). While Utah has no state NIL law,⁷⁷ in 2021, BYU reached a deal that compensated every member of its football team.⁷⁸ Then in 2023, BYU's NIL collective (The Royal Blue), announced an agreement that benefitted every member of its 123-member team and provided full tuition for walk-ons.⁷⁹ The sheer size and implications of the deal were unprecedented. However, the highly decentralized NCAA interim policy allows for institutions to fill in any gaps of state legislation (or lack thereof). School policies can also be restrictive; most institutions require athletes to adhere to honor codes and university policies, while some prohibit athletes

72. *See id.*

73. *See* 110 ILL COMP. STAT. 190 (2023) (Illinois student-athletes can sign individual NIL deals while enrolled at an Illinois institution).

74. *Id.*

75. *See id.*

76. *See* NCAA, *supra* note 6 (“For institutions in states without NIL laws . . . if an individual elects to engage in an NIL activity, the individual’s eligibility for intercollegiate athletics will not be impacted by application of Bylaw 12 (Amateurism and Athletics Eligibility).”).

77. *See* Charron, *supra* note 71.

78. *See* Wilton Jackson, *BYU Football Strikes NIL Deal to Pay Tuition for Walk-On Players*, SPORTS ILLUSTRATED (Aug. 12, 2021), <https://www.si.com/college/2021/08/12/byu-football-nil-deal-walk-on-tuition-built-bar> [<https://perma.cc/B8HD-FFB8>]; *see also* Mitch Harper, *BYU's NIL Collective Launches Program that Pays Every Football Player*, KSL SPORTS (Aug. 30, 2023, 1:52 PM), <https://kslsports.com/504185/byu-nil-collective-the-royal-blue-pays-every-player-kalani-sitake> [<https://perma.cc/ZH5S-SPGX>].

79. *See id.*

from making deals with vice industries and products like tobacco and alcohol.⁸⁰ Oftentimes, institutions are interested in protecting their intellectual property and team brands.⁸¹

B. Technology, Collectives, and Potential Federal Legislation

Increasingly frequently, schools, agents, and athletics organizations are utilizing technology to maximize student-athletes' NIL opportunities. For example, many institutions have partnered with companies, like Opendorse, that use data to optimize endorsement deals and provide insights like average compensation per deal by sport, position, and athletic conference.⁸² Moreover, the creation and development of NIL collectives have also sparked new discussions and controversies regarding the sources of NIL funding and the relationship between collectives and schools. Collectives are organizations that pool large sums of money from boosters and donors for NIL deals.⁸³ While they are supposed to be independent of schools, they are often associated with institutions. The Gator Collective, which is tied to the University of Florida, was the first of its kind. It paved the way for the creation of over 120 other collectives across the collegiate athletics space.⁸⁴ The Every True Tiger Foundation is the main NIL collective in Missouri and is associated with the University of Missouri.⁸⁵ Some collectives are categorized as for-profit while others are 501(c)(3) non-profits that gain tax-exemption status by having athletes donate their services and time to charities.⁸⁶ Some major questions surrounding collectives are what level of institutional support is permissible and how interrelated or intertwined

80. See Braly Keller, *NIL Incoming: Comparing State Laws and Proposed Legislation*, OPENDORSE (May 25, 2023), <https://biz.opendorse.com/blog/comparing-state-nil-laws-proposed-legislation/> [https://perma.cc/5JGY-D2QW].

81. See *id.*

82. See *id.*

83. See Pete Nakos, *What are NIL Collectives and How do They Operate?*, ON3 (July 6, 2022), <https://www.on3.com/nil/news/what-are-nil-collectives-and-how-do-they-operate/> [https://perma.cc/A35Y-ABEK].

84. See *id.*

85. See Dave Matter, *Mizzou's NIL Collective Off and Running as College Athletics Adjust to New Era*, ST. LOUIS POST-DISPATCH (Feb. 6, 2023), https://www.stltoday.com/sports/college/mizzou/mizzous-nil-collective-off-and-running-as-college-athletics-adjust-to-new-era/article_e5bcdb5a-47d2-5687-9146-82a50b98ebab.html [https://perma.cc/386Y-9NAH].

86. See Nakos, *supra* note 83 ("The go-to model for tax-exempt collectives involves college athletes picking a charity to provide their services in exchange for NIL payment from the collective").

collectives and institutions can and should be.

