An Evolving Landscape: Name, Image, and Likeness Rights in High

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An Evolving Landscape: Name, Image, and Likeness Rights in High School Athletics

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Amateur sports have entered a changing landscape. The onset of Name, Image, and Likeness ("NIL") opportunities at the college level has prompted over half of state high school athletic associations to likewise permit high school student-athletes to pursue similar financial opportunities. The purpose of this Essay is not to argue for or against the emergence of NIL opportunities at the high school level but instead to explore this newly evolving landscape, identify accompanying financial dangers, and propose a statutory framework that builds upon California’s Coogan’s Law—a measure providing financial safeguards to children working in the entertainment industry—to better protect minor student-athletes entering into endorsement contracts.

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INTRODUCTION

Bronny James, son of basketball legend LeBron James and a highly rated basketball prospect in his own right, entered his senior year of high school with a massive social media presence totaling over seven million Instagram followers. Given the nature of this current social media age, the younger James’s following translated into enormous earnings potential, with one analysis estimating that Bronny could generate over $7 million per year by licensing his Name, Image, and Likeness (“NIL”) for product endorsements. Indeed, prior to his high school graduation in 2023, the younger James had reportedly already signed an endorsement contract with Nike worth $10 million over five years.

Opportunities like this would have been unthinkable for a high school—or college—student-athlete just a few short years ago. However, following the historic decision of the National Collegiate Athletic Association (“NCAA”) to allow collegiate student-athletes to monetize their NIL rights in 2021, state high school athletic associations have begun to rethink their own approaches to the issue. As of 2023, over half of all state high school athletic associations have amended their bylaws, handbooks, or constitutions to permit high

1. Samir Mehdi, Valued at over $7 Million, Bronny James Charges $46,000 per Instagram Post for 7 Million Followers, SPORTS RUSH (Mar. 23, 2023, 8:30 PM), https://thesportsrush.com/nba-news-valued-at-over-7-million-bronny-james-charges-46000-per-instagram-post-for-7-million-followers/ [https://perma.cc/AQ8S-LZ5R].


school athletes to sign endorsement deals. In the remaining states, high school athletes continue to be prohibited from earning income because of their athletic ability, creating an uneven set of regulations across the country.

The newfound promise of NIL deals for high school athletes—as exemplified by Bronny James—does not come without potential peril, however. One need look no further than the case of former Olympic gymnast Dominique Moceanu to see how easily minor athletes’ newfound riches could be misspent through no fault of the child themselves. After winning a gold medal for Team USA as a teenager at the 1996 Summer Olympics, Moceanu leveraged her fame to generate approximately $1 million in income from various endorsement contracts. By the time she turned seventeen in 1998, however, Moceanu discovered that her parents had squandered these earnings, leaving her with practically nothing.

Unfortunately, states that have elected to permit high school athletes to pursue NIL opportunities have generally failed to implement safeguards to protect against Moceanu’s fate. Instead, these states have typically adopted NIL regulations for high school students consistent with the rules that have been put in place at the college level. Such an approach overlooks important differences between these two populations, including—most notably—the age at which student-athletes compete at each level.

As most high school athletes fall below the legal age of majority, their endorsement contracts raise a host of legal and ethical considerations that similar contracts entered into by college athletes


5. See infra Part I.


7. See id. (noting that Moceanu had filed a lawsuit seeking independence from her parents in order to discover what had happened to her money).

8. See infra Part I.

9. See infra Part II.
(who are almost always at or above the age of eighteen) do not.\textsuperscript{10} Moreover, the lack of protection for high school athletes entering into NIL contracts stands in stark contrast to other regulations that some states have adopted to address minors working in the television and film industries (like California’s Coogan’s Law), where statutory protections help prevent the financial exploitation of child actors by their parents or guardians.\textsuperscript{11}

Surprisingly, while NIL regulations at the college level have generated significant debate in legal scholarship,\textsuperscript{12} relatively little attention has been paid to the parameters governing NIL opportunities at the high school level.\textsuperscript{13} This Essay attempts to help fill such literary void by providing a comprehensive analysis of the unique legal implications surrounding NIL regulation of high school student-athletes. In particular, this Essay explores the financial dangers that minor athletes may be susceptible to when entering into endorsement contracts and proposes a statutory framework through which state legislatures can provide some measure of financial protection for high school athletes engaging in NIL opportunities.

To meet these objectives, this Essay proceeds as follows: Part I evaluates the evolving landscape of NIL rights for both high school and college athletes. Part II examines relevant differences between college and high school athletic competition, focusing specifically on the

\textsuperscript{10} See infra Section II.A.

\textsuperscript{11} See infra Part III; see also, e.g., CAL. FAM. CODE § 6753 (West 2003) (referred to as Coogan’s Law); N.Y. ARTS & CULT. AFF. LAW § 35.03 (McKinney 1998). We use the expression “Coogan’s Law,” but it must be noted that inconsistent variations of the expression are found in the literature to include the “Coogan Law,” the “Coogan Bill,” and the “Coogan Act.” See, e.g., Kristin A. Hoffman, Flipping and Spinning into Labor Regulations: Analyzing the Need and Mechanisms for Protecting Elite Child Gymnasts and Figure Skaters, 25 MARQ. SPORTS L. REV. 565, 576–77 (2015) (referring to the statute as the “Coogan Act”).


\textsuperscript{13} But see Francesca Casalino, Note, Call to the Bullpen: Saving High School Student Athlete Name, Image, and Likeness Rights, 29 JEFFREY S. MOORAD SPORTS L.J. 263, 273–74 (2022).
athletes that compete in each. Part III analyzes the legal protections afforded talented minors working in the entertainment industry, such as those established under California’s Coogan’s Law. Drawing upon the parallels between minor entertainers and athletes, Part IV then offers recommendations and other considerations for state legislatures to contemplate to better protect the rights of minor athletes entering into NIL contracts. A brief conclusion follows.

I. A BRIEF HISTORY OF NIL RIGHTS AT THE COLLEGIATE AND HIGH SCHOOL LEVELS

The origins of NIL compensation can be traced to the right of publicity, which prevents the use of an individual’s name, likeness, or other aspect of their persona without authorization. While right of publicity laws have existed for decades and have been codified in a number of states, only recently have student-athletes been able to monetize these rights. Consequently, the great majority of the academic discourse surrounding right of publicity, NIL compensation, and pay-for-play has centered around college athletics. Recent interest, 

14. See Haelan Laby’s, Inc. v. Topps Chewing Gum, Inc., 202 F.2d 866, 868 (2d Cir. 1953) (differentiating a professional athlete’s right to privacy versus commercial rights); In re NCAA Student-Athlete Name & Likeness Licensing Litig., 724 F.3d 1268, 1284 (9th Cir. 2013) (holding that a video game developer has no First Amendment defense against right of publicity claims of a former college student-athlete); Hart v. Elec. Arts, Inc., 717 F.3d 141, 170 (3d Cir. 2013) (holding that the video games at issue “do not sufficiently transform [the former collegiate football player’s] identity to escape the right of publicity claim”); O’Bannon v. NCAA, 802 F.3d 1049, 1067 (9th Cir. 2015) (declining to answer the “thornier questions of whether participants in live TV broadcasts of college sporting events have enforceable rights of publicity”); see also Kathryn Kisska-Schulze & Adam Epstein, The Claim Game: Analyzing the Tax Implications of Student-Athlete Insurance Policy Payouts, 25 JEFFREY S. MOORAD SPORTS L.J. 231, 259 (2018) (recognizing that historic legal efforts to compensate student-athletes for their NIL stem from right of publicity arguments); Lauren Skarupsky, Fight Until the Final Whistle: A Push for Publicity Rights for Student Athletes in Louisiana, 49 S.U. L. REV. 257, 271–72 (2022) (defining the right of publicity).


however, has been directed at the interscholastic level, with high school athletes in over half of all states now having some ability to capitalize on their NIL. This emergent trend is perhaps unsurprising, given that the structure and operations of the NCAA often trickle down to the high school level. Still, as will be discussed in Part II below, NIL opportunities for high school student-athletes raise unique and important issues not generally applicable to the college level. Before exploring such variances, however, it is first beneficial to appreciate (a) the history of NIL rights at the collegiate level, and (b) the evolving NIL landscape emerging at the high school level.

A. NIL Rights at the Collegiate Level

The transition from amateurism toward professionalism in college sports has generated considerable debate in recent decades. Critical discussions surrounding pay-for-play began surfacing in 1984, when the U.S. Supreme Court held in NCAA v. Board of Regents of the University of Oklahoma that the NCAA’s then-monopolized television plan violated antitrust law. Although that case was not centered on student-athlete compensation, the Court noted “to preserve the character and quality of the [NCAA’s] ‘product,’ athletes must not be


18. See supra note 4.


paid.” Such language later fueled the NCAA’s arguments (albeit unsuccessfully) that it was judicially permitted to freely restrict student-athlete compensation.

More than twenty years later, in 2009, two separate lawsuits filed by former student-athletes Ed O’Bannon and Sam Keller centered on whether student-athletes should be compensated for the commercialized use of their likenesses. These cases ultimately merged, with the Plaintiffs arguing that use of student-athletes’ likenesses in video games violated their rights of publicity. O’Bannon continued a separate legal quest against the NCAA, arguing that preventing student-athletes from receiving compensation for the use of their NIL violated antitrust laws.

Momentum intensified when Time Magazine showcased Johnny Manziel on its 2013 cover with the caption “It’s Time To Pay College Athletes,” and academic scholars pressed to

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22. Id. at 102.
   The NCAA directs our attention to Board of Regents, where this Court considered the league’s rules restricting the ability of its member schools to televise football games. On the NCAA’s reading, that decision expressly approved its limits on student-athlete compensation—and this approval forecloses any meaningful review of those limits today.

   We see things differently.

25. Kisska-Schulze & Epstein, supra note 16, at 259; see also In re NCAA Student-Athlete Name & Likeness Licensing Litig., 724 F. 3d 1268, 1268–74 (9th Cir. 2013).
26. O’Bannon v. NCAA, 7 F. Supp. 3d 955, 962–63 (N.D. Cal. 2004), aff’d in part, vacated in part, 802 F.3d 1049 (9th Cir. 2015).
change the NCAA’s restrictive amateur status amid an evolving multibillion-dollar college sports enterprise.

