



SOUTH CAROLINA REVENUE AND FISCAL AFFAIRS OFFICE

STATEMENT OF ESTIMATED FISCAL IMPACT

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This fiscal impact statement is produced in compliance with the South Carolina Code of Laws and House and Senate rules. The focus of the analysis is on governmental expenditure and revenue impacts and may not provide a comprehensive summary of the legislation.

Bill Number:	S. 0685	Signed by Governor on May 6, 2021
Author:	Hembree	
Subject:	Athletics	
Requestor:	Senate	
RFA Analyst(s):	A. Martin	
Impact Date:	July 19, 2021	

Fiscal Impact Summary

This bill makes provisions for an intercollegiate athlete to earn compensation for the use of his name, image, or likeness (NIL) and provides requirements and restrictions for such compensation.

This bill will have no impact on academic scholarships received by students. However, the compensation a student athlete receives for the use of his NIL may impact the student's eligibility for need-based financial aid and scholarships. Need-based financial aid awards are determined by many factors, and data are unavailable to estimate the amount of compensation that may be received and the resulting impact on financial aid awards. Therefore, the impact of this bill on need-based scholarships is undetermined.

This bill will have no expenditure impact on the Commission on Higher Education (CHE), because it does not create additional duties for the agency. CHE surveyed the research and comprehensive institutions of higher learning to determine the expenditure impact the bill may have on their agencies. Based on the responses received, institutions may require additional athletic department staff to ensure compliance. However, these institutions indicate that they intend to staff these positions using existing resources. Therefore, we do not anticipate an expenditure impact for institutions of higher learning as a result of this bill.

The State Board for Technical and Comprehensive Education (SBTCE) reports that two of the sixteen technical colleges have athletic programs. SBTCE anticipates that the requirements of this bill would be managed using existing appropriations. Therefore, this bill would have no expenditure impact on the technical schools.

This bill allows student athletes to obtain an athlete agent for the purposes of securing compensation for their NIL and creates a continuing education requirement for athlete agents. The Department of Consumer Affairs (SCDCA) is responsible for registering athlete agents on a biennial basis. SCDCA does not anticipate a large increase in the number of athlete agents seeking registration. However, if the agency experiences an increase in expenditures as a result of this bill, it is anticipated that the registration fees retained by the agency will offset these expenditures.

This bill may increase General Fund Individual Income tax revenue as athletes may acquire taxable income. However, we do not currently anticipate that this bill will have a significant impact, as the amount is not expected to be substantial relative to total income taxes. The revenue increase will depend on upon how much income is earned by student athletes and the amount of income allocated to South Carolina. The amount of the potential increase is currently undetermined due to a lack of data to estimate the impact.

This bill increases the registration fees for athlete agents, which is expected to increase fee revenue for SCDCA. This increase is intended to offset the increase in expenditures the agency may experience due to an increase in workload. Because the increase in agents applying for registration is unknown, the impact on Other Funds revenue of SCDCA is undetermined.

Explanation of Fiscal Impact

Signed by Governor on May 6, 2021

State Expenditure

This bill establishes provisions for an intercollegiate athlete to earn compensation for the use of his NIL. Compensation may only be provided by a third-party, and may only be for third-party endorsements, the athlete's non-athletic work product, or activities related to a business that the athlete owns. Such activities may not take place during the student's academic, athletic, or team-mandated activities. In addition, compensation may not be earned for the endorsement of tobacco, alcohol, illegal substances or activities, banned athletic substances, or gambling. For the purposes of this bill, "third-party" is defined as any entity other than the institution of higher learning in which the intercollegiate athlete is enrolled. This bill also allows student athletes to obtain an athlete agent for the purposes of securing compensation for their NIL. Athlete agents must be registered by SCDCA.

A grant in aid awarded to the athlete by an institution of higher learning is not considered compensation. Such an award may not be revoked or reduced as a result of the athlete earning compensation. Compensation earned for the use of an athlete's NIL may not be used to limit athletic grant in aid, but may be used in the calculation of his need-based financial aid. Earning compensation in compliance with this bill does not affect the student's athletic eligibility.

The bill prohibits compensation for the student's athletic participation or performance and for his attendance at a particular institution. In addition, use of such compensation by an institution or its boosters as a recruiting inducement is prohibited. The athlete may not use his institution's facilities, uniforms, or intellectual property in connection with the use of his NIL. An institution of higher learning and its athletic conference are prohibited from directly or indirectly creating or facilitating compensation opportunities for an athlete. In addition, an institution and any entity that supports or benefits the institution or its athletic programs may not directly or indirectly compensate an athlete for the use of his NIL.

An institution of higher learning may only prohibit an athlete from using his NIL for compensation if that use conflicts with an existing sponsorship agreement or the institution's

values. The bill provides guidance on disclosure of information by the institution, the athlete, and the agent representing the athlete.