Discrepancies surrounding NIL funding and its unregulated nature have contributed to coaches calling for reform and federal legislation. States with lenient NIL policies have developed an advantage in recruiting, as athletes are enticed to commit to programs that can consolidate and distribute massive NIL packages and deals.⁸⁷ As a result, there has been a strong push from the NCAA, conference commissioners, coaches, and school administrators for Congress to create a federal solution and level the playing field.

While several federal bills aiming to regulate NIL have been introduced and discussed, none have survived committee.⁸⁸ The proposed provisions and priorities vary widely, demonstrating that there is no uniform consensus regarding federal NIL legislation.⁸⁹ In 2023, three bills were introduced—The College Athlete Economic Freedom Act, the Protecting Athletes, Schools, and Sports Act of 2023, and the Student Athlete Level Playing Field Act.⁹⁰ The College Athlete Economic Freedom Act includes provisions that protect international students, as well as a provision requiring revenue sharing among athletes, universities, and athletics conferences.⁹¹ The Protecting Athletes, Schools, and Sports Act of 2023 differs from The College Athlete Economic Freedom Act because it emphasizes protecting institutions, places prohibitions on types of NIL-related activity, and limits transferring.⁹² The Student Athlete Level Playing Field Act aims to combat impermissible inducements, prevent athletes from

87. See Heitner, *supra* note 67; see also OPENDORSE, *supra* note 66. Through April 2024, the top conferences for NIL compensation were the Big 12 Conference, Southeastern Conference, and Big Ten Conference, respectively. *Id.*

88. See Dosh, *supra* note 7. The NIL space remains “a patchwork of state laws, with only a few broad rules and guidelines from the NCAA.” *Id.*

89. *See id.*

90. *See id.*

91. *See id.*; see also Murphy, *Trahan Reintroduce Legislation to Codify College Athletes’ Unrestricted Right to Their Name, Image, Likeness*, CHRIS MURPHY (July 26, 2023), <https://www.murphy.senate.gov/newsroom/press-releases/murphy-trahan-reintroduce-legislation-to-codify-college-athletes-unrestricted-right-to-their-name-image-likeness> [https://perma.cc/6C2L-XQW8] (bill was reintroduced with additional provisions after originally being proposed in 2021).

92. See Manchin, *Tuberville Introduce Legislation to Address Name, Image, and Likeness in College Sports*, JOE MANCHIN (July 25, 2023), <https://www.manchin.senate.gov/newsroom/press-releases/manchin-tuberville-introduce-legislation-to-address-name-image-and-likeness-in-college-sports> [https://perma.cc/WDS8-HBCE] (the, Protecting Athletes, Schools, and Sports Act (PASS Act) intends to “protect student-athletes, maintain fair competition and compensation, strengthen transparency, and preserve the time-honored tradition of college sports”).

gaining employee consideration, and seeks to involve the Federal Trade Commission (FTC) in NIL deals.⁹³ Thus, the federal NIL legislation space is highly varied and undeveloped. It is unclear if or when a uniform federal policy will be enacted. Until then, and under the NCAA's current interim policy, the power to regulate NIL lies with the states and their respective institutions.

III. MISSOURI'S AMENDED NIL LAW

Missouri has one of the most progressive NIL policies in the country. Governor Parson signed Missouri House Bill 417, which targets in-state high school athletes and allows coaches to play a greater role in facilitating NIL deals.⁹⁴ The bill, sponsored by Senator Karla Eslinger (R-Wasola), stipulates that in-state recruits can start earning NIL money before they graduate high school.⁹⁵ While other states require athletes to be enrolled in school and present on campus in order to earn NIL compensation, HB 417 only requires in-state prospective athletes to sign a binding agreement with a Missouri college or university.⁹⁶ Examples of binding agreements include national letters of intent and financial aid documents.⁹⁷ The practical effect of this one-of-a-kind state legislation is that Missouri high schoolers (i.e., prospective collegiate athletes) can start earning NIL revenue as early as their senior year.⁹⁸

The Missouri State High School Activities Association's (MSHSAA) NIL policy mirrors the state law, with a few caveats. High school athletes must obtain "prior, written consent" from a school administrator to

93. See *Rep. Carey Introduces Student Athlete Level Playing Field Act*, MIKE CAREY (May 24, 2023), <https://carey.house.gov/media/press-releases/rep-carey-introduces-student-athlete-level-playing-field-act> [<https://perma.cc/R5RU-RCE2>].

