SURVEY OF ILLINOIS LAW: ILLINOIS NAME, IMAGE, & LIKENESS STATUTE AND THREE REASONS WHY ATHLETES MUST BECOME EDUCATED IN BUSINESS TO PROPERLY MONETIZE ON THEIR CELEBRITY

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INTRODUCTION

Imagine yourself as a student-athlete who is required to dedicate up to forty hours per week[1] to your sport only to retire to your dorm room or apartment tired, hungry, and lacking the ability to feed or provide for yourself financially. Contrary to popular belief, student-athletes on full-ride scholarships often live at or below the poverty line due to the additional responsibility of paying for extra out-of-pocket expenses that their scholarship does not cover.[2]

To become a National Collegiate Athletic Association ("NCAA") Division-I student-athlete at a top university means that top-performing athletes' hard work would pay off as a pathway to the National Football League ("NFL"), National Basketball League ("NBA"), Major League Baseball ("MLB"), the Women's National Basketball League ("WNBA"), the Major Soccer League ("MLS"), and more. Therefore, dedicating up to forty hours per week is simply a small sacrifice based on the opportunity that awaits the student-athletes who compete in professional leagues.[3]

However, studies show that fewer than 2% of NCAA student-athletes become professional athletes.[4] Therefore, the other 98% of student-athletes,

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1 *See* Peter Jacobs, *Here's The Insane Amount of Time Student-Athletes Spend on Practice*, BUS. INSIDER (Jan. 27, 2015, 10:44 AM), https://www.businessinsider.com/college-student-athletes-spend-40-hours-a-week-practicing-2015-1.

2 *The Price of Poverty in Big Time College Sports*, NCPA, http://assets.usw.org/ncpa/The-Price-of-Poverty-in-Big-Time-College-Sport.pdf (last visited Sept. 5, 2022).

3 *See Recruiting Facts*, NCAA, (May 10, 2022, 7:76 AM), https://ncaaorg.s3.amazonaws.com/compliance/recruiting/NCAA_RecruitingFactSheet.pdf.

4 *Id.*

especially those of color, often find themselves in a difficult position as they are unprepared to transition into life after college sports.[5] During an interview, Eddie Comeaux, Associate Professor at the University of California at Riverside and the founder of UC Riverside's Center for Athletes' Rights and Equity ("CARE"), stated the following:

> My own research[6] has shown that while computers and tutoring and writing centers are all readily available to college athletes, career preparation beyond sport is not central to their undergraduate experiences. They see clear indicators that coaches and others want to develop their athletic talents to win games, and maybe help them go to the professional level. But at the same time, energy and investment don't go to academic goals.[7]

The Illinois General Assembly's recent passage of the Illinois Name, Image, and Likeness ("NIL") legislation allows student-athletes to remove the pressure of becoming professional athletes to capitalize on their athletic ability and celebrity.[8] The new NIL era is a great opportunity for many struggling and hopeful student-athletes to reset their mental focus on what their future can be. However, along with the excitement, is also the underlying mental and physical commitment athletes must attend to pull off great success with NIL that does not undermine their eligibility, the school's rules, and guidelines, or statutory prohibitions.

As athletes seek financial opportunities through NIL, there are some legal impacts that athletes, their families, and college administrators must be aware of: 1) understanding contract law; 2) understanding Intellectual Property and how NIL factors in; and 3) who can the student-athlete hold liable for damages in terms of the statute, their federal or state publicity rights if violated?

However, first, we must understand the history of college sports and the advocacy for student-athlete compensation.

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5 *See id.*

6 *See* Uma M. Jayakumar & Eddie Comeaux, *The Cultural Cover-Up of College Athletics: How Organizational Culture Perpetuates an Unrealistic and Idealized Balancing Act*, 87 J. OF HIGHER EDUC. 488 (2016).

7 Patrick Hruby, *They Don't Feel Adequately Prepared: How Schools Struggle to Ready Athletes for Success After College Sports*, GLOBAL SPORT MATTERS: RESEARCH (Sep. 21, 2021), https://globalsportmatters.com/research/2021/09/21/schools-struggle-ready-athletes-success-after-college-sports-ncaa-eddie-comeaux/.

8 *See* Claire O'Brien, *Time to Cash In: Illinois' NIL Laws go into Effect Thursday After Years of Pressure for Legislature*, THE DAILY ILLINI, (Mar. 28, 2022, at 4:39 PM), https://dailyillini.com/sports-stories/2021/07/01/time-to-cash-in-illinois-nil-laws-go-into-effect-thursday-after-years-of-pressure-for-legislature/.

I. BRIEF HISTORY & WHAT GOT US HERE?

Prior to the passage of NIL legislation and while universities, alumni, coaches, and others could profit from NCAA athletics, student-athletes were limited to only their scholarship benefits which only cover the athlete's tuition, fees, room, board, and course-related books.[9] Athletes sacrificed their families, schoolwork, and options for more promising degrees, all for the hope and demand of their sports.[10] Moreover, the NCAA's rules prohibiting student-athletes from accepting gifts or bribes from agents, boosters, or anyone else could lead to a student-athlete's athletic suspension or even end their athletic careers.[11] Many criticized the NCAA's rules prohibiting student-athletes from profiting off of their names, images, and likenesses considering the revenue educational institutions attained from their athletic programs was largely from student-athletes' talents and celebrity.[12]

Considering that many student-athletes map out their sporting careers during high school to ensure their eligibility and athletic acumen to play at the college level, with the eventual goal of playing professionally, they recognized the huge imbalance of power and wealth and decided to challenge the NCAA's rules prohibiting compensation in 2014.[13] Such challenges encompassed demanding just compensation for the work and sacrifice many athletes endure throughout an arduous collegiate athletic career.[14] In 2014, a class-action lawsuit was filed by former and current collegiate athletes alleging an illegal monopoly on college sports in violation of federal antitrust

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9 *See* NCAA vs. Alston, 141 S. Ct. 2141, 2151 (2021) ("The president of the NCAA earns nearly $4 million per year. Commissioners of the top conferences take home between $2 to $5 million. College athletic directors average more than $1 million annually. And annual salaries for top Division I college football coaches approach $11 million, with some of their assistants making more than $2.5 million.") (citations omitted); *see also Scholarships*, NCAA, https://www.ncaa.org/sports/2014/10/6/scholarships.aspx (last visited Apr. 4, 2022); *see also* Felix Richter, *U.S. College Sports Are a Billion-Dollar Game*, STATISTA (Mar. 28, 2022), https://www.statista.com/chart/25236/ncaa-athletic-department-revenue/.