O’Bannon v. NCAA helped set the stage for meaningful economic changes within the college sports arena in 2015, when the U.S. Court of Appeals for the Ninth Circuit held that NCAA rules barring student-athletes from being compensated for the use of their NIL are subject to antitrust laws. The appellate court also affirmed the lower court’s ruling against grant-in-aid restrictions, thus permitting colleges and universities to offer student-athletes scholarships that cover the full cost of attendance and living expenses. However, the Ninth Circuit also ultimately determined in O’Bannon that the NCAA’s amateurism model provided sufficient procompetitive benefits to warrant denying student-athletes financial compensation for NIL rights. The U.S. Supreme Court declined a request for certiorari in 2016, thus leaving the specific question of whether student-athletes can be compensated for the use of their NIL in limbo.


30. 802 F.3d 1049, 1079 (9th Cir. 2015).

31. Id. at 1075–76.

32. Id. at 1076–79; In our judgment, however, the district court clearly erred in finding it a viable alter[native] to allow students to receive NIL cash payments unthethered to their education expenses,...

... Both we and the district court agree that the NCAA’s amateurism rule has procompetitive benefits. But in finding that paying students cash compensation would promote amateurism as effectively as not paying them, the district court ignored that not paying student-athletes is precisely what makes them amateurs.

(emphasis omitted).


This set the stage for NCAA v. Alston to emerge as “The Case That Changed College Athletics Forever.” In 2014, former West Virginia football player Shawne Alston and other Division I athletes filed suit against the NCAA, alleging multiple antitrust violations that limited their ability to be compensated for their services. Specifically, the Alston Plaintiffs challenged NCAA rules preventing schools from providing student-athletes with cash compensation and thus “effectively sought to force the NCAA to implement ‘a free market for college football and . . . basketball players.’”

As the Alston litigation worked its way through appeals, and still two years before the U.S. Supreme Court would ultimately issue its decision in the case, California Governor Gavin Newsom signed into law the Fair Pay to Play Act (“FPTPA”), allowing student-athletes to capitalize on their NIL and permanently altering the trajectory of amateurism in college sports. Almost immediately after the FPTPA’s signing, the NCAA—a private, nonprofit organization that is not a state actor—contended that the FPTPA was unconstitutional. However, just one month later, on October 29, 2019, the NCAA Board of

37. Cox, supra note 16, at 231; see also In re NCAA Athletic Grant-In-Aid Cap Antitrust Litig., 375 F. Supp. 3d 1058, 1110 (N.D. Cal. 2019) (holding that limitations on education-related benefits for student-athletes constitute unlawful restraints on trade under Section 1 of the Sherman Act and leaving in place multiple limits on newly permissible benefits, including allowing conferences to restrict education-related benefits, even if the NCAA cannot); id. at 1087–88, 1090 (discussing the effectiveness of Plaintiffs’ proposed alternatives).
39. See In re NCAA Athletic Grant-In-Aid Cap Antitrust Litig., 958 F.3d 1239, 1263 (9th Cir. 2020) (affirming the lower court’s decision that restrictions on payments unrelated to education serve to enhance the distinction between college and professional sports and concluding that the district court “struck the right balance in crafting a remedy that both prevents anticompetitive harm to Student-Athletes while serving the procompetitive purpose of preserving the popularity of college sports”).
41. See Holden & Kisska-Schulze, supra note 29, at 881 (majority of states have introduced or passed laws similar to FPTPA).
Governors unanimously endorsed the idea of allowing student-athletes to capitalize on the use of their NIL pending the formulation of future rules ensuring that any such activities would adhere to the organization’s amateurism paradigm. Such a rapid shift toward endorsing NIL opportunities was perhaps less indicative of the NCAA’s support of financial equity amid an increasingly commercialized college sports industry and more so a reluctant concession to the plethora of legal battles and state pressures directed at the NCAA.

The NCAA reinforced this changed NIL policy in its April 2020 Board of Governors’ Final Report, effective beginning with the 2021–2022 academic year. Two months later, on June 12, 2020, Florida Governor Ron DeSantis signed S.B. 646 into law, allowing student-athletes to capitalize on their NIL effective July 1, 2021—a full eighteen months before any other state’s NIL laws became effective. Florida’s legislation pressured then—NCAA President Mark Emmert to beseech federal lawmakers to effectuate uniform, nationwide NIL legislation. Soon after, more states began passing similar NIL

43. Id.
44. Holden & Kisska-Schulze, supra note 29, at 887.
49. See Ross Dellenger, Mark Emmert to Ask Senate to Grant NCAA Antitrust Protection in Name, Image, Likeness Hearing, SPORTS ILLUSTRATED (July 22, 2020).
legislation. Compounding this increasing tension between state legislators and the NCAA, on June 21, 2021, the U.S. Supreme Court unanimously held in *NCAA v. Alston* that the NCAA’s rules restricting certain education-related benefits for student-athletes violated Section 1 of the Sherman Act.

In response to the U.S. Supreme Court’s decision—the first time in history that student-athlete eligibility rules were held to violate the Sherman Act—the NCAA adopted a uniform interim policy that suspended its NIL restrictions across all three member divisions. Doing so effectively permitted student-athletes to earn endorsement income—subject to any existing state laws—but certainly did not end the NCAA’s litigation woes. On July 14, 2021, the U.S. District Court for the Northern District of California merged two separate lawsuits previously filed by former Arizona State swimmer Grant House and former University of Oregon basketball player Sedona Prince against the NCAA for lost NIL pay. Modeled after *Alston*’s antitrust premise, *In re College Athlete NIL Litigation* has evolved into a class action suit.
with Plaintiffs seeking damages for past NIL benefits that they were unable to receive due to the NCAA’s historic NIL restraints.55

As this case works its way through the judicial process, more than twenty-five states have implemented collegiate-level NIL laws,56 of which a number have already been amended.57 Two states have either repealed or suspended previously enacted laws,58 and at least twelve have introduced new legislation.59 In addition, eight separate NIL laws have been introduced at the federal level,60 culminating in a March 2023 congressional hearing where a subcommittee of the House Committee on Energy and Commerce addressed student-athlete compensation and potentially paving the way for uniform federal regulations that may one day preempt existing state laws.61

No matter the decades-long discord leading up to this juncture, NIL opportunities have proven lucrative for numerous collegiate student-athletes in the short time these opportunities have been allowed. The recent advent of NIL collectives—where independent groups pool funds from donors, alumni, boosters, fans, and third-party businesses to create endorsement opportunities for student-athletes—


57. States that have amended their NIL laws include Arkansas, Connecticut, Illinois, Mississippi, Missouri, New York, Tennessee, and Texas. Id.

58. Alabama repealed its law in February 2022, and South Carolina suspended its law for academic year 2022–2023. Id.


has furthered this trend. Some suggest that the top one hundred college athletes could soon collectively earn up to $1 billion each year from NIL deals. Even outside the elite-athlete spectrum, data suggest that NIL compensation per student-athlete now averages between $1,000 and $10,000. It is, therefore, unsurprising that high school athletes wish to similarly explore revenue-earning opportunities for the use of their NIL. As the next Section details, NIL opportunities have not only gained traction in college athletics but become a rapidly emerging issue within high school sports.

B. NIL Rights at the High School Level

Until recently, high school athletic associations have generally followed the NCAA’s historic mantra prohibiting any form of pay-for-play, including student-athletes being compensated for the use of their NIL. The onset of NIL opportunities at the college level has prompted important discussions about whether high school student-athletes should likewise be allowed similar rights. For some young athletes,

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62. First emerging in 2021, NIL collectives are third-party businesses, wholly independent of any specific university, which work alongside colleges and universities to provide increased NIL opportunities for student-athletes. At present, there are hundreds of non- and for-profit NIL collectives, including Texas Tech’s The Matador Club, Southern Methodist University’s Boulevard Collective, and Clemson University’s Tiger Impact. See Kisska-Schulze, supra note 60; see also Kathryn Kisska-Schulze, Narrowing the Playing Field on NIL Collectives, MARQ. SPORTS L. REV. (forthcoming 2023) (noting the NIL collectives generally fall into one of three categories: marketplace (which serve as representative agents of student-athletes), donor-driven (which pool outside funding to directly pay student-athletes in exchange for sponsorship or endorsement agreements), or dual collectives (serving as a hybrid of the former two).

63. Kori Hale, How NIL Diversity Is Driving the Market up to $1.1 Billion, FORBES (Mar. 10, 2023, 8:00 AM), https://www.forbes.com/sites/korihale/2023/03/10/how-nil-diversity-is-driving-the-market-up-to-1-billion/?sh=de6362360b2 [https://perma.cc/C4DM-FJW7].


65. Solomon, supra note 17 (“State high school athletic associations have long followed the NCAA’s lead in prohibiting financial compensation of almost any kind for athletes.”).

high school athletic association rules have not evolved quickly enough, resulting in some choosing to either relocate to jurisdictions that permit them to capitalize on their NIL,\(^{67}\) graduate early to take advantage of lucrative collegiate NIL opportunities,\(^{68}\) or attend private institutions not bound by prohibitive public high school athletic association rules.\(^{69}\)

Like college sports, there is currently no national law or policy governing NIL at the high school level.\(^{70}\) Instead, the permissibility of high school athletes capitalizing on their NIL in a given jurisdiction is subject to a patchwork of state legislation or state high school athletic association rules, or both.\(^{71}\) The National Federation of State High School Associations (“NFHS”) is the national leadership organization with authority over high school athletics.\(^{72}\) In collaboration with its fifty-one member state organizations (including the District of Columbia),\(^{73}\) it promotes and protects education-based high school athletics.\(^{74}\) Each NFHS member organization is then allowed to specifically govern high schools sports within its jurisdiction as it sees fit.\(^{75}\) In addition, a few states have enacted laws, or otherwise introduced legislation, that address select issues surrounding high school athletics.\(^{76}\)

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67. High School Athletes Are Getting Major Endorsement Deals Following State Law Changes, CBS NEWS (Nov. 30, 2022, 5:16 PM), https://www.cbsnews.com/news/high-school-athletes-nil-deals-name-image-likeness-six-figures/ [https://perma.cc/WUH6-J4XA] (discussing high school basketball star Jada Williams, who moved with her mother to California in order to capitalize on NIL opportunities that were unavailable to high school athletes in Missouri).


69. See id. (discussing high school athlete Mikey Williams's decision to attend an independent school "not bound by rules governing high school sports in North Carolina," at the time disallowed high school students to capitalize on their NIL).

