

NILAR: Oregon's New Bill Changes the Name of the Game

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On February 14, the Oregon House of Representatives [passed a bill](#) amending the state's law regarding name, image, and likeness (NIL). If the bill (HB 4119) passes through the state Senate, it would prohibit the NCAA, athletic conferences, or other athletic governing bodies from punishing schools and student-athletes for violating NIL rules. The bill also would allow for NIL compensation to be contingent on a student-athlete attending a specific school and provide schools in the state and their employees with liability protections related to NIL activity.

The bill, sponsored by Rep. John Lively and Rep. Jeff Helfrich, also adds "athletic reputation" to the traits from which a student athlete may earn compensation, creating a new term in place of the ubiquitous "NIL," known in the Oregon bill as "name, image, likeness, *and athletic reputation*" (NILAR) (emphasis added). The bill would continue to prohibit NIL compensation that is conditioned on the student-athlete's performance, but would allow NIL compensation to be conditioned on the student-athlete's attendance (or continued attendance) at a particular institution — directly contradicting the NCAA's [Interim NIL Policy](#), which explicitly prohibits this. The bill also recognizes the collective-backed "pay for play" system — despite the NCAA's efforts to punish the same — and embraces both the collective system and the modern NIL reality.

Effectively, the bill would preclude the NCAA or any other athletic governing body from implementing its NIL rules. In the context of a student-athlete exercising their NILAR rights, the bill would restrict the NCAA from:

1. Prohibiting a college or university or athlete from participating in college sports;
2. Accepting a complaint;
3. Opening an investigation;
4. Taking any other adverse action against a school or athlete as a result of a violation, or an alleged violation, of its rules; or
5. Authorizing, causing, or allowing any post-secondary institution of education that is a member of the association to take any prohibited actions under the proposed bill.

The bill also provides liability protections to schools within the state and their employees. Specifically, the bill provides that a school, or its employees, "may not be held liable for any damages to a student athlete's ability to

exercise the student athlete’s rights due to any decision or action made by the post-secondary institution of education or employee” that is “routinely taken in the course of intercollegiate sports” or “is part of identifying, facilitating, enabling or supporting opportunities for the current student to exercise the student athlete’s” NIL rights at the institution.

Members of the Oregon Trial Lawyers Association, however, have raised concerns about this liability protection clause, arguing that such blanket immunity would have unintended consequences for many student-athletes.^[1] Others within the Oregon bar have argued that the liability protection clause within the bill violates Oregon’s constitutional right to a remedy — known as the Remedy Clause — as it ostensibly strips away a student-athlete’s right to sue for damages related to lost earnings if, for example, a school employee wrongfully harms a student-athlete in the course of school athletics (e.g., during travel, strength, and conditioning, or an athletic hazing activity).

Oregon is not the first state, and certainly will not be the last, to include preemption protections within its state NIL law. With lobbyists pushing back on the restrictive NCAA guidelines, the result is a patchwork of state laws. This bill would align Oregon with many other states that have sought to provide blanket immunity to schools related to NIL litigation. See our [State and Federal Legislation Tracker](#) for more information.

At bottom, this new bill, if enacted into law, would explicitly preempt any future challenges to NILAR activity, which would effectively eliminate the NCAA’s authority to police NIL, or NILAR, in Oregon.

Oregon’s proposed NILAR bill also overlaps to a certain extent with the recent preliminary injunction granted in favor of Tennessee and Virginia. On February 23, U.S. District Judge Clifton L. Corker of the Eastern District of Tennessee, issued an [opinion and order](#) granting the Tennessee and Virginia attorneys generals’ request for a preliminary injunction, [enjoining the NCAA](#) from enforcing its so-called “NIL-recruiting ban.” This preliminary injunction has the potential to upend the entire NIL regime and undercut a fundamental NCAA NIL policy: third parties cannot pay potential student-athletes to attend a certain school. We discuss this EDTN injunction in more detail, both in the article, [End Game? Federal Court Enjoins Enforcement of NCAA’s “NIL Recruiting Ban”](#), and our most recent *Highway to NIL* podcast episode, [NIL Recruitment Injunction](#).

After the Senate Committee on Rules held a work session for HB 4119, the bill now moves through the Oregon State Senate. Troutman Pepper will continue to monitor this bill and provide updates as significant developments arise.

[1] *The Oregonian*. “Lawyers raise concerns about liability protection in bill that would amend Oregon’s NIL law.” Accessed March 1, 2024.

<https://www.oregonlive.com/sports/2024/02/lawyers-raise-concerns-about-liability-protection-in-bill-that-would-amend-oregons-nil-law.html>

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