10 *See* Angela Farmer, *Let's Get Real With College Athletes About Their Chances of Going Pro*, THE CONVERSATION (Apr. 24, 2019, 6:47 AM), https://theconversation.com/lets-get-real-with-college-athletes-about-their-chances-of-going-pro-110837.

11 *See Summary of NCAA Regulations, NCAA Division I*, NCAA, at 2-3 (2011-2012), http://fs.ncaa.org/Docs/AMA/compliance_forms/DI/DI%20Summary%20of%20NCAA%20Regulations.pdf*; see also* Bailey Brautigan, *Cam Newton and 10 College Athletes in Scandal: Is It Their Fault or the System?*, BLEACHER REP. (Mar. 31, 2022, 7:26 AM), https://bleacherreport.com/articles/514177-10-college-athletes-involved-in-scandals-is-it-their-fault-or-the-system.

12 *See* Mike Ferlazzo, *Survey Polls Nation on Issues Related to Supreme Court Ruling on NCAA Student-Athlete Compensation*, FOR THE MEDIA (June 21, 2021, 5:41 PM), https://forthemedia.blogs.bucknell.edu/Bucknell-poll-finds-mixed-support-for-college-student-athlete-compensation/.

13 *Alston*, 141 S. Ct. 2141.

14 O'Bannon v. NCAA, 7 F.Supp.3d 955 (N.D. Cal. 2014), *aff'd in part*, *vacated in part*, 802 F.3d 1049 (9th Cir. 2015).

law – specifically the Sherman Act[15] – by placing a restraint on trade.[16] The NCAA argued, *inter alia*, that student-athletes were amateurs, and that allowing student-athletes to profit from their athletic celebrity would remove the standard of amateurism.[17]

The district court disagreed, finding that the NCAA had a monopoly on college sports to which other major actors, such as coaches, boosters, and athletic associations, all benefit financially from student-athletes who spend a considerable amount of time on their sport.[18] The district court further noted that the NCAA's "restraints were stricter than necessary to achieve demonstrated procompetitive benefits" which violates the Sherman Act.[19] The NCAA appealed the district court's ruling claiming that the restraints on trade were justified and necessary to preserve its procompetitive benefits for its consumer demand by maintaining amateurism.[20] The appellate panel disagreed with the NCAA and upheld the district court's ruling that the restraint against FBS Football athletes, and D1 basketball athletes were illegal; that the student-athletes student-athletes "carried their burden at the first step of the Rule of Reason analysis by showing that the restraints produced significant anticompetitive effects within the relevant market for student-athletes' labor on the gridiron and the court";[21] that some of the NCAA's rules did nothing to preserve a pro-competitive market such as "restricting non-cash education-related benefits, did nothing to foster or preserve consumer demand"[22] among other things.

Again, the NCAA appealed to the United States Supreme Court, arguing that it should have been immune to the Sherman Act because the NCAA and its member schools are not "commercial enterprises," arguing that it has a unique product (student-athletes), and oversee collegiate athletics.[23] The NCAA relied on the *NCAA vs. Board of Regents* decision as to its authority that the district court should have approved all of its existing restraints, *inter alia*.[24] Consequently, the Supreme Court was tasked with determining whether the district court erred in its ruling that the NCAA violated the Sherman Act by limiting educationally related school benefits

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15 15 U.S.C. § 1.

16 *Alston*, 141 S. Ct. 2141 (citing 15 U.S.C. § 1).

17 *Id*. at 2155.

18 *See In re* Nat'l Collegiate Athletic Ass'n Grant-In-Aid Cap Antitrust Litigation, 375 F.Supp.3d 1058, 1097 (N.D. Cal. 2019) (finding that plaintiffs produced sufficient evidence to establish relevant market comprising national markets for labor in the form of athletic services in exchange for grants-in-aid and other benefits).

19 *Id*. at 1104.

20 Alston vs. NCAA, 958 F.3d 1239 (2020).

21 *Id*. at 1243.

22 *Id*.

23 *Alston*, 141 S. Ct. at 2158-59.

24 *Id*. at 2158-59; *see also* NCAA vs. Board of Regents, 468 U.S. 85 (1984).

that could be offered to student-athletes.[25] The Supreme Court upheld the lower courts' decision, affirming the injunction of NCAA restrictions on compensation such as "non-cash education-related benefits" like computers, instruments, or other tangible items that are necessary for academic success[26] were necessary and that the lower courts did so under the appropriate level of scrutiny, the *rule of reason* as NCAA violated the Sherman Act.[27] The NCAA continued to argue that its restraints should have been reviewed under the deferential standard claiming that it has a joint venture with members whose collaboration is necessary to offer consumers a unique product.[28] The Supreme Court rejected the idea that the NCAA has a joint venture on college sports, but concluded that based on its monopoly power, the proper analysis was the rule of reason that the lower courts accurately applied and by which antitrust laws were created to prevent organizations like the NCAA from using federal laws as "a cover for exploitation of the student-athletes."[29]

Prior to the Supreme Court's decision in *Alston*, California was the first state to propose NIL legislation in 2019, followed by Colorado and Florida in 2020.[30] On June 31, 2021, Gov. J.B. Pritzker signed the Illinois NIL legislation known as the *Student-Athlete Endorsement Rights Act*[31] allowing college athletes in Illinois to profit from their name, image, and likeness.[32]

Illinois NIL statute provides ambiguities and complex legal issues that college athletes, their universities, and professionals supporting athletes must understand to properly protect student-athletes and that will allow student-athletes to benefit from their celebrity.[33]

There are many examples of professional athletes who built successful brands and businesses outside of their athletic careers.[34] Yet, bringing NIL

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25 *Alston*, 141 S. Ct. at 2155.

26 *In re* Nat'l Collegiate Athletic Ass'n Athletic Grant-in-Aid Cap Antitrust Litig., 375 F. Supp. 3d 1058 (N.D. Cal. 2019).

27 *Alston*, 141 S. Ct. at 2166; *see also In re* Delta Dental, Antitrust Litig., 484 F. Supp. 3d 627, 633 (2020) ("The standard framework for analyzing an action's anticompetitive effects on a market is the Rule of Reason."); *see also* Agnew v. Nat'l Collegiate Athletic Ass'n, 683 F.3d 328, 335 (7th Cir. 2012) (*"*Under this mode of analysis, "the plaintiff carries the burden of showing that an agreement or contract has an anticompetitive effect on a given market.").