70. See Casalino, supra note 13, at 268.

71. Id.

72. Id. at 274; see also NFHS Company Brochure, NFHS 2, https://www.nfhs.org/media/885655/nfhs_company_brochure.pdf (last visited Apr. 5, 2024) [https://perma.cc/YGJ3-SQ4H].


74. NFHS, supra note 72, at 5.

75. Perry, supra note 73.

Once the “wild west” of NIL opportunities took off for college athletes in 2021, the high school NIL movement emerged.\(^7\) Sixteen days after the Alston decision, Dr. Karissa Niehoff, Executive Director of the NFHS, reiterated that member-state rules continue to prohibit high school athletes “from receiving money connected to wearing their school uniform.”\(^7\) However, Dr. Niehoff likewise conceded that individual states are the ultimate governing bodies of high school athletics,\(^7\) prompting the California Interscholastic Federation (“CIF”) to take the early lead in ensuring that California high school student-athletes are aware that they can profit from their NIL.\(^8\) Such immediate support was unsurprising given California’s historic protection of child actors similarly capitalizing on their fame, and the fact that the state was the first to enact legislation granting college student-athletes the right to monetize their NIL.\(^9\)

In August 2021, Quinn Ewers announced that he would forgo his senior year at a Texas high school to enroll at The Ohio State University, where he could capitalize on his NIL.\(^8\) As the number one ranked high school football recruit in the nation, Ewers’s decision was based on the stance of the University Interscholastic League (the governing body enforcing high school athletic rules in Texas) that student-athletes cannot profit from their NIL without losing high school

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7. See Joe Moglia, The NCAA Dropped the Ball on NIL, FORBES (Aug. 18, 2021, 3:57 PM), https://www.forbes.com/sites/joemoglia/2021/08/18/the-ncaa-dropped-the-ball-on-nil/?sh=130a084562a5 (noting that beginning in July 2021, when student-athletes could monetize off their NIL, it became “the wild west virtually overnight”).


9. Id. In fact, the CIF clarified that its “approach has always been to allow high schoolers in the state to enjoy their NIL rights to the fullest extent possible.” Id.
eligibility. The decision enabled Ewers to sign NIL deals totaling a reported $1.4 million.

In October 2021, the New York State Public High School Athletic Association became the second organization to allow high school athletes to capitalize on their NIL. It was soon followed by high school athletic associations in New Jersey, Kansas, Alaska, and Nebraska. In January 2022, high school baseball player Sal Stewart and others filed a class action lawsuit against the Florida High School Athletic Association (“FHSAA”). The suit alleged that Florida student-athletes are exploited by the FHSAA because they do not have the ability to monetize their NIL, and that this restriction violates Florida antitrust law.

Following the Louisiana High School Athletic Association’s declaration that high school students can capitalize on their NIL, the Association approved a statewide partnership with Eccker Sports to offer educational services and resources to help high school administrators and student-athletes better understand NIL contracts.
Both the Tennessee Football Coaches Association and the Texas High School Coaches Association (which, intriguingly, continues to oppose NIL deals for Texas high school student-athletes) have also partnered with Eccker Sports to provide NIL education to high school athletes and administrators.93

In 2023, Virginia, North Carolina, Kentucky, Missouri, and Vermont became some of the most recent states to allow high school athletes to enjoy the financial benefits afforded by NIL rights.94 However, the same day that the North Carolina High School Athletic Association (“NCHSAA”) passed the policy, the North Carolina Senate amended S.B. 636 to restrict the NCHSAA’s power, thereby preventing high school athletes from attaining NIL eligibility unless or until the State Board of Education passes legislation to allow it.95

Amid this evolving landscape, and as Table 1 below indicates, over half of the states currently allow high school athletes to pursue NIL opportunities, while the remaining states uphold prohibitions against high school athletes profiting from their NIL.96

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94. ON3NIL, supra note 4.
95. Bryant Baucom, NCHSAA Commissioner Addresses Future of NIL, YAHOO!NEWS (June 9, 2023, 11:59 PM), https://news.yahoo.com/nchsaa-commissioner-addresses-future-nil-035509666.html [https://perma.cc/W6T4-CQSQ]; see also S. 636, 2023 Gen. Assemb., Reg. Sess. (N.C. 2023) (establishing oversight of NCHSAA); Andy Wittry, North Carolina Legislators, Administrators Battle over NIL Rights, ON3NIL (May 25, 2023), https://www.on3.com/nil/news/north-carolina-high-school-athletic-association-nchsaa-nil-rules-name-image-likeness-policy-proposal/ [https://perma.cc/ZHA7-K8PM] (noting that in the great majority of states that permit NIL rights to high school students, the state high school athletic associations administered such approval, with the exception of Arkansas, which granted high school student-athletes the ability to entertain NIL opportunities via the state legislature, and North Carolina, which is the only state where tension has arisen as to which governing body—the state athletic association or the state legislature—should have the power to govern such decisionmaking); Darren Heitner, Newsletter, Image, Likeness Vol. 48: The High School Landscape Is Quickly Catching Up, LINKEDIN (Oct. 6, 2023), https://www.linkedin.com/pulse/newsletter-image-likeness-vol-48-high-school-quickly-catching-darren?utm_source=rss&utm_campaign= influencers_en&utm_medium=google_news [https://perma.cc/E2F8-GVPN] (noting that North Carolina remains one of just sixteen states that does not permit high school athletes to entertain NIL endorsement deals).
96. See Johnson, supra note 4; Keller, supra note 4.
TABLE 1: WHERE CAN HIGH SCHOOL ATHLETES CAPITALIZE ON THEIR NIL?

<table>
<thead>
<tr>
<th>State</th>
<th>High School Athletics Governing Body</th>
<th>High School NIL Status</th>
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<td>Alabama High School Athletic Association</td>
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<tr>
<td>Alaska</td>
<td>Alaska School Activities Association</td>
<td>Permitted⁹⁸</td>
</tr>
<tr>
<td>Arizona</td>
<td>Arizona Interscholastic Association</td>
<td>Prohibited⁹⁹</td>
</tr>
<tr>
<td>Arkansas</td>
<td>Arkansas Activities Association</td>
<td>Prohibited¹⁰⁰</td>
</tr>
<tr>
<td>California</td>
<td>California Interscholastic Federation</td>
<td>Permitted¹⁰¹</td>
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<td>Colorado</td>
<td>Colorado High School Activities Association</td>
<td>Permitted¹⁰²</td>
</tr>
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<td>Connecticut Interscholastic Athletic Conference</td>
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<td>Delaware</td>
<td>Delaware Interscholastic Athletic Association</td>
<td>Prohibited¹⁰⁴</td>
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</tbody>
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<table>
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<th>State</th>
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117. MD. CODE ANN., EDUC. § 5-131 (West 2023).


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\(^{132}\) Bylaws, OHIO HIGH SCH. ATHLETIC ASS’N 55–57, https://ohsaaweb.blob.core.windows.net/files/About-the-OHSSA/Bylaws.pdf (last updated May 2023) [https://perma.cc/B9C5-7A6N]


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Notably, those states that have chosen to permit high school student-athletes to profit from their NIL have generally done so consistent with collegiate-level NIL restrictions. For instance, at the college level, state NIL laws largely protect institutions’ intellectual property (“IP”) rights.148 Although some state statutes permit college athletes to use institutional IP (like logos, uniforms, or colors) in their

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142 Athletic Policies, Vt. Principals’ Ass’n 10–12, https://docs.google.com/document/d/1_DMIEHHX32i0zO2gqzaXlV2Puk8r-047TrnQrJQ8U/edit (last visited Apr. 5, 2024) [https://perma.cc/SF3P-HG2R].


148 See, e.g., S. 1296, 55th Leg., 1st Reg. Sess. (Ariz. 2021) (prohibiting college student-athletes from entertaining NIL endorsement deals that violate “the intellectual property rights of any person, including the student athlete’s postsecondary education institution”); S. 60, 2021 Leg., Reg. Sess. (La. 2021) (“An intercollegiate athlete shall not use a postsecondary education institution’s facilities, uniforms, registered trademarks, products protected by copyright, or official logos, marks, colors, or other indicia in connection with the use of the athlete’s name, image, or likeness without the express permission of the postsecondary education institution.”).
endorsement engagements—so long as permission is granted\textsuperscript{149}—others prohibit athletes’ use of institutional IP when participating in NIL activities.\textsuperscript{150} In a similar light, high school athletic associations that allow athletes to capitalize on their NIL generally prohibit them from doing so while wearing institutional IP.\textsuperscript{151} In addition, state NIL statutes generally prohibit college athletes from endorsing morally questionable products or activities, like alcohol, tobacco, marijuana, gambling activities, and adult entertainment.\textsuperscript{152} Likewise, high school

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149. See Holden et al., supra note 12, at 53 n.307 (providing, as one example, that the University of Houston has “a detailed policy on use of university intellectual property in marketing”); see also Andy Wittry, How Schools Try to Protect Their IP, Multimedia Rights in the NIL Era, On3NIL (May 5, 2023), https://www.on3.com/nl/news/college-athletes-multimedia-rights-contracts-van-wagner-kent-state-western-michigan-marks-logs-ip/ ([https://perma.cc/3X7K-U6XE] (offering that both Western Michigan University and Kent State University limit student-athletes’ use of their institutional marks and IP to only sponsorship agreements entered into with Van Wagner).

150. See Holden et al., supra note 12, at 53 (describing Texas’s NIL statute, which prohibits athletes from using IP owned by the university in an NIL contract); see also, e.g., S. 1385, 87th Leg., Reg. Sess. (Tex. 2021) (prohibiting student-athletes from being compensated for their NIL “in exchange for property owned by the institution or for providing an endorsement while using intellectual property or other property owned by the institution”); S. 439, 2021 Leg., 443d Sess. (Md. 2021) (“Nothing in this section may be construed to grant a student athlete a right to make commercial use of names, trademarks, logos, or other intellectual property owned or controlled by a public institution of higher education.”).

151. See, e.g., CAL. INTERSCHOLASTIC FED’N, supra note 101, at 48 (prohibiting student-athletes from “[w]earing a school uniform or any identifying school insignia while appearing in any advertisement, promotional activity or endorsement for any commercial product or service”); COLO. HIGH SCH. ACTIVITIES BD., supra note 102, at 83 (July 2023) (“Student-athletes will be prohibited from monetizing their name, image, and likeness with the use of their school’s uniform, equipment, logo, name, proprietary patents, products and/or copyrights associated with a CHSAA member school either in public, print or social media platforms.”); DCSAA 2022-2023 Member Handbook, supra note 105, at 22 (“These [NIL eligibility] provisions are not intended to restrict the right of any student to participate in a commercial or marketing endorsements provided there is no school team, school or DCSAA affiliation name or logo visible.”).