94. See H.B. 417, 102nd Gen. Assemb., Reg. Sess. (Mo. 2023) (hereinafter H.B. 417); MO. REV. STAT. § 173.280 (2023).

95. See H.B. 417; see also Haynes, *supra* note 1 (in-state recruits can be compensated for their NIL "as soon as they sign a binding agreement with an in-state college").

96. See Haynes, *supra* note 1.

97. See *id.*; see also H.B. 417 (high school athletes can begin earning NIL endorsements after "signing an athletic letter of intent or other written agreement to enroll in postsecondary educational institution in this state"). The bill ensures that in-state high school athletes who take advantage of this opportunity will not be prevented from participating in high school athletics or stripped of eligibility at the high school level. *Id.*

98. See Manley, *supra* note 4.

represent their particular high school and use its identity.⁹⁹ Moreover, high school athletes cannot receive benefits that promote “participation, fame or prowess” in a particular sport.¹⁰⁰ According to the MSHSAA 2023–24 Official Handbook, prohibited benefits include cash or cash equivalents like free services, gift certificates, and gift cards.¹⁰¹ While it is relatively unclear how MSHSAA’s policy will interact with state law, the handbook seems to supplement the amended policy and protect prospective collegiate student athletes.

Another unique feature of Missouri’s NIL policy is that it allows coaches, like University of Missouri football coach Eliah Drinkwitz, to help negotiate and facilitate deals for athletes.¹⁰² Prior to the revised statute, coaches, administrators, and other school employees were prohibited from contacting NIL entities like brands, sponsors, or collectives.¹⁰³ The purpose of HB 417 is “encouraging individuals to obtain employment-related skills.”¹⁰⁴ It prohibits athletic associations and conferences from opening NIL-related investigations against institutions or coaches, and also prohibits disqualifying or punishing athletes for receiving NIL compensation.¹⁰⁵

Additionally, the policy contains provisions regarding intellectual property. Athletes with NIL deals and endorsements can apply for and obtain licenses to use their institution’s colors, logo, mascot, and motto in promotions.¹⁰⁶ This differs from Illinois law, for example, which does not allow athletes to use its intellectual property for NIL in any format.¹⁰⁷

99. 2023–24 MSHSAA OFFICIAL HANDBOOK 101 (corrected version, Nov. 2023) [<https://perma.cc/5JVR-8W93>]. Missouri high school athletes are only permitted to utilize their school’s name, colors, nickname(s), mascot(s), logo(s), and/or uniforms with prior approval from an administrator. *Id.*

100. *Id.* at 59 (athletes cannot promote “sport-specific service”).

101. *See id.* at 60.

102. *See id.*

103. *See* MO. REV. STAT. § 173.280 (2023) (allows coaches to “identify, create, facilitate, negotiate, support, enable, or otherwise assist” Missouri student-athletes regarding compensation conversations with third-party NIL entities like collectives).

104. *See* H.B. 417.

105. *See* Haynes, *supra* note 1.

106. *See* Manley, *supra* note 4 (Senator Eslinger said HB 417 gives young people the opportunity to gain “up-skill” credentials); *see also* MO. REV. STAT. § 173.280 (2023) (institutions or third parties “shall develop and adopt a process for granting to a student athlete, or to a third party for use with a student athlete, a license to use such institution’s or third-party’s unique identifiers when earning or attempting to earn compensation from the use of such student athlete’s name, image, likeness rights, or athletic reputation consistent with its policies regarding licensing of its unique identifiers”).

107. *See* 110 ILL. COMP. STAT. 190 (2023).

However, Missouri athletes are prohibited from entering NIL contracts that conflict with team sponsorship and their institution's own licenses and contracts.¹⁰⁸ Moreover, Missouri requires its colleges and universities to host informational workshops about financial skills, time management, and entrepreneurship in relation to NIL.¹⁰⁹ With this type of NIL-friendly legislation in play, Missouri is a clear frontrunner when it comes to regulating collegiate athletics.