28 *Alston*, 141 S. Ct. at 2166.

29 *Id*.

30 *See* CAL. EDUC. CODE § 67456 (2021); COLO. REV. STAT. ANN. § 23-16-301 (2021); FLA. STAT. ANN. § 1006.74 (2021).

31 110 ILL. COMP. STAT. 190/1 (2021).

32 Matt Stevens, *Pritzker Signs Illinois NIL Bill Ensuring State's Athletes Can Begin Profiting Off Themselves on July 1*, ILLINI GUYS (June 29, 2021), https://illiniguys.com/pritzker-signs-illinois-nil-bill-ensuring-states-athletes-can-begin-profiting-off-themselves-on-july-1/.

33 110 ILL. COMP. STAT. 190 (2021).

34 *See* Michael McCann, *Derrick Rose's Adidas Contract: Breaking Down the Strange Terms*, SPORTS ILLUSTRATED (Feb. 6, 2018), https://www.si.com/nba/2018/02/06/derrick-rose-adidas-contract-terms-payment-clauses-cavs; *see also* Barnaby Lane, *Christiano Ronaldo Reportedly Makes More Money Being An Influencer on Instagram Than He Does Playing Soccer For Juventus*, BUS.

into the college space undoubtedly requires student-athletes to manage a business, school, and sports by increasing the hours they currently dedicate per week to be successful in each arena.[35]

II. ILLINOIS'S NIL STATUTORY PROVISIONS

As with any business relationship or transaction, contracts are often at the forefront of it, but may often have a different effect when rules like the Uniform Commercial Code ("UCC") come into play.[36] This section will discuss how contracts and the UCC impact Illinois' NIL statute and student-athletes rights and obligations at law.

A. Contracts, the UCC, & NIL

The Illinois NIL statute references "contract" and the ability of student-athletes to enter into contractual agreements without their educational institution's influence in the following ways:

> [A] postsecondary educational institution shall not uphold any contract, rule, regulation, standard, or other requirement that prevents a student-athlete of that institution from earning compensation as a result of the use of the student-athletes name, image, likeness, or voice. Any such contract, rule, regulation, standard, or other requirement shall be void and unenforceable against the postsecondary educational institution or the student-athlete.[37]
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> [A]n athletic association, conference, or other group or organization over intercollegiate athletic programs . . . shall not enforce a contract, rule, regulation, standard, or another requirement that prevents a postsecondary educational institution from participating in an intercollegiate athletics program as a result of the compensation of a student-athlete for the use of the student-athletes name, image, likeness, or voice.[38]

INSIDER (Oct. 16, 2019, 7:48 AM), https://www.businessinsider.com/cristiano-ronaldo-makes-more-money-from-instagram-than-juventus-2019-10.

35 *See* Alex Kirshner, *How College Athletes are Making 'Massive Decisions' in the NIL Era,* GLOBAL SPORT MATTERS (Dec. 7, 2021), https://globalsportmatters.com/business/2021/12/07/college-athletes-massive-decisions-nil-era/.

36 *See Belleville Toyota, Inc. v. Toyota Motor Sales, U.S.A., Inc.*, 199 Ill. 2d 325, 352-53 (2002) (applying the "predominant purpose test" where a contract involves the sale of both goods and services leaving the court to determine which part of the agreement was the chief component).

37 110 ILL. COMP. STAT. 190/15 (2021).

38 *Id*. at 190/15(d) (2021).

The statute makes clear that student-athletes can only enter contracts with third parties for compensation of their name, image, and likeness, and each agreement must be in writing.[39]

Synchronously, the statute prohibits student-athletes and third parties from engaging in certain behavior that would violate the ideals and intention of the statute.[40] Such prohibited conduct includes: providing, directly or indirectly, any type of publicity rights agreement to the student-athlete as an inducement to enroll or attend a particular educational institution[41]; the student-athletes' compensation for NIL shall not be conditioned on their athletic performance, attendance, or enrollment at a particular school[42]; an educational institution shall not provide, directly or indirectly, for the arrangement of a NIL deal between a third-party and the student-athlete[43]; and the student-athlete may not enter a NIL deal prior to enrolling in their educational institution.[44]

By prohibiting such conduct and setting certain guidelines around third parties and student-athletes, the statute mandates that student-athletes may not engage in business – directly or indirectly - with their educational institution, or have an apparent inference of doing so, for the sake of monetizing their name, image, or likeness.[45] The statute further mandates that a student-athlete's educational institution shall not directly or indirectly provide compensation to a prospective or current student-athlete or in any way arrange a publicity rights agreement for a prospective or current student-athlete.[46] In addition to the prohibitions mentioned above, the statute expresses that each NIL contract must be in writing and be disclosed to the student-athletes educational institution.[47] Therefore, the legislative terminology based on contracts and their importance for student-athletes must be broken down to fully explain what is allowed under the statute.

1. The Illinois NIL Statute's Relevant Terms for Contract

When entering a contract, it is essential that one understand whom they are doing business with and each party's respective rights and obligations. The Illinois NIL statute defines some key terms for all parties entering into NIL agreements to understand who, what, when, why, and where such

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39 *Id.* at 190/10.
40 *See id.* at 190/20 (providing prohibited conduct under the Act).
41 *Id.* at 190/20(e).
42 *Id.* at 190/20(e).
43 *Id.* at 190/20(g).
44 110 ILL. COMP. STAT.190/20(h) (2021).
45 *Id.* at 190/20(e).
46 *Id.* at 190/20(f).
47 *Id.* at 190/20(c).

contracts will take effect.[48] The following key terms are defined by the statute for purposes of clarity and contract construction:

Image	[A]ny visual depiction, including, but not limited to, photograph, digital image, rendering, and video.[49]
Likeness	[A] physical, digital, rendering, or other depiction or representation of a student-athlete, including a student-athlete's uniform number or signature, that reasonably identifies the student-athlete with particularity[50] and is not reasonably considered to be a generic representation of a member of an intercollegiate athletics program.[51]
Name	[T]he first or last name or the nickname of a student-athlete when used in a context that reasonably identifies the student-athlete with particularity.[52]
Publicity Rights Agreement	[A] contract or other written or oral arrangement between a student-athlete and a third party licensee the name, image, likeness, or voice of the student-athlete.[53]
Publicity Right	[A]ny right that (i) is licensed under a publicity rights agreement or (ii) is recognized under a federal or State law that permits an individual to control and benefit from the commercial use of the name, image, likeness, or voice of the individual.[54]

48 *Id.* at 190/5 (defining certain terms for purposes of the Act).
49 *Id.* at 190/5.
50 *Id.* at 190/5.
51 *Id.* at 190/5.
52 *Id.* at 190/5.
53 *Id.* at 190/5.
54 110 ILL. COMP. STAT. 190/5 (2021).