[A] student participating in intercollegiate athletics shall be prohibited from earning compensation as a result of the use of the student’s name, image, or likeness in connection with any person, company, or organization related to or associated with the development, production, distribution, wholesaling, or retailing of: adult entertainment products and services; alcohol products; casinos and gambling, including sports betting, the lottery, and betting in connection with video games, on-line games, and mobile devices; tobacco and electronic smoking products and devices; prescription pharmaceuticals; a controlled dangerous substance; and weapons, including firearms and ammunition;

athletic associations that permit NIL endorsement opportunities typically are equivalently restrictive. Several states have also restricted students from entering into NIL deals that would compensate the athlete commensurate with their performance in a particular sporting event (such as an NIL deal that provides financial incentives based on the number of points an athlete scores in a particular game). Finally, high school athletic associations tend to require student-athletes to disclose NIL endorsement deals to their schools, thus mimicking state statutes that require college athletes to do the same.

As high school athletics continues to move toward embracing NIL, it is important to consider such financial opportunities amid the broader spectrum of amateur athletics. While similarities between collegiate and high school athletics exist, there are also significant and critical differences between the two. The next Part considers these differences amid the newly evolving high school NIL landscape.

II. DIFFERENTIATING HIGH SCHOOL AND COLLEGE ATHLETICS

As indicated above, most of the recently enacted state laws regulating high school NIL rights have largely treated student-athletes at this level analogously to those competing under the purview of the NCAA. That being said, this approach overlooks meaningful

153. See, e.g., PIAA 2023-2024 Constitution and Bylaws, supra note 135, at 13 (prohibiting high school athletes from engaging in NIL activities that endorse adult entertainment, alcohol, gambling, tobacco, opioids, and prescription pharmaceuticals, controlled substances, or weapons, firearms, and ammunition); IHSA Handbook with Illustrations, supra note 110, at 119 (prohibiting NIL activities that associate with “gaming/gambling, alcoholic beverages, tobacco, cannabis, banned or illegal substances, adult entertainment products or services, firearms, or other weapons; or any other product or service that the Board deems inappropriate or distracting”).

154. See, e.g., OSAA 2023-2024 Handbook, supra note 134, at 39 (“The compensation (or prospective compensation) is not contingent on specific athletic performance or achievement (e.g., financial incentives based on points scored).”).

155. See, e.g., id. (student-athletes must disclose “any proposed [NIL] agreement/contract to the member school at which the student is enrolled and/or participating”); CIAC, 2022-2023 Handbook, supra note 103, at 88 (“Student-athletes are required to provide their member school copies of any endorsement, employment and representation agreements.”).

    At least five days prior to the execution of a name, image, or likeness contract authorized by this chapter, the third party proposing to enter into the name, image, or likeness contract with the intercollegiate athlete must disclose, in writing, to the intercollegiate athlete any prior or existing association, either formally or informally, with any institution of higher learning or any prior or existing financial involvement with respect to athletics;
Leg. 962, 106th Leg., 2d Sess. (Neb. 2020) (“Any student-athlete who enters into a contract that provides compensation for the use of such student-athlete’s name, image, or likeness rights or athletic reputation shall disclose such contract to an official of the postsecondary institution for which such student-athlete participates in an intercollegiate sport.”).

157. See supra notes 148–156 and accompanying text.
differences between high school and college athletic competition—and, importantly, the athletes competing at each level. Relevant differences that state policymakers should consider when drafting rules in this area include the (a) ages of the respective athletes being regulated and their purposes for seeking NIL opportunities, and (b) differences in the purpose and structure of high school versus college sports (and the educational mission of each level more broadly).

A. Relevant Distinctions Between High School and College Student-Athletes

When drafting NIL regulations at the high school level, it is important for policymakers to recognize several relevant differences between athletes competing in high school versus college. Perhaps the most important of these differences is the respective ages of the student-athletes: while most college athletes will typically have turned eighteen and thus reached the age of majority, many high school athletes are under the age of eighteen and thus legally considered minors. This difference has several important implications for crafting high school NIL policies.

Most notably, high school athletes under the age of eighteen generally lack the mental capacity to sign legally binding contracts. Thus, any NIL contract signed by a high school athlete under the age of majority is susceptible to termination should the minor later choose to disaffirm the contract. Indeed, this is the case in most jurisdictions even if the minor’s parents cosign the contract on their behalf. To counteract this traditional legal rule, some states have enacted legislation specifying that minors are unable to disaffirm certain contractual obligations—or otherwise have created a procedure for courts to approve minors’ contracts, thereby making them legally binding. States reevaluating their approach to NIL rights at the high school level may wish to consider whether there is a need to address most high school athletes’ contractual capacity in any new regulations they enact and, if so, how best to go about handling the issue.


159. Id. at 274 (explaining the right of minors to disaffirm contracts entered into prior to the age of 18).

160. Id. (finding that “the approval of a minor’s contract by a parent or other guardian usually will not alter the voidable nature of the agreement”).

161. See id. at 272–73.
Similarly, given their relative youth, many high school athletes may be more susceptible to questionable lapses in judgment than their college counterparts. While the risk that a high school athlete may engage in problematic behavior could make companies more hesitant to associate themselves with players at this level, the potential lack of maturity is also an issue that policymakers should consider when drafting high school NIL rules. Specifically, as discussed below, several states have enacted rules requiring minors signing contracts in other sectors of the entertainment industry—like child actors—to set aside a portion of their earnings in a trust for use once the child has reached the age of legal maturity. Not only does this protect the minor from spending all of their earnings before turning eighteen, but it also protects them from unscrupulous parents or guardians potentially doing the same. Thus, states formulating new regulations in this area should consider enacting similar protections for high school athletes entertaining NIL deals, thereby preventing future athletes from experiencing the fate of Olympic gymnast Dominique Moceanu.

Some have also expressed concern that high school students may be particularly susceptible to anxieties and stresses that can result from pressures to maximize their NIL earnings potentials. As the value of NIL deals is often based on the athlete’s social media following, young athletes may struggle to balance maintaining a sufficient social media presence while also preserving a strong academic record and performing at a high level on the playing field. Commentators have also cautioned that even for those high school athletes who do not feel undue stress or anxiety over potential endorsement income, NIL opportunities may further incentivize some to specialize in a single

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162. See Solomon, supra note 17 (“‘[T]he potential risk of a high school athlete doing a deal is probably scary for a lot of brands.’” (quoting Braly Keller, NIL Specialist, Opendorse)).

163. See infra Part III.

164. See supra notes 6–7 and accompanying text.

165. See Keith Groller, Name, Image, Likeness Deals for High School Athletes: A Potential Powder Keg or Much Ado About Nothing?, MORNING CALL (March 26, 2023, 4:00 AM), https://www.mcall.com/2023/03/26/nil-high-school-sports/ [https://perma.cc/YHB6-QLWD] (interviewing John Hauth, a Senior Director at St. Luke’s, who noted his team does not wish to “add one more additional stress point” for high school athletes, a demographic that is already under a lot of stress).

166. See Eisenberg, supra note 17 (noting that the high school athletes likely to sign the largest NIL deals have “huge social media followings,” something that requires “maintaining a consistent presence on social media” platforms).

sport at an earlier age—thus “increasing the risk of burnout and overuse injuries”\textsuperscript{168}—or chase superficial validation and individual accolades at the expense of team accomplishments (potentially resulting in increased locker-room strife).\textsuperscript{169} While individual high school athletes are likely to internalize these pressures and incentives quite differently from one another, considering that the United States is already facing a teen mental health crisis,\textsuperscript{170} the potential psychological effects that NIL opportunities may have on this vulnerable age group is another factor that state legislators should be mindful of.

Finally, one other age-related difference worth noting is that certain foreign jurisdictions extend additional privacy protections to minors beyond those that are typically provided in the United States.\textsuperscript{171} Such protections could extend to any U.S. high school student-athletes maintaining dual citizenship in such foreign jurisdictions and thus represent another unique concern potentially distinguishing NIL deals at the high school versus collegiate level.

Beyond age, there are also important differences in how and why high school students may engage with NIL opportunities as compared to their college counterparts. First, while the highest-profile high school athletes will be predominantly motivated to enter into endorsement contracts because of the potential financial remuneration that they provide, in many other cases high school students may seek these opportunities for quite different reasons. For example, a meaningful subset of high school athletes are pursuing NIL deals to help raise their individual profiles in the eyes of college coaches in the hopes of landing athletic scholarships, or to otherwise increase their particular sport’s popularity.\textsuperscript{172} Others may hope to secure free brand name

\textsuperscript{168} Solomon, supra note 17.

\textsuperscript{169} See Murphy, supra note 167 (discussing the potential for NIL opportunities to result in teenagers “seek[ing] superficial validation” or “individual accolades”); see also Nick Alvarez, The Debate Around NIL and Alabama High School Athletics Is Here, AL.COM (Feb. 2, 2023, 9:19 AM), https://www.al.com/highschoolsports/2023/02/the-debate-around-nil-and-alabama-high-school-athletics-is-here.html (citing one high school football coach as worrying that NIL opportunities could cause players to fight in the locker room for additional opportunities on the playing field).


merchandise\textsuperscript{173} or offset the costs of athletic training.\textsuperscript{174} Indeed, unlike at the college level—where the aforementioned rise of school-affiliated collectives has resulted in significant sums of money being directed at a broad array of student-athletes, with little expectation of any corresponding level of promotional work\textsuperscript{175}—at the high school level, most NIL deals are secured through third-party endorsement deals that have no relation to the student-athletes’ affiliated schools.

Finally, given the demands placed on college athletes, those competing at the high school level are more likely to carry traditional part-time jobs during either the school year or summer break.\textsuperscript{176} The realities of outside employment raise a host of difficult questions and line drawing exercises for policymakers seeking to limit high school students from receiving compensation from third-party companies based on their athletic abilities. For example, how does one determine whether a local high school student was hired for a part-time job at a restaurant due to her outstanding customer service skills, or if instead the job is merely disguising an NIL payment based on her local athletic notoriety? Factors like these may thus require state policymakers to consider adopting different NIL regulations than those implemented at the college level.