IV. DISCUSSION

Missouri has a strong interest in promoting NIL compensation because it is home to various colleges and universities whose student-athletes would stand to benefit.¹¹⁰ The amendment is clearly tailored to entice in-state prospective athletes to sign with in-state institutions and keep top talent playing in-state, especially from metropolitan areas like St. Louis and Kansas City.¹¹¹ However, will the revolutionary legislation operate as intended? Are there any loopholes or conflicting policies? Part IV analyzes the Missouri NIL law to determine whether it is the most comprehensive, NIL-friendly state policy to date; and if it can avoid running afoul of NCAA guidelines.

A. Implications of Missouri's NIL Legislation

Since the law took effect at the beginning of the 2023 fall semester, it has remained relatively unclear how the provision allowing high schoolers to monetize their NILs will pan out.

One concern is how Missouri plans to deal with athletes who “flip” their commitments from an in-state postsecondary educational institution to an out-of-state institution after they have already received compensation.¹¹²

108. See MO. REV. STAT. § 173.280. (“No student athlete shall enter into an apparel, equipment, or beverage contract providing compensation to the athlete for use of the athlete’s name, image, likeness rights, or athletic reputation if the contract requires the athlete to display a sponsor’s apparel, equipment, or beverage or otherwise advertise for the sponsor during official team activities if such provisions are in conflict with a provision of the postsecondary educational institution’s current licenses or contracts.”).

109. See *id.* (postsecondary educational institutions must offer at least two workshops per year).

110. See Peterfy & Carron, *supra* note 34, at 75–76.

111. See Haynes, *supra* note 1 (in-state high school athletes can start earning NIL compensation as soon as they “commit and sign” a binding document); see also MO. REV. STAT. § 173.280 (2023).

112. See Haynes, *supra* note 1. In theory, players could sign a binding document that is not a

However, this risk is mitigated by the MSHSAA's stipulation that athletes cannot receive "cash or cash equivalents."¹¹³

While Missouri emerged as a sneaky, late-round leader in the NIL lawmaking race, California jumped out early and has proved difficult to dethrone. California was the first state to allow high schoolers to benefit from their NIL, with thirty states following suit.¹¹⁴ Despite a majority of states allowing high school athletes to receive compensation, it has been difficult for prospective athletes to monetize their NIL thus far.¹¹⁵ Fame, as well as social media presence and following, have been stronger indicators of pre-collegiate NIL success rather than athletic ability.¹¹⁶ A few athletes, like LeBron James' son Bryce James, have managed to earn endorsements from brands like Nike before ever stepping foot on a college basketball court.¹¹⁷ Even though high-profile, multi-year deals are not necessarily commonplace in high school settings, many local businesses are teaming up with their hometown stars to showcase community pride.¹¹⁸

In this way, the "in-state" requirement will work in Missouri's favor because high school athletes who sign with Missouri postsecondary educational institutions could sign NIL contracts with local businesses and services that last throughout their entire collegiate careers. For example, University of Missouri receiver and St. Louis area native Luther Burden III has a deal with Old Vienna, a St. Louis-based potato chip company.¹¹⁹ The deal features a special flavor and packaging design with Burden's signature on every bag denoting his own product.¹²⁰ Moreover, the chips are only sold

national letter of intent, receive compensation, change their minds, and commit to a different school before stepping foot on campus. While there have been no reports of this hypothetical scenario yet, it will be interesting to see if a loophole exists in the policy language.

113. 2023–24 MSHSAA OFFICIAL HANDBOOK, *supra* note 99, at 61.

114. See Lexi Lonas Cochran, *High School Athletes Take a Page from College with Growing NIL Movement*, THE HILL (Oct. 22, 2023, 8:00 AM), <https://thehill.com/homenews/education/4267419-high-school-athletes-endorsements-college-nil-movement/> [<https://perma.cc/EPE9-MAR4>] (currently thirty states and Washington, D.C., have passed "legislation legalizing NIL contracts in K-12 schools").

115. See *id.*

116. See *id.* (California athletes like USC quarterback Malachi Nelson made multiple NIL deals before committing to USC and received compensation before finishing his final high school football season in 2022).

117. See *id.*

118. See *id.*

119. Connor Zimmerlee, *Look: Missouri WR Luther Burden Signs Unique NIL Deal*, SPORTS ILLUSTRATED (Aug. 21, 2022), <https://www.si.com/college/missouri/football/mizzou-wr-luther-burden-nil-old-vienna-chips> [<https://perma.cc/5RNT-QXHX>].