Commission on Higher Education. This bill would allow student athletes to earn compensation for their NIL. This compensation will not affect academic and athletic awards received by the student. However, this compensation may be used in calculating a student's eligibility for need-based financial aid. Need-based financial aid awards are determined by many factors, including dependency status of the student, parental income, and other aid received. In addition, we have no precedent upon which we may estimate the number of athletes that may receive compensation for their NIL or the amount of compensation they may receive. For these reasons, the impact of this bill on need-based scholarships is undetermined.

CHE surveyed the institutions of higher learning to determine what fiscal impact this bill may have on their agencies. Coastal Carolina University reports that this bill would require additional governance by the athletic department and the National Collegiate Athletic Association (NCAA) compliance staff. This may require an outsourced third-party management firm to assist the institution's compliance department at a cost of approximately \$45,000 annually. In addition, the NCAA compliance staff may require two additional staff members at a combined expense of \$112,000 annually for salary and fringe. The university anticipates that any increase in expenditures would be managed by the athletics budget or supported by athletic foundation funds.

Francis Marion University also reports that additional governance within the athletics department would be needed to ensure compliance and legal review. The university anticipates a 0.75 FTE would be needed at an annual cost of \$65,000 for salary and fringe. In addition, the university anticipates annual expenditures of \$22,500 for software, phone contracts, correspondence, etc. The university intends to manage these expenses using existing resources.

Lander University reports that the additional oversight resulting from this bill would require one additional compliance officer at an annual cost of \$63,900 for salary and fringe. The university anticipates that the increase in expenditures would be funded by enrollment growth or reallocation of existing funds.

Several other states have enacted similar legislation, and such legislation has been introduced in many others. In addition, the U.S. Senate introduced two bills containing similar requirements, with companion bills being introduced in the U.S. House of Representatives. Florida, Nebraska, Colorado, and California are among the states that have enacted this legislation. While these changes are too recent to provide a precedent, these states anticipate the need for additional oversight within the athletic departments of their institutions of higher learning, such as those anticipated by institutions in our state.

CHE does not anticipate an expenditure impact, as the bill does not create additional duties for the agency. Based on the responses received from the institutions of higher learning, we do not anticipate an increase in expenditures as a result of this bill.

State Board for Technical and Comprehensive Education. Two of the sixteen technical colleges have athletic programs. SBTCE anticipates that the compliance requirements of this bill would be managed using existing appropriations. Therefore, this bill would have no expenditure impact on the technical schools.

Department of Consumer Affairs. This bill allows student athletes to obtain an athlete agent for the purposes of securing compensation for their NIL and creates a continuing education requirement for athlete agents. Currently, SCDCA is responsible for registering athlete agents on a biennial basis. SCDCA reports that as of April 1, 2021, there are 136 registered athlete agents. The agency will also be required to maintain an online, public directory of all registered athlete agents in good standing, which must include each athlete agent's registration application information.

SCDCA does not anticipate that this bill will greatly increase the number of agents registering with the agency. However, if SCDCA experiences a large increase in the number of registration applications, it anticipates that the registration fees retained by the agency will be sufficient to cover the correlating costs. In addition, agents are required to renew their registration every two years from the initial filing date. This rolling cycle ensures a more manageable workload, making it easier for staff to respond to an increase in applications.

Florida recently passed similar legislation, and we contacted their Department of Business and Professional Regulation as to the impact the new NIL legislation had on the number of athlete agents seeking licensure. As of April 2021, Florida had an additional fifty licensed athlete agents. Florida and South Carolina each have twenty-six institutions of higher learning participating in the NCAA. However, no aggregate data is available for the total number of student athletes in each state. This information is provided for reference only, and South Carolina's experience may differ from Florida's.

Additionally, Florida planned to implement similar legislation in FY 2020-21, while South Carolina intended to delay implementation until at least FY 2022-23. However, in June of 2021, the governance bodies of all three divisions of the NCAA adopted a uniform interim policy suspending the NCAA NIL rules for all incoming and current student-athletes in all sports. On July 1, 2021, the Attorney General certified that the NCAA's action conforms to this bill. Therefore, the provisions of this bill are effective for FY 2021-22.

State Revenue

This bill allows student athletes to obtain an athlete agent for the purposes of securing compensation for their NIL.

This bill may increase General Fund Individual Income tax revenue as athletes may acquire taxable income. However, we do not currently anticipate that this bill will have a significant impact, as the amount is not expected to be substantial relative to total income taxes. The revenue increase will depend on upon how much income is earned by student athletes and the amount of income allocated to South Carolina. The amount of the potential increase is currently undetermined due to a lack of data to estimate the impact.

Additionally, as of April 1, 2021, SCDCA had 136 registered athlete agents. This bill increases the registration fees for athlete agents. This increase is intended to offset any increase in expenditures the agency may experience due to their increased workload. Because there is no reliable precedent upon which to estimate the increase in agents, the increase in Other Funds revenue of SCDCA is undetermined.

Local Expenditure

N/A

Local Revenue

N/A



Frank A. Rainwater, Executive Director