\textbf{B. Variations in the Purpose and Structure of High School and College Athletics}

In addition to the relevant differences between high school and college athletes outlined above, there are other important variances between the two levels of actual competition that policymakers should consider when formulating new rules regulating high school NIL rights. To begin, high schools and colleges have traditionally served different

\textsuperscript{173} See \textit{id.} (discussing examples of athletes signing NIL deals for clothing and free food).

\textsuperscript{174} See Armato, supra note 66 (interviewing a student-athlete’s father who stated they have turned down opportunities that would “help offset the expense [his] family must undertake to ensure that [his son] receives the best training” because they live in a jurisdiction that prohibits high school NIL (internal quotation marks omitted)).

\textsuperscript{175} See supra note 62 and accompanying text; see also Jon Blau, \textit{Clemson NIL Collective’s Tax-Exempt Status in Doubt After IRS Memo}, \textit{Post & Courier} (June 18, 2023), https://www.postandcourier.com/sports/clemson/clemson-nil-collectives-tax-exempt-status-in-doubt-after-irs-memo/article_f6a9c208-9b9e-11ee-814a-c75d596f3194.html [https://perma.cc/TKL6-A58C] (contending that it is unclear whether these college collectives “can make a compelling argument that paying [student-]athletes to promote charities is ‘incidental’ when compared to the greater good”).

\textsuperscript{176} See, e.g., Groller, supra note 165 (noting the example of a high-profile high school athlete who was a paperboy for the local newspaper throughout high school).
societal missions and educational roles. Whereas a college education is generally viewed as an optional pursuit for those seeking to further develop themselves personally, professionally, and intellectually, high schools provide more fundamental educational credentials. Indeed, the goal of a high school education is to provide all children with a “sound basic education”; one that prepares them to functionally serve society as productive citizens. As such, concerns that NIL-related activity could distract high school student-athletes, and hinder their ability to finish their baseline educational experience, are potentially more worrisome than in the case of intercollegiate athletics.

Similarly, others have argued that athletic competition at the high school and college levels serve different fundamental purposes. Specifically, while intercollegiate athletics is—at least at the highest and most visible levels—predominantly a highly competitive enterprise, some have argued that high school sports should ideally be viewed as a more educationally focused endeavor. As scholar Van Ann Bui notes:

Interscholastic athletics also play a pivotal role in the area of education. They help build self-confidence, encourage teamwork and healthy competition and help develop a myriad of other leadership skills. For students who are not academically inclined, interscholastic sports may provide a much needed boost of motivation to excel in academics—due to academic eligibility requirements—and they may help establish a social network for students who are academically-oriented.

Others have similarly noted that “[t]he primary reason that an overwhelming majority of high school students play sports is to have

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177. See Michael Hacker, Rethinking the Tax Treatment of Higher Education Expenditures: An Argument for Cost Recovery Through Amortization, 59 S. TEX. L. REV. 1, 24 (2017) (reporting that “35% of adults surveyed said that the purpose of a college degree should be to help individuals grow personally and intellectually, while 50% said that college should teach job-related skills”).

178. See, e.g., Deborah N. Archer, Failing Students or Failing Schools?: Holding States Accountable for the High School Dropout Crisis, 12 LEWIS & CLARK L. REV. 1253, 1259 (2008) (observing that “a high school diploma [is] a key component of [a basic] educational experience”).


180. Cf. James Landry & Thomas A. Baker III, Change or Be Changed: A Proposal for the NCAA to Combat Corruption and Unfairness by Proactively Reforming Its Regulation of Athlete Publicity Rights, 9 N.Y.U. J. INTELL. PROP. & ENT. L. 1, 45 n.310 (2019) (noting the need to “ensure student-athletes are focused on their education during the semesters and not distracted by business opportunities”).


fun and spend significant and meaningful time with their peers.” 183 For this reason, some consider high school sports to be the “purest form of amateur[ism].” 184 As such, the potential educational and social effects of NIL opportunities—and their resulting profit incentives—arguably raise greater concerns at this level of competition than in college athletics. 185

Another factor that policymakers should contemplate is the potential administrative burden that any NIL regulations will place on cash-strapped high schools. Due to the extremely competitive nature of college sports, NCAA schools have traditionally been heavily regulated, requiring them to maintain significant compliance-related staffing. 186 In contrast, high school athletic programs tend to be more leanly staffed, meaning that any elaborate or detailed NIL regulations at the high school level could pose heightened burdens for the institutions and associated athletic associations that supervise them. 187

One final difference between high school and college sports that should be considered is the greater variety of types of competition that are available to athletes at the high school level. While most four-year institutions of higher education competing in intercollegiate athletics are NCAA members, and thus agree to be bound by the same set of rules, 188 the high school sports landscape is made up of a more diverse


185. To be sure, the NCAA itself continues to maintain that intercollegiate athletics should continue to abide by the principle of amateurism to maintain a “clear line of demarcation between college athletics and professional sports.” Division I: 2023-24 Manual, NCAA 34, https://web3.ncaa.org/isdbi/reports/getReport/90008 (last visited Apr. 5, 2024) [https://perma.cc/7WZ6-5U2C].

186. See Nathaniel Grow & Todd Haugh, Assessing the NCAA as a Compliance Organization, 2021 Wis. L. Rev. 787, 803 (“Universities with major sports programs now employ as many as eleven full-time staff members to serve as NCAA compliance officers within their athletic departments.”).

187. Cf. Lan Kennedy-Davis, Let’s Make a NIL Deal Part II: High School Student-Athletes Look to Get into the NIL Game, JD SUPRA (Mar. 11, 2022), https://www.jdsupra.com/legalnews/lets-make-a-nil-deal-part-ii-high-7720859/ [https://perma.cc/C38V-WHBE] (noting that high schools should consider the need to engage lawyers and advisors for high school athletes signing NIL deals). One possible source of administrative support for high schools wrestling with added administrative burden would be to partner with outside vendors, similar to the existing partnerships between Louisiana, Texas, and Tennessee with Eckers Sports. See supra notes 92–93 and accompanying text.

set of participants. In addition to the traditional public and private high schools belonging to their respective state’s high school athletic association, recent years have also seen a rise in the number of independent academies fielding high school athletic teams.189 These academies typically operate outside the scope of their state’s high school athletic association, instead competing against other similar academies from across the country.190 As a result, these academies are not subject to the same rules and regulations as their more traditional counterparts, meaning that players dissatisfied with their state’s NIL rules could elect to transfer to an institution where their eligibility to compete would not be subject to the same constraints.191

Further, many high school players frequently participate on so-called travel or Amateur Athletic Union (“AAU”) teams outside the traditional high school season for their sport, providing opportunities that greatly increase their visibility and marketability with both college coaches and potential NIL partners.192 These AAU teams are often financially supported by various corporate partners—most notably leading shoe and apparel companies, like Nike193—thus raising a host of difficult questions about how to regulate these relations with high school athletes. As a result, the increased importance of AAU sports also raises unique challenges for policymakers enacting NIL rules at the high school level.

colleges are not NCAA members, “[f]or all practical purposes, the NCAA . . . directs and controls all major revenue-producing collegiate athletic events.” (alterations in original) (quoting Daniel A. Rascher & Andrew D. Schwarz, “Amateurism” in Big-Time College Sports, 14 ANTITRUST 51, 52 (2000))).

189. See, e.g., Kimberly Jade Norwood, Adult Complicity in the Dis-education of the Black Male High School Athlete & Societal Failures to Remedy His Plight, 34 T. MARSHAL L. REV. 21, 72 (2008) (“The IMG Academies, spread out over 300 acres in Florida, are the ‘largest and most ambitious schools ever created for devoted youth athletes.’ They have advanced, state of the art multi-sport training centers and facilities and top flight educational faculty.” (footnote omitted)).


191. See Solomon, supra note 17 (noting the example of a player attending “Vertical Academy in Charlotte . . . [whose] current endorsement deals would make him ineligible for competition” in the NCHSAA).

192. See Stephen F. Ross & Miles J. Gueno, Solving the Problem of Social Cost Through Legislative Pressure: A Case Study of the Coase Theorem as Applied to the College Basketball Shoe Scandal, 30 MARQ. SPORTS L. REV. 9, 16 (2019) (“The recruiting process begins by sponsorship of tournaments and teams in AAU competitions. The AAU summer leagues . . . provide a forum for AAU coaches, brand representatives and college coaches to influence the prospect and his family to remain loyal to the shoe company brand.”).

193. See id. at 15–20 (discussing the role of shoe companies in AAU basketball).
Due to the number of competitive outlets available to high school athletes, policymakers should be cognizant of the fact that restrictive NIL regulations at the high school level could increase the odds that talented athletes choose to leave traditional public or private high schools for independent academies, relocate across state lines, or avoid playing high school sports altogether and instead play exclusively on AAU travel teams in order to capitalize on their notoriety. Such loss of talent threatens the traditional community pride engendered by high school athletics, in which local townsfolk support their community’s most talented athletes playing for their hometown schools.

The above-noted concerns relating to the age and competitive environment of high school athletes, as compared to college athletes, are not meant to suggest that NIL opportunities should necessarily be withheld at the high school level. However, these concerns emphasize the need for policymakers and high school athletic associations to think more acutely when considering whether high school athletes should be permitted to capitalize on their NIL. At a minimum, protections should be implemented to help prevent the financial exploitation of high school athletes by their parents or guardians. As the next Part details, such safeguards could follow the example established by California’s Coogan’s Law.

194. See Solomon, supra note 17 (discussing the example of Mikey Williams, a highly rated college basketball recruit who elected to “play[] for Vertical Academy in Charlotte, a school that was founded by his father and is scheduled to play 25 games in 19 states against prep schools and similar academies,” in order to be able to monetize his NIL rights despite the NCHSAA rules prohibiting such deals).

195. See CBS News, supra note 67 (documenting that high school basketball player Jada Williams moved to California with her mom in order to capitalize on NIL opportunities); Jeff Miller, How Texas’s NIL Law Drives Top High School Athletes out of State. TEX. MONTHLY (Sept. 5, 2023), https://www.texasmonthly.com/arts-entertainment/texas-high-school-athletes-leaving-for-nil/ [https://perma.cc/2AEW-P4K9] (citing additional examples of student-athletes leaving Texas for states where they can earn NIL income).