120. See *id.* (Old Vienna produced a "special edition honey barbecue version of its red hot riplets

in Schnucks grocery stores in Missouri.¹²¹ Burden was highly recruited out of high school and chose the University of Missouri over more storied programs, emphasizing his commitment to “staying home.”¹²² Missouri’s amended NIL policy is perfectly poised for a situation like Burden’s moving forward, and collectives like the Every True Tiger Foundation have already formed grassroots extensions in St. Louis centered around expanding the fanbase and increasing donor pledges.¹²³

The provision allowing Missouri high school athletes to receive NIL compensation is a significant aspect of the amendment—for that there is no doubt. Although, other pieces are working in tandem to make the legislation especially effective and unique. For instance, the law permits and encourages coaches and administrators to become directly involved with the NIL deal making process, from facilitation to negotiation to agreement.¹²⁴ Collectives and educational institutions are becoming increasingly intertwined. Under the state policy, collectives can compensate athletes directly as long as the funds are separate from athletic departments.¹²⁵ Missouri collectives, like Every True Tiger Foundation, pool funds from donors for endorsement deals.¹²⁶ With each passing year, headlines emerge with more frequent million-dollar deals, typically arising out of schools with

which will have Burden’s picture and autograph on each bag”).

121. Corey Miller, *Mizzou’s Luther Burden III Nets Exclusive Potato Chip NIL Deal with Schnucks*, 5ON YOUR SIDE (Aug. 22, 2022, 3:34 PM), <https://www.ksdk.com/article/sports/college/mizzou/mizzou-luther-burden-potato-chip-schnucks/63-f86dcc95-cd26-41d8-8f5a-590b836c31db#:~:text=Old%20Vienna%20released%20special%20edition,ships%20before%20they%20hit%20stores> [https://perma.cc/R829-6CXK].

122. See Eric Blum, *Why did Luther Burden Commit to Mizzou Football over Georgia and Alabama? Here’s What he Said*, COLUMBIA DAILY TRIB. (Oct. 19, 2021, 8:59 PM), <https://www.columbiatribune.com/story/sports/college/tiger-extra/2021/10/19/luther-burden-explains-why-committed-missouri-football-mizzou-georgia-alabama-recruiting/6086590001/> [https://perma.cc/PHB3-WQVJ].

123. See Matter, *supra* note 85 (detailing how a core of University of Missouri boosters has “formed a grassroots extension of ETTF they’ve called MIZ- LOU. Led by alumnus Phillip Bender, the group has grown to around 30 donors committed to pledging \$20,000 annually toward NIL deals for MU athletes from the St. Louis area”).

124. See MO. REV. STAT. § 173.280 (2023). Coaches and athletic department members can assist in creating NIL opportunities for athletes as long as they refrain from receiving compensation from the athlete for their assistance, do not influence the athlete’s decisions or choices, or attempt to limit an athlete’s number of choices among competing third parties. See *id.*

125. See *id.*

126. See Matter, *supra* note 85. Every True Tiger Foundation is considered a non-profit, charitable organization, and donors can “earmark their money toward Mizzou teams of their choice.” *Id.* Collective signees receive a summary of their contractual obligations, including charity work, as well as financial wellness resources. *Id.*

collectives.¹²⁷ And while the NCAA's interim policy still prohibits impermissible inducements, like offering NIL compensation for prospective athletes or transfers, NIL has inherently become a major component of recruiting—whether the NCAA likes it or not.¹²⁸

B. Potential Conflicts

Missouri's policy includes language regarding NCAA interference in its NIL dealings, governance, and affairs.¹²⁹ It restricts the NCAA's ability to prevent student-athletes from receiving NIL compensation and prevents suspending an institution from participation in collegiate athletics as a result of athletes' NIL compensation.¹³⁰ The policy also prohibits open investigations and complaints related to activities protected under the law.¹³¹ While the policy language is aimed at insulating Missouri from potential NCAA oversight and interference, it is unclear how the provision will play out in actuality.