Student Athlete	[A] student currently enrolled at a postsecondary educational institution who engages in, is eligible to engage in, or may be eligible in the future to engage in, an intercollegiate athletics program at a postsecondary educational institution.[55]
Third-Party Licensee	[A]ny individual or entity that licenses publicity rights or the use of name, image, likeness, or voice from any prospective or current student-athlete or group of student-athletes.[56]
Compensation	[A]nything of value, monetary or otherwise, including, but not limited to, cash, gifts, in-kind items of value, social media compensation, payments for licensing or use of publicity rights, payments for other intellectual or intangible property rights under Federal or State law, and any other form of payment or remuneration [not excluded within the Act].[57] A student-athlete may earn compensation, commensurate with market value, for use of the name, image, likeness, or voice of the student-athlete while enrolled [in an educational institution.][58] Compensation . . . shall not affect, the student-athlete's scholarship eligibility, grant-in-aid, or other financial aid, awards or benefits, or the student-athlete's intercollegiate athletic eligibility.[59] Compensation shall not include tuition, room, board, books, fees, and personal

55 *Id.* at 190/5.
56 *Id*. at 190/5.
57 *Id*. at 190/5.
58 *Id*. at 190/10.
59 *Id*. at 190/15(a).

	expenses that a post-secondary educational institution provides to a student-athlete[60]; Federal Pell Grants and other State and federal grants or scholarships unrelated to, and not awarded because of a student-athlete's participation in … sports[61]; other financial aid, benefits, or awards that a post-secondary educational institution provides to a student-athlete[62]; or the payment of wages and benefits to a student-athlete for work actually performed (but not for athletic ability or participation in [college sports]."[63]
Social Media Compensation	[A]ll forms of payment for engagement on social media received by a student-athlete as a result of the use of that student-athletes name, image, likeness, or voice.[64]
Disclosure in Writing	Student-athletes are required to disclose any publicity rights agreement to their educational institution and must provide the following information: "the existence and substance of all publicity rights agreement," and where the agreement "contemplate cash or other compensation to the student-athlete that is equal to or in excess of a value of $500[, it] shall be formalized into a written contract."[65]
Timing	[The] contract shall be provided to the postsecondary educational institution in the manner and at a time prescribed by the institution which the student is enrolled prior to the execution of the agreement and

60 110 ILL. COMP. STAT. 190/5(1) (2021).
61 *Id.* at 190/5(2).
62 *Id.* at 190/5(3).
63 *Id.* at 190/5(4).
64 *Id.* at 190/5.
65 *Id.* at 190/20(c).

	before any compensation is provided to the student athlete..”[66]
Term of student-athlete contract	A contract or representation agreement relating to the use of the student-athlete’s name, image, likeness, or voice that is entered into while the student-athlete is participating in an intercollegiate sport at a postsecondary educational institution may not extend beyond the student-athlete’s participation in the sport at the institution.[67]

2. Compensation & Written Agreement Mandate

Approximately 56% of American small businesses are sued for breach of contract.[68] To avoid being one of those small business owners, student-athletes must study the NIL statute and become familiar with key terms to ensure they are protecting themselves and the wealth that they desire to generate.

The Illinois NIL statute introduces keywords such as “all forms of payment,”[69] or “other compensation”[70] that student-athletes should thoroughly understand to ensure they are compliant with the statute and their educational institution’s rules and regulations that could impact eligibility under the statute and NCAA guidelines.[71]

It is possible that a student-athlete could believe they are exempt from disclosing a third-party licensing agreement if they have not been paid fungible cash of $500 or more, or where they believe that any other offer for performing the agreement does not have a value rising to that level. Could the student-athlete find themselves on the wrong side of a contract lawsuit

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66 *See* 110 ILL. COMP. STAT. 190/20(c) (2021).

67 *Id*. at 190/25.

68 Klemm Analysis Group, *Impact of Litigation on Small Business*, SMALL BUS. ADMIN. OFF. ADVOC., Oct. 2005, at 3 (citing CAROL J. DEFRANCES & STEVEN K. SMITH, CONTRACT CASES IN LARGE COUNTIES: CIVIL JUSTICE SURVEY OF STATE COURTS, 1992, at 2, 8 (1996)).

69 110 ILL. COMP. STAT. 190/5 (2021).

70 *Id.* at 190/20(C).

71 *Id*. (requiring disclosure and written agreement of all NIL agreements exceeding or equal to $500 to the student-athlete’s postsecondary educational institution); *see also Name, Image, Likeness: Interim NIL Policy*, NCAA (2021), http://ncaaorg.s3.amazonaws.com/ncaa/NIL/NIL_Interim Policy.pdf (providing that NCAA Bylaws prohibiting pay-for-play and improper recruiting inducements remain in effect, subject to a student-athlete violating state law regarding NIL activity).

where they underestimated the value of their deal which they possibly failed to disclose? The answer to both questions is yes.

Non-monetary compensation may include gym memberships, free parking, free merchandise, or discounts to a store or service.[72] If a student-athlete enters a publicity rights agreement where compensation includes a gym membership for one year and 15% discount on all products, the value could easily surpass $500, thus requiring disclosure of the agreement and demanding the terms be formalized in writing.[73] Not only does disclosure and the requirement of properly executing the terms in writing ensure that the student-athlete is monitored with whom they are doing business, but also provides a protection mechanism for the student-athlete.