196. See Tabatha Wethal, Do NIL Changes Affect High School Student-Athletes?, ATHLETIC BUS. (Sept. 7, 2021), https://www.athleticbusiness.com/operations/programming/article/15138817/do-nil-changes-affect-high-school-student-athletes [https://perma.cc/A993-2CE4] (providing that if high school athletes who secure NIL deals through AAU play in states that do not permit high school athletes to pursue NIL opportunities, they are “likely not going to be able to also play for their high school team at the same time they are functioning as a professional athlete”).

197. See Groller, supra note 165, at 3 (noting that “NIL [raises] concerns at the high school level revolv[ing] around the movement of athletes”).

198. See Tracy, supra note 88 (noting the importance of “being part of a community” for high school athletics).
III. CALIFORNIA’S COOGAN’S LAW: A POSSIBLE APPROACH TO INTERSCHOLASTIC NIL INCOME

Paying minors who play sports for their services is not a novel idea. Historically, such activity has typically involved sponsorship agreements with professional athletes who are nonemployee independent contractors, like golfers and tennis players. For example, tennis talent Jennifer Capriati made headlines in the 1990s by turning pro at age thirteen. Independent contractor athletes often earn prize money and, in some instances like Capriati, are paid to endorse an entire brand or specific product using their NIL.

In other sports, like professional soccer, minor athletes are paid as employees to provide services as professional athletes for the team or club. For example, teenage soccer star Freddy Adu signed a six-year contract at age fourteen with the Major League Soccer team D.C. United in 2003. More recently, fifteen-year-old soccer star Chloe Ricketts signed a contract with the Washington Spirit and, in 2023, became the youngest professional female soccer player in the United States to sign with Adidas.

Still, concerns over youths playing sports in an adult world led to the establishment of minimum age regulations in some professional

199. See, e.g., Josh Fordham, Jennifer Capriati Turned Pro at 13, Had Her Own Video Game Before Depression and Drug Issues but Eventually Won Three Grand Slam Titles—including Two Australian Opens, TALKSPORT (Jan. 22, 2023, 9:30), https://talksport.com/sport/tennis/1307263/jennifer-capriati-australian-open-drug-issues-video-game/ (noting that the contract would start the following season and quoting Commissioner Don Garber, “[t]his is the biggest signing in the history of the league”).

200. Id. (referencing Capriati’s million-dollar contract with Diadora and that she had a video game named after her for the Sega Genesis in 1992, called Jennifer Capriati Tennis); see also Michael McCann, Coco Gauff and the Legality of the Teenage Professional Athlete, SPORTS ILLUSTRATED (July 3, 2019), https://www.si.com/tennis/2019/07/03/coco-gauff-wimbledon-teenage-professional-athlete-legal (discussing the prize money and endorsement contracts that teenage professional athletes such as fifteen-year-old tennis player Coco Gauff has been able to achieve and how other sports leagues and associations have attempted to regulate age-based eligibility opportunities to compete).

201. Id. (comparing various age eligibility minimums in numerous professional sport leagues including Major League Soccer, which does not have an age minimum, and other leagues in which the age eligibility or age minimum is established as a direct result of collective bargaining).


associations and leagues. These restrictions have often, but not exclusively, come through the collective bargaining process.\textsuperscript{204} Unfortunately, managing the financial affairs of an elite minor athlete can lead to controversy, as in the case of Dominique Moceanu who—as noted above\textsuperscript{205}—sued her parents at the age of seventeen for squandering her earnings.\textsuperscript{206}

Given recent opportunities for some high school athletes to receive compensation for the use of their NIL, the gates have opened to a new frontier of minors earning income subject only to piecemeal regulation.\textsuperscript{207} However, this new world also exposes minor athletes to the possibility that their NIL and other earnings could be at risk of misuse, as happened with Moceanu.\textsuperscript{208} As a result, and for guidance,

\textsuperscript{204} See McCann, supra note 200 (noting the Women’s Tennis Association established age eligibility rule structure crafted in part in response to the burnout that child tennis star Jennifer Capriati endured in the early 1990s). McCann also notes that there is an age rule minimum in the ATP, the men’s governing body for tennis, but in other professional sports leagues such as the NFL, NBA, WNBA, MLB, and NHL, the minimum age eligibility rules are a direct result of collective bargaining. Id. But see Meredith Cash, Olivia Moultrie Didn’t Mean to Start the NWSL’s Teenage Revolution, but She’s Proud of the Role She Played, BUS. INSIDER (May 16, 2023, 2:13 PM), https://www.insider.com/olivia-moultrie-nwsl-teenagers-lawsuit-impact-equality-2023-5 [https://perma.cc/Y3YW-WQAL] (discussing how the then-fifteen-year-old Moultrie successfully challenged in court via a temporary restraining order the National Women’s Soccer League (“NWSL”) rule that one had to be eighteen to play as a violation of antitrust law, leading to a settlement between Moultrie and the NWSL). Cash notes that, as a result of Moultrie’s successful court challenge, the first NWSL collective bargaining agreement, established less than a year later, omits a minimum age rule entirely. Id. Moultrie plays for the Portland Thorns, and two fifteen-year-olds, Chloe Ricketts (Washington Spirit) and Melanie Barcenas (San Diego Wave) also played in the 2023 league. Id.

\textsuperscript{205} See supra text accompanying notes 6–7.

\textsuperscript{206} See Longman, supra note 6:

Moceanu, who is a high school senior in Houston, has asked a Texas District Court to declare her an adult so that she can handle her own affairs and determine what has happened to the approximately $1 million she has made from a professional career that began at age 10 and bloomed into gold-medal success as the American women won the gymnastics team competition at the 1996 Summer Olympics in Atlanta;

\textsuperscript{207} See Scott Nover, In California, Even High School Athletes Can Score Endorsement Deals, QUARTZ (Aug. 2, 2021), https://qz.com/2041395/high-schoolers-can-profit-off-their-nil-in-one-state [https://perma.cc/D5CX-PARU] (describing how the intercollegiate landscape changed dramatically in 2021 when the NCAA changed its rules to permit college athletes to profit from their NIL). Nover also reports that at the time of the article, only the state of California permitted high school athletes to profit from their NIL because many student-athletes are also involved in the film and television industries to some degree. Id. Nover states, “California’s lenient NIL policy could give it a competitive advantage over the other[] [states].” Id.

this Essay explores the need to protect a portion of a minor’s income earned in the entertainment industry—both from access and possible embezzlement by unscrupulous parties, as well as from the minor’s own potentially questionable financial decisionmaking.

Notably, according to California’s Coogan’s Law, fifteen percent of the gross earnings from the hired work of unemancipated minors—at least in specific types of contractual relationships found primarily in the entertainment industry—must be put into an established trust account referred to in the statute itself as a “Coogan Trust Account.”

This fifteen percent must be placed in the trust account per the California Family Code until the minor turns eighteen, although a parent or guardian can petition a court

209. See, e.g., John H. Shannon & Richard J. Hunter, Jr., Principles of Contract Law Applied to Entertainment and Sports Contracts: A Model for Balancing the Rights of the Industry with Protecting the Interests of Minors, 48 LOY. L.A. L. REV. 1171, 1175 (2015) (asking whether principles applicable to the regulation of the entertainment industry should “be the guideposts in the area of contracts with athletes who are minors”). The authors also offer suggestions for the current Coogan’s Law framework and note how actors Jackie Coogan, Shirley Temple Black, Gary Coleman, and others all had to deal with parents who misused or otherwise squandered their earnings. Id. at 1181–84; see also Susan McAlveey, Note, Spendthrift Trust: An Alternative to the NBA Age Rule, 84 ST. JOHN’S L. REV. 279, 298 (2010) (“Coogan’s Law recognizes that the pressures of the entertainment industry force minors to grow up quickly and face the same obligations as adults.”).


211. FAM. § 6753(a) (“The trustee or trustees shall establish a trust account, that shall be known as a Coogan Trust Account.”). The fifteen percent requirement is mentioned in two places: FAM. § 6752 (b)(1) (“[t]he court shall require that 15 percent of the minor’s gross earnings pursuant to the contract be set aside by the minor’s employer, except an employer of a minor for services as an extra, background performer, or in a similar capacity . . . .”); and FAM. § 6752 (b)(4) (“The minor’s employer shall deposit or disburse the 15 percent of the minor’s gross earnings pursuant to the contract . . . .”). These trust accounts might go by different commercial names, including, “Coogan Account,” “Coogan Blocked Trust Account, Coogan Trust Account, or Coogan Bank Account.” E.g., Charles Wallace, The “Coogan Account” and Setting Your Little Performer up for Financial Success, CREEDON, https://www.creedon.com/blog/2021/9/24/the-coogan-account-and-setting-your-little-performer-up-for-financial-success (last visited Apr. 5, 2024) [https://perma.cc/NNC8-5BLU]; see also Coogan Law, SAG-AFTRA, https://www.sagaftra.org/membership-benefits/young-performers/coogan-law (last visited Apr. 5, 2024) [https://perma.cc/5E3L-GJXV] ( affirming that parents or guardians are required to open a Coogan Account with a California bank, credit union or brokerage firm under California Law, with similar requirements existing for New York, Illinois, Louisiana, and New Mexico); McCann, supra note 200 (“The Screen Actors Guild represents young performers and provides important legal information to them, including on legal issues pertinent to their parents and guardians.”).

212. FAM. § 6753(b) (“Prior to the date on which the beneficiary of the trust attains the age of 18 years or the issuance of a declaration of emancipation, . . . no withdrawal by the beneficiary or any other individual, individuals, entity, or entities may be made of funds on deposit in trust . . . .”).
otherwise if they can show “good cause.” Specifically, this section of the California Family Code applies to contracts pursuant to which a “minor is employed or agrees to render artistic or creative services, either directly or through a third party, including, but not limited to, a personal services corporation (loan-out company), or through a casting agency.”