The recent NIL controversies in Florida and Tennessee provide some insight into this potential conflict. Since the *Alston* decision almost three years ago, the NIL space has remained a tangled web of vague, ever-changing policies and guidelines that are oftentimes at odds with state laws—a compliance nightmare. Earlier this year, the NCAA imposed sanctions on Florida State University's athletic department for NIL violations related to impermissible inducements.¹³² According to the NCAA, a potential transfer student met with the CEO of a collective during his official visit to the school, and the booster offered the student and his

127. *See id.*

128. *See* NCAA, *supra* note 6; *see also* Matter, *supra* note 85 (staying competitive in the NIL space amid rumors of collectives dishing out seven-figure payments to recruits has become a main priority for athletic departments and associated collectives alike).

129. *See* MO. REV. STAT. § 173.280 (2023). The statute prevents any type of athletic association, conference, or organization from “penaliz[ing] a student athlete from receiving compensation for the commercial use of [their NIL] . . . [or] prevent[ing] a postsecondary educational institution from participating in varsity intercollegiate athletics [because of] receipt of compensation for [students NIL] . . . [or] entertain[ing] a complaint, [or] open[ing] an investigation, or tak[ing] . . . adverse action . . . for . . . activit[ies] protected under [the bill].” *Id.*

130. *See id.*

131. *See id.*

132. *See* Matt Bonesteel, *Florida State Football Hit with NCAA Sanctions Over NIL Violations*, THE WASHINGTON POST (Jan. 12, 2024), <https://www.washingtonpost.com/sports/2024/01/12/florida-state-ncaa-violations/> [<https://perma.cc/5D7H-3UQP>].

family an NIL compensation package worth \$15,000 per month.¹³³ The NCAA's interim policy prohibits using these types of deals as recruiting leverage before an athlete signs a letter of intent or similarly binding document.¹³⁴ Florida State University admitted fault and complied with the NCAA's short investigation—but the penalties were still severe.¹³⁵

In January 2024, the NCAA opened an investigation against the University of Tennessee, also in connection with NIL violations.¹³⁶ The university was already on thin ice with the NCAA after it was charged with eighteen violations for impermissible recruiting and pay-for-play less than a year prior.¹³⁷ Since the university is on probation, any additional violations would warrant magnified penalties unless the university fully cooperates with the NCAA.¹³⁸ However, this time around, neither the University of Tennessee's athletic department nor the state's attorney general shared Florida State University's willingness to cooperate.¹³⁹

Instead, Tennessee Attorney General Jonathan Skrmetti sued the NCAA for violating federal antitrust laws under the Sherman Act with its anticompetitive restrictions on student-athletes monetizing their NIL.¹⁴⁰ Tennessee, joined by the state of Virginia, seek to enjoin NCAA restrictions relating to prospective student-athletes.¹⁴¹ This type of lawsuit is exactly

133. *See id.*

134. *See* NCAA, *supra* note 6.

135. *See* Bonesteel, *supra* note 132 (agreed-upon sanctions included “two years of probation for the football program . . . disassociation from the booster for three years and the NIL collective he represented for one year, a deduction of five scholarships over the next two years” as well as other recruiting restrictions).

136. *See* David Cobb, *Tennessee Under NCAA Investigation Related to Potential NIL Violations Across Multiple Sports*, CBS SPORTS (Jan. 30, 2024, 4:46 PM), <https://www.cbssports.com/college-football/news/tennessee-under-ncaa-investigation-related-to-potential-nil-violations-across-multiple-sports/> [<https://perma.cc/MQW9-BFJS>] (explaining the investigation has been centered around five-star quarterback Nico Iamaleava, his recruitment, and his NIL contract with the collective Spyre Sports Group).

137. *See id.*

138. *See id.*

139. *See id.* (explaining when the NCAA investigated the University of Tennessee's NIL practices the first time, it “argued that a postseason ban would violate an amendment to a Tennessee state law . . . that protects student athletes from being punished for violations they did not commit.” In this instance, the university avoided a postseason ban but was still hit with significant penalties despite “exemplary cooperation”).

140. *See Tennessee Sues NCAA Challenging Its NIL-Recruiting Ban*, ATT'Y GEN. & REP. (Jan. 31, 2024), <https://www.tn.gov/attorneygeneral/news/2024/1/31/pr24-10-tennessee-sues-ncaa.html> [<https://perma.cc/6L22-UAFD>].