In Illinois, the Statute of Frauds provides a great affirmative defense to someone who may be sued for breach of contract.[74] The Statute of Frauds requires that certain agreements that cannot be performed within one year after execution, or for the sale of goods valued at more than $500 must be in writing such as a marriage, the sale of land or lease, or a promise to pay debt of another.[75]

To qualify as a sale of a good that is $500 or more Under Article 2 of the Uniform Commercial Code ("UCC"), the good must be movable and cannot be affixed to land.[76] Therefore, if an Illinois student-athlete enters any agreement involving goods valued at $500 or more, such as the sale of a car, merchandise, or jewelry, it must be in writing.[77] In a circumstance where a student-athlete agrees to perform a service and accepts compensation in the form of goods, the analysis may change because Article 2 of the UCC does not apply to service contracts.[78] In this type of situation, the outcome depends on whether the agreement's predominant purpose was for the sale of goods, triggering a formal execution of a contract.[79] When these issues arise, causing Illinois courts to determine the contract's predominate purpose, the Illinois courts have deemed such agreements as "mixed contracts," which require the consideration of a myriad of factors.[80] Therefore, although the mandate in the Illinois NIL statute may seem stringent to some, it demonstrates a level of protection for the student-athlete to have the ability to enforce their

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72 *See* 110 ILL. COMP. STAT. 190/5 (2021) (defining "compensation" for purposes of the Act).

73 *Id.* at 190/20.

74 810 ILL. COMP. STAT. 5/2-201 (2009).

75 *Id.* at 5/2-201.

76 *Id.* at 5/2-105.

77 *Id.* at 5/2-201.

78 Brandt v. Sarah Bush Lincoln Health Ctr., 329 Ill. App. 3d 348 (2002) (citing Pitler v. Michael Reese Hospital, 92 Ill. App. 3d 739, 742 (1980)) (stating that "[if] the transaction was primarily for services, then the UCC does not apply even if the sale of goods was part of the transaction").

79 *Id.*

80 *Id.*

contractual rights against a third party if the student-athlete complied with their part of the deal.[81]

It is important for student-athletes to understand the duration of their contractual obligations and legal rights. The Illinois NIL statute provides that a contract for purposes of the student's NIL shall not extend beyond the student-athlete's "*participation in the sport at the institution*."[82] However, this language is ambiguous as it does not specifically define when a student-athlete's "participation" ends for purposes of the Act.[83]

When statutory language creates confusing or conflicting rules, it is essential to look to other authorities for guidance, such as legal counsel and their athlete agents for support.[84] Student-athletes can also find guidance from reading the legislative history regarding the passing of the Illinois NIL bill and consulting other states' NIL statutes[85] to provide additional color on issues where Illinois could be silent. Therefore, a student-athlete should enter a dialogue with their college athletic administrators to understand particular terms and timelines set out by their schools to avoid issues that may later impact the student-athlete's eligibility since Illinois has mandated that schools can set their own reporting timelines.[86]

3. Understanding publicity rights under the contract.

The Illinois NIL statute allows the student-athlete to enter a contract for essentially the licensing of their publicity rights that the student-athlete may have at the state or federal level.[87] Therefore, the student-athlete must review the law of their current state to determine how it complements or conflicts with the new NIL written rule.

The Illinois Right of Publicity Act[88] declares that an individual may grant the right to use their name or likeness for a commercial purpose and may revoke that right at any time.[89] Determining whether a person has a right

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81 *See* 110 ILL. COMP. STAT. 190/35 (2021) (intentionally not including third-party licensees in its analysis against who the student-athlete may have liability).

82 *Id.* at 190/25.

83 *See id.* at 190/25.

84 *Id.* at 190/15(f), 20 (discussing student-athletes' right to legal and agent support without interference by the student-athletes educational institution).

85 *Tracker: Name, Image, and Likeness Legislation by State*, BUS. OF COLL. SPORTS, https://businessofcollegesports.com/tracker-name-image-and-likeness-legislation-by-state/ (last updated Jun. 17, 2022).

86 SIVONNIA DEBARROS, ATHLETES MAKING MOVES: SECURE THE FUTURE BY PROTECTING YOUR NAME, IMAGE & LIKENESS 38 (Special edition 2021) (expounding on the many applications that Illinois's Section 25 could have on a student-athlete); *see* The Student Athlete Endorsement Rights Act, Pub. Act 102-892, 2022 Ill. Laws § 15, 20 (amending 110 ILCS 190/15(f) and 20(c)).

87 *See* 110 ILL. COMP. STAT. 190/5 (2021).

88 765 ILL. COMP. STAT. 1075/1 (1999).

89 *Id.* at 1075/15, 1075/30.

to publicity is established by the "[the individual's] right to control and to choose whether and how to use an individual's identity for commercial purposes[90]." It is important to note that in Illinois, the statute grants the right of enforcement of publicity rights and an award of monetary damages of whichever value is greater: the profit received based on unauthorized use of another's publicity rights or $1,000.[91] Upon establishing such damages, the statute mandates that the injured party show proof of lost income, but the defending party can deduct reasonable expenses to illustrate a lesser value.[92] In addition, the injured party may recover the attorney fees and can ask for punitive damages[93] if they can establish an act of willful violation.[94]

The student-athlete's name, image, and likeness are all part of their *right of publicity* in Illinois.[95] When a student-athlete agrees to make a public appearance or film for a commercial, they must understand the extent of the rights granted for the other party to commercially benefit from them.[96] If the student-athlete fails to properly limit the right of use in their agreement, it could mean the other party has a right to use the student-athlete's name, image, or likeness until the agreement expires, or if the student-athlete failed to limit the contract's duration by granting a perpetual use clause, the student-athlete or their legal representative[97] can legally argue *unconscionability*,[98]

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90 *Id.* at 1075/10. *Commercial Purposes* "means the public use or holding out of an individual's identity (i) on or in connection with the offering for sale or sale of a product, merchandise, goods, or services; (ii) for purposes of advertising or promoting products, merchandise, goods, or services; or (iii) for the purpose of fundraising." *Id.* at 1075/5.

91 *Id.* at 1075/40.

92 *Id.* at 1075/45.

93 "Punitive damages are considered punishment and are typically awarded at the court's discretion when the defendant's behavior is found to be especially harmful. Punitive damages are normally not awarded in the context of a breach of contract claim." *See, e.g.*, O'Gilvie Minors v. United States, 519 U.S. 79 (1996); *Punitive Damages*, CORNELL LEGAL INFO. INST., https://www.law.cornell.edu/wex/punitive_damages (last visited April 15, 2022).

94 765 ILL. COMP. STAT. 1075/40, 1075/55 (1999).

95 *See generally id.* 1075/ (1999).

96 *Id.* at 1075/20(a)(2) (discussing a person's ability to enforce his/her rights whereby a transfer of publicity rights were made).