The California law traces its origins to Jackie Coogan—a child actor who became famous for working with Charlie Chaplin, particularly in the 1921 silent film *The Kid*. Jackie earned between $2 million and $4 million as a child actor. At the time, California child actors’ earnings belonged solely to their parents. When Jackie became an adult, he discovered that his money was gone, having been depleted by his parents and manager. As a result, Jackie sued his parents and his former manager, and in 1939 California established the eponymous Coogan’s Law to provide some measure of financial...
protection for young actors vis-à-vis their parents when employed in California’s entertainment industry.\textsuperscript{220}

The original iteration of Coogan’s Law could have been drafted with fewer loopholes and has been modified several times since 1939, including in 1941, 1947, 1989, and 2000.\textsuperscript{221} Starting on January 1, 2000, earnings by minors in the entertainment industry are presumed to be the property of the minor, not their parents or guardians.\textsuperscript{222}

In California, Coogan Trust Accounts are highly protected, so much so that any withdrawal from a Coogan Trust Account must have court approval first, even if it is merely a bank’s monthly service fee for operating the account.\textsuperscript{223} These blocked trust accounts appear in several states beyond California, including New York, Illinois, Louisiana, New Mexico, North Carolina, Pennsylvania, and Tennessee.\textsuperscript{224} In these states, one must demonstrate proof of these accounts before the state grants a work permit.\textsuperscript{225}

It is interesting, though not often discussed in the literature, that the statutory framework also applies to minor athletes within California since it encompasses “[a] contract pursuant to which a minor is employed or agrees to render services as a participant or player in a sport.”\textsuperscript{226} While this language would cover a child athlete’s contract with

\begin{itemize}
\item \textsuperscript{220} See Shannon & Hunter, Jr., supra note 209, at 1181–83 (discussing the history of and modifications to the original Coogan’s Law). Of note is the authors’ recognition that the Coogan’s Law framework failed to address the changing entertainment industry landscape regarding young actors, who focused more on short-term contracts such as in television commercials or individual, single film projects. Id.; see Siegel, supra note 208, at 434 (“As [Coogan’s Law] was written over sixty years ago, it fail[s] to incorporate many paramount changes in the industry that affected child actors.”); see also SAG-AFTRA, supra note 211 (“[The parent] will have to supply proof of a trust account prior to receiving a work permit. 15% of the minor’s gross wages are required to be withheld by the employer and deposited into the Coogan Account within 15 days of employment.”).
\item \textsuperscript{221} See Shannon & Hunter, Jr., supra note 209, at 1184–87 (discussing California’s numerous amendments to Coogan’s Law).
\item \textsuperscript{222} Id. at 1187; SAG-AFTRA, supra note 211.
\item \textsuperscript{223} See Phillips v. Bank of Am., 186 Cal. Rptr. 3d 434, 442 (Cal. Ct. App. 2015) (holding that under the Coogan Trust Account framework, even a monthly service fee charge by the bank violates the Coogan Law statutory construct).
\item \textsuperscript{224} See SAG-AFTRA, supra note 211 (mentioning California, New York, Illinois, Louisiana, and New Mexico); see also Harris, supra note 210 (mentioning California, Illinois, Kansas, Louisiana, Nevada, New Mexico, New York, North Carolina, Pennsylvania, and Tennessee); MORGAN STANLEY, supra note 219 (mentioning California, Illinois, Kansas, Louisiana, Nevada, New Mexico, New York, North Carolina, Pennsylvania, and Tennessee).
\item \textsuperscript{225} See MORGAN STANLEY, supra note 219; Employment/Age Certificate, U.S. Dep’t of LAB. (Jan. 1, 2024), https://www.dol.gov/whd/state/certification.htm [https://perma.cc/2VQD-J562] (providing information on state-by-state work permit laws for child labor); see also Marina A. Masterson, Comment, When Play Becomes Work: Child Labor Laws in the Era of “Kidfluencers,” 169 U. PA. L. REV. 577, 599–601 (2021) (providing a history of child labor laws, child actor protections, and Coogan laws, but calling into question whether a work permit is practical or appropriate for “kidfluencers” because such a requirement is “difficult, if not impossible, to apply to the social media context”).
\item \textsuperscript{226} CAL. FAM. CODE § 6750(a)(3) (West 2020).
\end{itemize}
a professional sports team—including the above-noted examples of Freddy Adu and Chloe Ricketts had they resided in California—this statutory provision does not appear to apply to most high school NIL contracts. Indeed, in a typical endorsement contract, a player is not “employed or agree[ing] to render services as a participant or player in a sport.”

Rather, the athlete is instead agreeing to permit the use of their NIL in association with a particular product or service. Thus, these contracts would not be covered by California’s existing version of Coogan’s Law.

Given the extent to which a high school athlete’s NIL earning potential is tied to their social media presence, it is noteworthy that while actors, actresses, athletes, and others are covered under Coogan’s Law, social media influencers—sometimes called kid influencers or simply kidfluencers—are not. In 2018, California considered a bill that would have amended Coogan’s Law by adding “employment of a minor in social media advertising” to the definition of employment in child entertainment law, giving kidfluencers the same financial and legal protections as child actors generally. However, the version of the bill that ultimately passed and was eventually signed by California Governor Gavin Newsom looked nothing like the bill that had been originally proposed. In fact, the language proposed by California Assembly Member Kansen Chu—which attempted to include child social media influencers—was removed before the bill was enacted.

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227. Id.
228. See supra notes 166–167 and accompanying text.
229. Julia Carrie Wong, It’s Not Play if You’re Making Money: How Instagram and YouTube Disrupted Child Labor Laws, GUARDIAN (Apr. 24, 2019, 1:00 PM), https://www.theguardian.com/media/2019/apr/24/its-not-play-if-youre-making-money-how-instagram-and-youtube-disrupted-child-labor-laws [https://perma.cc/KMN7-GKB]; see also Ana Saragoza, Comment, The Kids Are Alright? The Need for Kidfluencer Protections, 28 AM. U. J. GENDER SOC. POL’Y & L. 575, 577–78 (2020) (acknowledging the failure of California to amend Coogan’s Law, noting the Federal Trade Commission plays a role in social media regulation, and arguing that regulating kidfluencing is especially important because “the lack of kidfluencer laws place children at serious risk of exploitation”). But see Masterson, supra note 225, at 607 (offering that “[f]ederal regulation may be . . . more fitting for social media production,” but acknowledging that until that happens, states must provide the protection in that space with tools including Coogan Trust requirements).

[Advocates for child workers’ rights argue that the law hasn’t kept pace with the digital age, and as a result, kidfluencers are falling through the cracks. In fact, no law outlines protections for minors earning income in social media. It’s a cause for concern since, without protections, they stand to lose millions to their own parents.

Out of concerns over financial exploitation, there have been calls to adopt additional legislation to expand Coogan’s Law to cover social media content.232

The momentum toward state legislation that requires parents to set aside a percentage of income earned by kidfluencers has been slow relative to changes in technology and social media generally, including video blogs (vlogs).233 Though not specific to NIL and minor athletes, on August 11, 2023, Illinois—amending its Child Labor Law—enacted the first state law to require that a blocked trust account be established for vlogging activity involving those under sixteen.234 It allows individuals who have reached eighteen years old to then seek remuneration for such vlogging, if necessary, from their family for the content created online while under the age of sixteen.235 However, a vlogger, as defined by the

Footnotes:

232. See McGrath, supra note 231, at 321 (calling for and proposing federal legislation); see also Lambert, supra note 230 (noting that one California legislator aims to enact legislation specific to Coogan’s Law and social media); Charlotte B. Winckler, Kidfluencers: How the Law’s Failure to Keep Up Leaves Children Across the Country at Risk of Labor Abuse and Financial Exploitation, 16 CHARLESTON L. REV. 111, 112–13 (2022).

In this new age of social media stars, children with large followings, popularly known as “kidfluencers,” are making huge earnings through brand deals and advertising revenue on platforms like Instagram, YouTube, and TikTok. However, the Coogan Law, and similar laws in states other than California, do not consider social media advertising labor, thus, there is nothing stopping parents from forcing their children to sit in front of a camera to create content and then use the profits for their own enjoyment.

(footnotes omitted); Kylie Clouse, Cash Kid: The Need for Increased Financial Protections of Internet Child Stars on YouTube, 65 WM. & MARY L. REV. 195, 208–09 (2023) (pushing for California to update its Coogan internet stars, particularly given that social media platforms such as Instagram, YouTube, and TikTok have headquarters within the state).


234. Id.: Starting July 1 2024, parents in Illinois will be required to put aside 50% of earnings for a piece of content into a blocked trust fund for the child, based on the percentage of time they’re featured in the video. For example, if a child is in 50% of a video, they should receive 25% of the funds; if they’re in 100%, they are required to get 50% of the earnings. However, this only applies in scenarios during which the child appears on the screen for more than 30% of the vlogs in a 12-month period.

statute, “does not include any person under the age of 16 who produces his or her own vlogs.”

As a result, in both California and elsewhere, it is prudent to consider whether a similar model to Coogan’s Law ought to be enacted specifically for NIL income earned by interscholastic and minor athletes. Indeed, in this new state-by-state NIL frontier, there does not yet appear to be any consideration for the safety and preservation of earnings from financial exploitation, misappropriation, or high school athletes’ own questionable judgment before reaching the age of majority—much of which the Coogan’s Law framework is designed to protect against. As such, the next Part offers recommendations for policymakers to consider when regulating NIL opportunities at the high school level.

IV. RECOMMENDATIONS AND OTHER CONSIDERATIONS FOR STATES DRAFTING HIGH SCHOOL NIL LAWS

As the above discussion highlights, NIL regulation at the high school level raises a host of legal and ethical issues not applicable at the college level. Yet, in those states where high school athletic associations have amended their rules to allow high school athletes to earn endorsement income from their athletic abilities, state policymakers have largely failed to take these unique considerations into account. Crafting and passing protective legislation for high school athletes earning NIL income is critical.

This Essay defers to state legislatures as to whether high school athletes may earn income from endorsement contracts. However, if a state does permit its high school athletes to earn NIL income, then it should likewise implement measures to ensure that this vulnerable

236. Id. sec. 5, § 0.5.
237. See CAL. FAM. CODE § 6750(c)(1) (West 2000):
    For purposes of this chapter, the minor’s “gross earnings” means the total compensation payable to the minor under the contract or, if the minor’s services are being rendered through a third-party individual or personal services corporation (loan-out company), the total compensation payable to that third party for the services of the minor.
238. See id. § 6750(a)(3) (discussing the specific types of contracts entered into between an unemancipated minor and any third party or parties on or after January 1, 2000). Coogan’s Law includes “contract[s] pursuant to which a minor is employed or agrees to render services as a participant or player in a sport.” Id. Clearly this is related to an employer-employee relationship, but one might consider whether the expression, “or agrees to render services as a participant or player in a sport” could be interpreted to mean as an independent contractor or even as a nonemployee, intercollegiate athlete. Id. Subsection 6750(b)(1) attempts to clarify by stating, “[i]f a minor is employed or agrees to render services directly for a person or entity, that person or entity shall be considered the minor’s employer for purposes of this chapter.” Id. § 6750(b)(1).
239. See supra Part II.
240. See supra notes 148–156 and accompanying text.
population is protected from having an unscrupulous parent or guardian, or their own potential immaturity, squander these earnings before they turn eighteen. Specifically, if a particular state’s high school athletic association chooses to grant high school athletes the right to pursue NIL opportunities, then state policymakers should follow the lead of those states discussed above that have implemented Coogan’s Law protections for child actors and actresses. In such cases, state law should specifically require that a certain percentage of income from the use of a minor athlete’s NIL be deposited into a blocked trust account.