141. *See id.* (lawsuit seeks to enjoin current NCAA restrictions like preventing prospective student-athletes from negotiating with collectives).

what Justice Kavanaugh warned about in his *Alston* concurrence—and the continued growth of NIL and the potential downfall of the NCAA could hinge on its decision and future similar cases.¹⁴²

The University of Tennessee’s athletic department has expressed its frustration with the NCAA’s retroactive investigation and constantly changing interim policy.¹⁴³ Like Tennessee and Florida, Missouri’s law permits NIL collectives to communicate directly with administrators, coaches, current students, and prospective students.¹⁴⁴ There does not appear to be a bright-line rule regarding how much interaction with recruits is too much, or the dollar amounts of deals deemed suspicious.¹⁴⁵ The NCAA seems to approach compliance issues on a case-by-case basis, but how potential violations are initially flagged is unclear. At a minimum, the ongoing situations at Florida State University and the University of Tennessee should put Missouri and its postsecondary educational institutions on notice that the NCAA will crack down—especially when it comes to impermissible recruiting tactics. If Missouri tries to preempt the NCAA from investigating or issuing sanctions, it could get tied up in costly litigation that detracts from the true purpose of the amendment—which is to expand NIL opportunities for both Missouri student-athletes and the institutions they attend.

C. *Staying Competitive in the NIL Space*

Despite the uncertainty that surrounds NCAA enforcement of its interim policy, it is still in Missouri’s best interest to pass and enact legislation that favors fewer NIL restrictions. After *Alston*, the NCAA chose to punt NIL decision-making to the states, and state legislatures have been up for the challenge.¹⁴⁶ Each new amendment has introduced innovative provisions that soon become widespread until a state pioneers a new idea, and the cycle repeats itself. Missouri lawmakers, institutions, coaches, and student-athletes are working together to achieve one of the least restrictive NIL

142. See *NCAA v. Alston*, 594 U.S. 69, 106–10 (2021) (Kavanaugh, J., concurring).

143. See Cobb, *supra* note 136.

144. See MO. REV. STAT. § 173.280 (2023).

145. See Lens, *supra* note 8, at 86–88 (explaining the NCAA introduced guidance in 2022 sought to prevent collectives’ involvement in recruiting—but this end was not achieved, as collectives are now more prevalent than ever).

146. See Heitner, *supra* note 67.

spaces in the country.¹⁴⁷

For this policy to be effective and reach its maximum potential, Missouri postsecondary educational institutions, specifically athletic departments, must ensure department staffers are on the same page regarding compliance. It is crucial to learn from Florida and Tennessee's mistakes and to create structures that foster strong internal communication. For example, Every True Tiger Association, the collective affiliated with the University of Missouri, has pledged to never promise more compensation or opportunities than it can presently afford.¹⁴⁸ Moreover, Missouri must continue to adapt to the elastic and ever-changing world of NIL.

Ironically enough, the future of student-athlete compensation is circling back to where the debate started—the amateur or employee distinction. Former University of Missouri athletics director Desiree Reed-Francois has described student-athletes as “entrepreneurs,” which poses a deeper question about the status of students-athletes as quasi-professionals rather than students.¹⁴⁹ Social policy concerns regarding the effects that instant wealth and fame will have on young student-athletes cut against arguments that restricting compensation propagates anticompetitive markets in collegiate athletics.¹⁵⁰ Some also fear the ramifications of NIL on student-athletes dedication to their studies, as well as how disparities in compensation will affect locker room camaraderie, cohesion, and team chemistry.¹⁵¹ Moreover, there are pertinent tax implications with non-profit collectives and allowing high schoolers—oftentimes minors and dependents—to monetize their NIL.

147. See Liam Knox, *Missouri to Open NIL Profits to High Schoolers*, INSIDE HIGHER ED (July 18, 2023), <https://www.insidehighered.com/news/quick-takes/2023/07/18/missouri-law-will-open-nil-profits-high-schoolers> [<https://perma.cc/8P5S-8LPL>] (explaining how the amendment “could incentivize some of Missouri’s top talent to remain in their home state, helping to ‘close down the borders and keep Missouri’s best athletes in the state of Missouri,’ as state representative Kurtis Gregory put it”).

148. See Matter, *supra* note 85.

149. See *id.* (quoting Reed-Francois referring to University of Missouri student-athletes as “550 entrepreneurs”).

150. See Heitner, *supra* note 67 (quoting former Florida House of Representatives Speaker Chris Sprowls saying, “[t]o a certain extent it’s like a race to the bottom in college sports . . . [h]ow many sports cars can we put in the hands of 18-year-olds?”).