97 110 ILL. COMP. STAT. 190/15(f) (2021). The statute partially states the following with respect to having professional representation:

> A postsecondary educational institution, athletic association, conference, or other group or organization with authority over intercollegiate athletics programs, including, but not limited to, the National Collegiate Athletic Association, the National Junior College Athletic Association, shall not prevent a student-athlete from obtaining professional representation for purposes of this Act in relation to name, image, likeness, or voice, or to secure a publicity rights agreement, including, but not limited to, representation provided by athlete agents or legal representation provided by attorneys. *Id.*

98 "If a contract is unfair or oppressive to one party in a way that suggests abuses during its formation, a court may find it unconscionable and refuse to enforce it. A contract is most likely to be found unconscionable if both unfair bargaining and unfair substantive terms are shown." *Unconscionability*, LEGAL INFO. INST., https://www.law.cornell.edu/wex/unconscionability (last visited Feb. 24, 2022).

against public policy for creating an indefinite duration,[99] or some other legal theory to limit or prohibit use.

The student-athlete must understand what right of publicity they are granting through their contractual deals and ensure that it is carefully crafted for greater protection. Moreover, this means that the student-athlete must understand—or be counseled to understand—that they have intellectual property rights which must be safely guarded and federally protected to avoid unauthorized use. That requires an understanding of intellectual property law and how it interacts with the new Illinois NIL statute.

B. Intellectual Property ("IP") Law & NIL

It is important to understand that everyone has IP. We walk around with it every day (our name).[100] We create it every day (logos, pictures, videos),[101] and we even think of new IP every day (brand names, services, products, and product designs).[102]

Most student-athletes may have heard by now the acronym, IP, or the words, intellectual property.

The Illinois NIL statute grants the student-athlete the right to use their name, image, and likeness and to be compensated at market rate value.[103] The use of one's is also the right of publicity - the ability to grant or revoke another's right to use your IP for commercial purposes.[104] Therefore, as student-athletes embark on this new journey, it is essential to understand the value of their IP and how to add additional layers of protection by federally registering their marks pursuant to U.S. copyright or trademark law.

Illinois NIL statute provides that a student-athlete is not permitted to use their school's registered IP without prior permission and payment at a fair market rate for such use.[105] The statute specifically states the following:

> student-athlete may not receive or enter into a contract for compensation for the use of the student-athlete's name, image, likeness, or voice in a way that also uses any *registered or licensed marks*, logos, verbiage, name, or designs of a postsecondary educational institution, unless the postsecondary educational institution has provided the student-athlete with written permission to do so prior to execution of the contract or receipt of

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99 *See* Rico Industries, Inc. v. TLC Group, Inc., No. 2014 IL App (1st) 131522 (ruling that a perpetual use clause or the inability of another party to unilaterally cancel an agreement was against public policy as it creates an indefinite duration and will not be upheld in this state).

100 "The term "trademark" includes any word, name, symbol, or device, or any combination thereof." *See* 15 U.S.C. § 1127.

101 *Id*.

102 *Id.*

103 110 ILL. COMP. STAT. 190/10 (2021).

104 *Id*. at 190/5.

105 *Id*. at 190/15.

> compensation. If permission is granted to the student-athlete, the postsecondary educational institution, by an agreement of all of the parties, may be compensated for the use in a manner consistent with market rates.[106]

If registered, the IP could be the school's name[107], logos[108], school colors[109], or the school's slogan, mottos,[110] or themed songs.[111] This is a great opportunity for student-athletes to follow their school's example of protecting their IP and the income stemming from such through the process of federal registration.

Although the Illinois NIL statute does not mandate student-athletes to federally register any marks, it does state that a student-athlete has such rights by illustrating that a student-athlete's publicity rights may be recognized under "*federal* or state law that permits an individual to control and benefit from the commercial use of the name, image, likeness, or voice of the individual."[112] Not only does registering one's IP give the student-athlete additional federal protection to enforce their rights for use or limit another's right to profit, but it also provides an additional vehicle to lodge claims for damages, if necessary.[113]

Based on all of these considerations, what happens if a student-athlete's NIL statutory or constitutional rights are infringed upon by the school or its employees? The next section will address whom the student-athlete can sue to enforce their rights.[114]

III. WHO CAN THE STUDENT-ATHLETE SUE?

Although NIL legislation is intended to grant certain rights and protections to student-athletes to engage in business deals with third parties without interference or punishment from their educational institutions or

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106 *Id.* (emphasis added).

107 15 U.S.C. § 1127.

108 *Id*.

109 *See* Qualitex v. Jacobsen Products Co., Inc., 514 U.S. 159 (1995) (discussing a particular shade of green as a brand color).

110 The Lanham Act specifies that service marks "includes without limitation the marks, names, symbols, titles, designations, slogans, character names, and distinctive features" used in business. Springfield Fire & Marine Ins. Co. v. Founders' Fire & Marine Ins. Co., 115 F. Supp. 787, 793 (N.D. Cal. 1953).

111 "Section 106 of the Copyright Act, 17 U.S.C. § 106, grants copyright owners the exclusive right to reproduce their copyrighted works." *See* Culver Franchising Sys. v. Steak n Shake Inc., No. 16 C 72, 2016 WL 4158957, at *3 (N.D. Ill. Aug. 5, 2016).

112 110 ILL. COMP. STAT. 190/5 (2021).

113 Where a plaintiff believes their intellectual property has been infringed, the proper vehicle to bring forth a claim is through the Lanham Act, 15 U.S.C. § 1051 *et seq.*; pursuant to Copyright Law, 17 U.S.C. §106; pursuant to Patent Law, 35 U.S.C. § 271; or by other complimentary state law rules protecting one's intellectual property.

114 Lanham Act, 15 U.S.C. § 1051 *et seq*.

athletic associations,[115] student-athletes could face unconsidered harm without a possible route to legal recourse.