For example, as noted above, California already requires that such a protection be afforded in any “contract pursuant to which a minor is employed or agrees to render services as a participant or player in a sport.” While this provision seemingly does not apply to income earned from NIL endorsements, as noted above, one way to modify and update the current law would be to simply reword it to cover

[a] contract pursuant to which a minor is employed or agrees to render services as a participant or player in a sport, or pursuant to which the minor will receive any remuneration, including royalties, for a paid sponsorship or endorsement of a good or service.

This would include NIL sponsorship earnings, regardless of whether the minor athlete is an employee, endorsee, or social media influencer, especially given that some kidfluencers are paid considerably well. States wishing to add a Coogan’s Law–type framework to NIL protection for kidfluencers might amend either their family code or their education code, for example. Further, because the current savings rate is arguably low and arbitrary, another recommendation would be for California or other states to consider increasing the percentage of income that must be deposited into the blocked trust account. Also, this Essay recommends the adoption of a statutory presumption—as in California—that all income earned by the minor athlete is their sole property alone, as opposed to their parents’ or guardians’ property.

241. FAM. § 6750(a)(3).
243. Specifically, regarding NIL endorsement income, this additional language might be general enough to also include social media influencers.
244. See, e.g., Winckler, supra note 232, at 120 (“Just as child movie stars find themselves making the same amount, if not more, than their adult counterparts, child influencers—often referred to as kidfluencers—are some of the highest paid social media stars in the industry.”).
245. For example, one can debate whether fifteen percent is arbitrarily low and instead consider raising the amount automatically deposited into the blocked trust account to twenty-five percent.
246. See FAM. § 771(b) (“[T]he earnings and accumulations of an unemancipated minor child related to a contract of a type described in Section 6750 shall remain the sole legal property of the minor child.”).
The above recommendations are not offered to suggest that parents or guardians of minor athletes will inevitably exploit their NIL earnings, nor does this Essay recommend some form of anti-parent legislation. As discussed above, however, there exist examples of both minor athletes and child entertainers who have been victims of their parents’ or managers’ misuse of funds. Indeed, these recommendations also protect minor athletes from squandering their own savings prior to reaching the age of majority. Given that history is also replete with examples of adult professional athletes facing bankruptcy after having been showered with cash from their athletic endeavors, protecting high school athletes from their own bad financial decisionmaking also serves an important policy objective.

Ultimately, the heart of Coogan’s Law beats in favor of providing some measure of protection and security of minors’ income from being misappropriated or misused by parents or guardians. As states continue to move toward allowing high school athletes to capitalize on their fame, the issue becomes less about whether they can earn income from their NIL and more so about what can be done to best protect them—at least to some significant degree—from outside influences (and themselves).

Further, in states that permit high school athletes to earn NIL income, additional statutory provisions could be considered that address some of the other issues highlighted above pertaining to high school NIL endorsement deals. For instance, one consideration is whether to specifically grant high school athletes the right to be represented by agents when negotiating NIL contracts. Similarly, states may want to consider whether to implement a mechanism that prevents minors from disaffirming endorsement contracts, perhaps conditioned on parental approval of the contract.

247. See supra notes 6–7, 218–220, and accompanying text.


249. For additional proposals not specific to NIL, see Shannon & Hunter, Jr., supra note 209, at 1190–91 (recognizing that some league contracts fall under the jurisdiction of the collective bargaining process, but offering that changes to Coogan’s Law could include approval of any contract entered into with a minor by a competent court, setting aside a significant portion of the earnings of a minor in a secure or blocked account, limiting a minor’s right of disaffirmance, requiring that the minor be represented by an agent approved by a player’s union, etc.).

250. See Casalino, supra note 13, at 297–98 (“Just as collegiate athletes are now being afforded the opportunity to hire an agent to assist with NIL sponsorship and endorsement contract drafting and interpretation, so should high school athletes.”).

251. See supra notes 158–161 and accompanying text.
Another potential issue that may require regulation is how (or whether) to prevent NIL income from being used as a recruiting inducement to persuade high school athletes to transfer to other institutions.\textsuperscript{252} Likewise, states should also weigh whether to restrict high school athletes from endorsing any so-called vice products or services, such as alcohol, tobacco, or firearms, among others.\textsuperscript{253} Finally, states may also want to consider the tax implications of high school NIL contracts.\textsuperscript{254}

Regardless of how each state chooses to regulate any of the issues identified above, in those states that permit high school athletes to engage in NIL opportunities, some form of protection should be implemented to ensure that a sufficient percentage of the NIL income received by a high school athlete is preserved for the child’s future use after reaching the age of majority.

One final issue that merits a brief discussion is the optimal governmental or regulatory level at which these rules ought to be enacted. While at least one commentator has suggested that a federal law is needed to ensure nationwide consistency,\textsuperscript{255} this Essay instead asserts that the regulation of NIL opportunities at the high school level is best decided on a state-by-state basis. Indeed, unlike at the college level, where colleges routinely compete against schools from other states, most competition in high school sports occurs between teams residing in the same state. Thus, a state-by-state regulatory regime will adequately ensure that teams compete against one another on an equal playing field within each jurisdiction. Moreover, state-by-state regulation is also arguably most appropriate given that the underlying legal regime supporting high school athletes’ NIL rights—that is, the right of publicity—is itself regulated on a state-by-state level, with sometimes meaningful differences in the extent to which various jurisdictions recognize such rights.\textsuperscript{256}

Admittedly, a state-by-state approach does not address the issue of high-profile athletes leaving traditional high schools in states where NIL contracts are prohibited, either to move to another state that does

\begin{itemize}
\item \textsuperscript{252}See Casalino, \textit{supra} note 13, at 294 (“Some have expressed concerns over the potential that NIL will create an opportunity for ‘high school recruiting,’ where schools and donors offer incentives for student athletes to attend one school over another.”).
\item \textsuperscript{253}See \textit{supra} notes 152–153 and accompanying text (discussing existing state regulations in this regard).
\item \textsuperscript{254}See Kisska-Schulze & Epstein, \textit{supra} note 16, at 477–503 (discussing the tax implications of student-athletes earning NIL income).
\item \textsuperscript{255}See Casalino, \textit{supra} note 13, at 296 (proposing a federal NIL statute for high school athletics).
\item \textsuperscript{256}See \textit{supra} notes 14–16 and accompanying text (discussing the legal basis for the right of publicity).
\end{itemize}
allow high school athletes to pursue those opportunities or to an academy operating outside of its state’s high school athletic association. However, given the relatively small number of student-athletes who may be affected by this, such lone consideration does not necessitate nationwide policymaking at the federal level. Instead, this Essay contends that states should continue to individually determine how to balance the promise and peril of NIL contracts at the high school level.

Nevertheless, this Essay does contend that any applicable rules governing high school NIL opportunities at the state level be codified via legislation, rather than simply enacted as a regulation by the state’s high school athletic association, for several reasons. First, state high school athletic associations lack the authority to implement legally binding provisions that require a percentage of an athlete’s earnings be set aside in a blocked trust account, or to modify the enforceability of such contracts for minors. Moreover, any rules issued by high school athletic associations that potentially restrict student-athletes’ NIL rights could be challengeable as an unreasonable restraint of trade among potential economic competitors. As noted above, such a claim was recently litigated by a class of high school athletes against the Florida High School Athletic Association. By codifying any such regulations via legislation, a state could specify that such restrictions are not challengeable under state antitrust law.

**CONCLUSION**

The world of sports is changing. The transition away from amateurism, and toward some form of pay in college sports, is now here, yet continuously evolving. Given the exorbitant endorsement deals that some elite college athletes have entertained, it is not surprising that high school athletes want to similarly explore revenue-earning opportunities for the use of their NIL. In fact, more than half of all states currently allow high school athletes to pursue NIL opportunities. However, in those states where high school athletic associations have moved to permit high school athletes to reap the financial benefits of their fame, most states have failed to implement any form of financial safeguards to protect those athletes.

257. See supra notes 189–191 and accompanying text (discussing these phenomena).
258. See supra notes 90–91 and accompanying text (summarizing the pending litigation).
259. See supra Section I.A.
260. See supra text accompanying notes 62–64.
261. See supra Section I.B.
262. See supra text accompanying notes 97–147.
Such a void in legislative protection is concerning, given that high school athletics differs in important ways from college athletics. As compared to college athletes, most high school athletes are minors, thereby presenting contractual issues related to capacity that adults might not face.263 In addition, the purpose and structure of a high school education lie in stark contrast to the educational mission of colleges and universities, thus raising concerns about the educational distractions resulting from NIL-related activities.264

This Essay explores these points in detail, ultimately recommending that states institute legislative protections to help prevent the financial exploitation of minor athletes by their parents, guardians, or third-party promoters. Specifically, this Essay proposes that a model legislative safeguard comes in the form of California’s Coogan’s Law—and analogous provisions adopted by several other states—to provide a measure of financial protection for young actors employed in the entertainment industry.265 Given that child actors and child athletes can now financially capitalize on their fame, it seems imperative that both find protective shields under state statutory law. In addition to the proposed statutory framework, this Essay raises other important legislative considerations that should be considered in this new and evolving landscape of high school NIL opportunities, including agent representation rights, mechanisms that prevent minors from disaffirming contracts, anti-recruitment persuasions, and tax law considerations.266

With NIL here to stay, state legislators must look beyond the collegiate model when contemplating how to best regulate NIL at the high school level. The time is ripe for policymakers to turn their attention toward protecting the most vulnerable population in the U.S. sports arena: our youth.

263. See supra Section II.A.
264. See supra Section II.B.
265. See supra Part III.
266. See supra Part IV.