151. See Matter, *supra* note 85 (explaining how a University of Missouri football player’s father was initially apprehensive about how NIL deals would affect team bonding but later conceded that no major issues have come up and that each player understands their role and opportunities on the team).

Since its inception, NIL has been a multi-faceted web of guidelines and provisions. The intricacies are difficult for even the most experienced attorneys to understand, let alone teenagers. Missouri's NIL policy accounts for this and includes a provision allowing student-athletes to obtain professional representation in the form of attorneys, agents, financial advisors, or tax advisors without risking punishment.¹⁵² Permitting student-athletes to seek and utilize professional guidance will set them up for success later in life because they will have the tools to manage newfound wealth.¹⁵³

CONCLUSION

Missouri's recently amended NIL law is one of the best student-athlete compensation policies in the country because everyone wins. The unrestrictive policy allows student-athletes to monetize their NIL in various ways from high school to throughout college.¹⁵⁴ Highly recruited, in-state prospective athletes are enticed to sign with some Missouri postsecondary educational institutions, and the coaches and athletic departments of these programs are putting together stronger teams that perform better and are more exciting to watch.¹⁵⁵ Successful programs bring in more fans for events, garner more attention, and increase overall enrollment—which in turn generates more revenue for the state. In effect, in-state signees will be tempted to “stay home,” while out-of-state signees will still look to reap the NIL-friendly benefits the state of Missouri has to offer.¹⁵⁶

NIL has been dubbed an arms race of sorts, and Missouri is setting the pace for its competitors.¹⁵⁷ While there are still many unknowns, the brief

152. See MO. REV. STAT. § 173.280 (2023) (“No postsecondary educational institution shall interfere with or prevent a student from fully participating in intercollegiate athletics or obtaining professional representation in relation to contracts or legal matters relating to earning compensation as a result of the use of the student athlete’s name, image, likeness rights, or athletic reputation, including, but not limited to, representation provided by athlete agents, financial advisors, or legal representation provided by attorneys”).

153. See *Great Wealth, Great Responsibility for Elite Young Athletes*, RAYMOND JAMES FIN., INC. (2024), <https://www.raymondjames.com/commentary-and-insights/family-life-events/2024/01/03/great-wealth-great-responsibility-for-elite-young-athletes> [<https://perma.cc/JHN5-FYKZ>].

154. See MO. REV. STAT. § 173.280 (2023).

155. See Postins, *supra* note 9.

156. See Haynes, *supra* note 1 (explaining how Missouri has become a “visionary” of NIL legislation, joining the states at the front of the pack).

157. See Haynes, *supra* note 1.

history of student-athlete compensation post-*Alston* shows that it is better to act proactively and get out front rather than miss out on valuable opportunities like signing top recruits and stimulating a competitive market, or risk losing in-state talent to states with more favorable laws.¹⁵⁸ Missouri is paving the way for clearer NIL regulation, even if that means expanding athletes' rights to compensation further than anyone could have imagined pre-*Alston*.

As much as federal legislation and national uniformity is desired, its enactment is looking distant.¹⁵⁹ In the meantime, Missouri has taken control of its own destiny and implemented one of the most comprehensive NIL policies to date. The law includes innovative provisions that incentivize keeping athletic talent in-state, encourage direct involvement of coaches and administrative staff in deal negotiations, and aim to restrict NCAA interference in NIL matters.¹⁶⁰ While it is premature to tell exactly what the effects of the amendment will be, or if they will align with the original intentions of the Missouri legislature, it is clear that Missouri has asserted itself at the front of the pack of states with unrestrictive NIL policies.

158. See Haynes, *supra* note 1 (prior to the 2023 amendment, Missouri had been on the outside looking in, but its new NIL policy puts the state and its postsecondary educational institutions on a whole different playing field).

159. See Dosh, *supra* note 7 (while various federal NIL legislation has been introduced, it varies widely in scope and has not managed to survive committee. Despite calls for uniformity, a federal NIL law could take years to take effect. Until then, states will continue to push the boundaries of the NCAA's interim policy guidelines).

160. See MO REV. STAT. § 173.280 (2023).