Whereby individual school officials are involved with causing interference to the student-athletes' right to commercialize their name, image, or likeness, the question becomes can the student-athlete hold a school employee or administrator liable for interfering with their NIL deal? Under the Illinois NIL statute, a student-athlete would not have a claim unless it is framed under Title IX of the Education Amendments[116] which such "requirements or obligations imposed under Title IX" are not to be – or considered - modified through the statute.[117] The NIL statute further clarifies that student-athletes do not have a claim for damages *of any kind* under the Act against their educational institution for tortious interference, unfair trade, or competition, *inter alia*.[118]

Therefore, to determine liability for a student-athlete's damages if a third party from their school violates the terms of the NIL statute, the student-athlete's rights must be examined on a case-by-case basis and whether any claim is properly positioned under Title IX.[119]

Title IX provides that "[n]o person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activities receiving Federal financial assistance."[120] Title IX's purpose was to correct the imbalance of equal access and opportunity provided to one sex over the other.[121] For instance, during the early 1900s and after the NCAA was formed in 1906, there were no scholarships for women athletes—only men.[122] Title IX helped to enforce equal treatment by requiring equal scholarships for women and men.[123] With the enactment of this rule, educators, students, and athletes are able to seek justice for discrimination stemming from educational institutions, whereby there was no other vehicle for such claims.[124] Even male college athletes have alleged unfairness claims under Title IX.[125]

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115 110 ILL. COMP. STAT. 190/15.

116 34 C.F.R. § 106 (2020).

117 110 ILL. COMP. STAT. 190/30 (2021).

118 *Id.* at 190/35.

119 A Policy Interpretation: Title IX and Intercollegiate Athletics, 44 Fed. Reg. 71413 (Dec. 11, 1979) (to be codified at 45 CFR pt. 86).

120 34 C.F.R. § 106.1 (2020).

121 34 C.F.R. § 106.31(a) (2020).

122 *Title IX Enacted*, HISTORY, https://www.history.com/this-day-in-history/title-ix-enacted#:~:text=As%20a%20result%2C%20in%201972,enforce%20equal%20access%20and%20quality (last visited Feb. 25, 2022).

123 *Id.*

124 *Equal Access to Education: Forty Years of Title IX*, U.S. DEP'T OF JUST., https://www.justice.gov/sites/default/files/crt/legacy/2012/06/20/titleixreport.pdf (last visited Aug. 27, 2022).

125 *See e.g.*, Boulahanis v. Board of Regents, 198 F.3d 633 (7th Cir. 1999).

How does Title IX apply in a matter stemming from a NIL statute? Imagine a student-athlete befitting a traditional protected class (African American, female, Latino, or disabled, for example) is denied the same rights that other white male athletes received based on NIL.[126] The student-athlete(s) (or their legal representative) would need to review the statute and determine if a true claim can be raised according to Title IX's Specific Prohibitions.[127]

In our scenario, if a college athlete falls within a traditional protected class (determined by Title VII[128] litigation) that would support the overall backdrop of discrimination, they may be able to enforce their rights under Title IX, but it is not the only determinative factor.[129] One must examine the actual conduct and determine whether the college athlete suffered a violation under Title IX because of their race, gender, religion, etc.[130] The student would still have to establish adverse action was taken against them, that they engaged in a protected activity, and thereafter, suffered retaliation (a Title VII standard) due to their verbal and written reporting of the unfair or discriminatory act.[131] The student would also need to establish their damages.[132]

One hurdle that student-athletes may not be able to overcome is an affirmative defense that is so strong, it could sink their case—sovereign immunity.[133] Because most schools are receiving federal and state funding, they are considered to be arms of the states, which provides Eleventh

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126 *See* Sarah Lindsey, *Violence and Injury in Illinois Schools: Students Deserve A Remedy*, 34 J. MARSHALL L. REV. 803 (2001).

127 Title IX's specific prohibitions, 34 C.F.R. § 106.31(b)(1-7) (2020), include the following:

> (1) Treat one person differently from another in determining whether such person satisfies any requirement or condition for the provision of such aid, benefit, or service;
> (2) Provide different aid, benefits, or services or provide aid, benefits, or services in a different manner;
> (3) Deny any person any such aid, benefit, or service;
> (4) Subject any person to separate or different rules of behavior, sanctions, or other treatment;
> (5) Discriminate against any person in the application of any rules of appearance;
> (6) Apply any rule concerning the domicile or residence of a student or applicant, including eligibility for in-state fees and tuition;
> (7) Aid or perpetuate discrimination against any person by providing significant assistance to any agency, organization, or person which discriminates on the basis of sex in providing any aid, benefit or service to students or employees;
> (8) Otherwise limit any person in the enjoyment of any right, privilege, advantage, or opportunity

128 42 U.S.C. § 2000e.

129 *Id*.

130 *See generally Taking Legal Action Under Title IX*, KNOW YOUR IX, https://www.knowyourix.org/legal-action/taking-legal-action-title-ix/ (last visited Feb. 25, 2022).

131 *Id*.

132 *Id*.

133 *See* Ameritech Corp. v. McCann, 297 F.3d 582 (7th Cir. 2002).

Amendment immunity from suit aside from certain exceptions,[134] and most of their employees may be considered state officials acting in their official capacities when making certain decisions.[135] Moreover, the Illinois NIL statute states that the Act's language is not intended to minimize or waive any or all available defenses, including the defense of sovereign immunity related to educational institutions.[136]

Because the student-athlete would be effectively dealing with the state, the Supreme Court has held that "an unconsenting state is immune from suits brought in federal courts by her own citizens as well as by citizens of another State."[137] Therefore, damages may be difficult to recover when "a state cannot be sued in federal court for monetary damages or equitable relief."[138] However, there is hope because "a state's sovereign immunity is not absolute. In some cases, a suit against a state or its officials may proceed despite the Eleventh Amendment's proscription."[139] For example, a student-athlete may proceed against a state if it has waived its sovereign immunity, consented to the federal suit, or Congress has used its enforcement powers to abrogate the State sovereign immunity claims.[140] The Supreme Court introduced the *Ex parte Young Doctrine*,[141] which provides that a private party can sue a state officer in his or her individual capacity for injunctive relief to enjoin the prospective action that would violate federal law and cause the private party harm.[142] Therefore, given the *Ex parte Young Doctrine*, the young student-athlete may have an opportunity to have their Title IX claims heard, although the issue stems from the NIL statute.

Where a third party is unaffiliated with the student-athlete's educational institution and breaches its licensing agreement with the student-athlete, a simpler vehicle to lodge a claim for damages is available. For example, the student-athlete could allege damages based on a violation of the Illinois Publicity Statute,[143] can raise a claim for breach of contract[144] in state court, and argue fraud[145] if the third-party misrepresented material terms to induce

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134 *Id.* at 585.

135 Garcia v. City of Chicago, 24 F.3d 966, 969 (7th Cir. 1994).

136 110 ILL. COMP. STAT. 190/35 (2021).

137 Edelman v. Jordan, 415 U.S. 651, 662-63 (1974).

138 MSA Realty Corp. v. Illinois, 990 F.2d 288, 291 (7th Cir. 1993).

139 *Ameritech Corp.*, 297 F.3d at 585.

140 *Id.*

141 *Ex parte* Young, 209 U.S. 123 (1908) (providing an exception to federal suit against a sovereign defendant).

142 Dean Foods Co. v. Brancel, 187 F.3d 609, 613 (7th Cir. 1999).

143 765 ILL. COMP. STAT. 1075/40.

144 "To establish a breach of contract [or agreement], the plaintiff must show the existence of a valid and enforceable contract, performance of the contract by the plaintiff, breach of the contract by the defendant, and resulting injury to the plaintiff." Horwitz v. Sonnenschein Nath & Rosenthal LLP, 399 Ill. App. 3d 965, 973 (2010) (citing Sherman v. Ryan, 392 Ill. App. 3d 712, 732 (2009)).

145 *See* Kleinwort Benson N. Am., Inc. v. Quantum Fin. Servs., Inc., 285 Ill. App. 3d 201, 210 (1996) (citing Black v. Iovino, 219 Ill. App. 3d 378, 391 (1991), *appeal denied*, 143 Ill. 2d 636 (1992);

the student-athlete to do business with them. Let's take a look at these legal theories.

First, the student-athlete can point to the NIL statute, Section 35 for liability and argue that the statute intends to provide a right of action since it clearly establishes a liability clause and is only silent to other parties that can be liable for violating terms relating to the student-athletes NIL. The student-athlete could also argue that if legislatures intended for other companies and individuals to be shielded from this Act's liability clause, it would have stated so.

Second, the student-athlete can claim a breach of contract claim. It is important to understand that before one can argue that another party did not perform as originally agreed, you must show that a valid contract existed.[146] To do so, you must show that an offer was made, it was accepted, and that valuable consideration was given.[147] Consideration is the value received for the deal. Legally, it's defined as "'bargained-for exchange of promises or performances."[148] For example, consideration could be a paid VIP ticket to access a high-level event that is valued at $10,000, or it could be the exchange of goods and services. If you have those three elements, and one party did not perform as agreed, then a cognizable claim may be raised as to breach. The student-athlete might have the ability to argue additional legal theories such as a condition precedent[149] if certain compensation was conditioned on the student-athlete's performance which they completed. The determination of a condition precedent could have a great impact on one's case, especially if, let's say, the student-athlete is claiming the opposing party did not properly perform, but the student-athlete missed a window of performance that did not trigger the opposing party's action.

Another legal theory by which a student-athlete could seek damages against a third party is infringement litigation. For example, if the student-athlete has a clearly defined brand by which they license for use inside a licensing agreement, a claim at the federal or state[150] level for IP infringement

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Mother Earth, Ltd. v. Strawberry Camel, Ltd., 72 Ill. App. 3d 37, 49 (1979)) (finding that "[a] misrepresentation is material if the plaintiff would have acted differently had he been aware of the falsity of the statement" or "the one making it knew that the statement was likely to induce the recipient to engage in the conduct in question.").

146 Sidley Austin LLP, *In Review: Contract Formation in USA (Illinois)*, LEXOLOGY (Dec. 3, 2019), https://www.lexology.com/library/detail.aspx?g=01632836-5f8a-4937-b818-0bc096d0a950.

147 *Id.*

148 *Id.*

149 "A condition precedent is a fact. . . which . . . must exist or occur before a duty of immediate performance of a promise arises . . . " McDowell-Jacobs v. Huebner, No. 06–2269–KHV–GLR, 2006 WL 2620045, at *1 (D. Kan. Sept. 12, 2006) (quoting RESTATEMENT (FIRST) OF CONTRACTS § 250 (AM. L. INST. 1932)).

150 Note that filing a trademark at the state level only provides state law protection and does not give an individual federal (or national) brand protection. *Why Register Your Mark*, USPTO, https://www.uspto.gov/trademarks/basics/why-register-your-

and breach of the licensing agreement may be plausible if the opposing party has begun to misuse the IP.[151] Although student-athletes have common law rights to their brands, such protection is limited and only effective within the geographical area to which the student-athlete uses such marks.[152] Therefore, for greater protection, the student-athlete would need to protect their IP through registration.[153] Federal registration of the student-athletes marks (name, image, and likeness) is essential as it provides national brand protection and creates a legal presumption that you are the owner of that mark.[154] Taking such an avenue to recuperate damages is time-consuming and costly and should be determined and weighed with the expertise and advice of counsel.

Although the Illinois NIL statute appears to limit a student-athlete's ability to file claims for damages, nothing in the statute voids the student-athlete's ability to file claims against third-party licensees to whom the statute was designed to cover.

CONCLUSION

Whether student-athletes can properly navigate NIL statutory provisions; companion statutes like the right of publicity; balance school, sports, and business and contractual relationships; timely and effectively communicate their NIL deals to their educational institutions; and understand their rights through ongoing education are all factors to consider from NIL. In time, we will see how issues surrounding student-athletes' right to monetize will develop. Will there be federal legislation solely on the issues of name, image, and likeness? Will there be a cohesive federal amendment to immigration rules that currently do not allow foreign student-athletes to take advantage of the NIL statute? Will high-school athletes on the threshold of entering college have the ability to sign deals prior to signing their scholarships? Only time will tell.

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trademark#:~:text=Legal%20presumption%20that%20you%20own,trademark%20protection%20in%20foreign%20countries (last visited Aug. 27, 2022) (stating that state protection does not extend beyond state lines).

151 *See generally* Jeremy M. Evans, *Student-Athlete Brands in the Age of Name, Image, and Likeness*, ABA (Dec. 1, 2020), https://www.americanbar.org/groups/intellectual_property_law/publications/landslide/2020-21/november-december/student-athlete-brands-age-name-image-likeness/.

152 *Why Register Your Mark*, USPTO, https://www.uspto.gov/trademarks/basics/why-register-your-trademark#:~:text=Legal%20presumption%20that%20you%20own,trademark%20protection%20in%20foreign%20countries (last visited Aug. 27, 2022) (stating that state protection does not extend beyond state lines).

153 *Id*.

154 *Id*.