

Summary of the Protecting Athletes, Schools, and Sports Act of 2023 (“PASS Act”)

In 2021, the U.S. Supreme Court decided *National Collegiate Athletics Association v. Alston (Alston)*, setting in motion the ability of student athletes across the U.S. to be compensated for the use of the name, image, and likeness (NIL). It is difficult to overstate the changes to college sports that we have since witnessed. Today, student-athletes, higher education institutions, and athletics conferences face uncertainty in a rapidly evolving landscape. A lack of clear rules has created a race to the bottom with some athletes receiving millions of dollars as an inducement to play, while others have been exploited and lost scholarships. Last year, Senators Manchin and Tuberville solicited input from a broad range of stakeholders, including athletic directors, administrators, associations, and student-athlete groups, on how to build bipartisan consensus around NIL. They arrived on four principles that guide the *Protecting Athletes, Schools, and Sports (PASS) Act of 2023*. These are:

- Maintain competitive balance between schools and states
- Total transparency on who is doing what, when, and where
- Protect players’ health and safety
- Maintain equality so that all student athletes in all sports benefit from these activities

Regulating “Name, Image, & Likeness” Activities and Reining in Collectives & Boosters

When the Supreme Court unanimously decided on *Alston*, they did not envision the rise of collectives and the lack of transparency and regulation that characterizes today’s college sports landscape. Collectives and boosters have openly paid millions of dollars to lure athletes to their schools, while others have broken promises to athletes when they didn’t have enough money to fulfill their outlandish promises. The PASS Act puts guardrails around these activities to provide transparency and protect student athletes and higher education institutions alike. Provisions in the bill include:

- Protecting student athletes by:
 - Requiring collectives and boosters to be affiliated with a college or school
 - Establishing a national standard for NIL
 - Preserving Title IX by ensuring that nothing in the PASS Act affects the rights of any students athletes or affects any programs funded through Title IX
- Protecting higher education institutions by:
 - Ensuring that schools, conferences, and associations are not liable for their work complying with the PASS Act
 - Prohibiting NIL agreements that involve alcohol, drugs, or conflict with existing school and conference licenses
 - Requiring student athletes to ask permission to make use of existing intellectual property (IP)
- Preserving the future of college sports by prohibiting inducements

Providing Transparency on NIL Activities

After one booster announced he had “invested” tens of millions of dollars to sign players at his alma mater, that school made its deepest tournament run in program history, even after its coach was suspended when it was revealed that several players met with the booster before committing to the school. In the same state, another player was offered \$13 million to sign a letter of intent to a school, but when the collective failed to pay, the player eventually was forced to leave, ultimately receiving \$0. In the chaos of the current landscape, these incidents are all too common. The PASS Act intends to shine a light on these activities by requiring:

- Agents and collectives that participate in NIL must register with regulating body
- All NIL contracts must be disclosed within 30 days
- Establishment of a public-facing website to publish anonymized NIL data

Moderating the Transfer Portal

Thousands of players have entered into the transfer portal over the past several seasons, and while some teams have benefited from bringing in new players, there is considerable risk to student athletes. In fact, according to

public data released from the 2019-20 and 2020-21 academic years, 41% of student athletes did not find a new school, were still looking, transferred to a non-NCAA school, or left their sport completely. Even among those that did find a new school, many lost their scholarships. In order to lessen the risk associated with the transfer portal, the PASS Act requires:

- Student-athletes must complete their first three years of academic eligibility before allowing them to transfer without penalty
- Exceptions for a death in the family, a coach that is fired or leaves, and other criteria

Ensuring the Health & Safety of Student Athletes

There are certain things that are more important than money. Senators Manchin and Tuberville are committed to the health and safety of student athletes, including a number of provisions that ensures that student athletes are not left to pay for sports-related medical expenses, preserves their scholarships from being eliminated due to injury or without just cause, and protects them from predatory behavior. That's why the PASS Act includes:

- Guaranteed health insurance for sports-related injuries for uninsured student athletes for 8 years following from a 4-year institution. To do so, the PASS Act requires:
 - All institutions to provide healthcare coverage while a student athlete is participating in intercollegiate athletics
 - Institutions making more than \$20 million in athletics revenues are responsible for 2 years of out-of-pocket medical expenses
 - Institutions making more than \$50 million in athletics revenues are responsible for 4 years of out-of-pocket medical expenses
 - For any out-of-pocket expenses beyond the responsibility of institutions, the PASS Act sets up a trust fund taken from 1% of annual proceeds from revenue-generating collegiate tournaments or playoffs, including the NCAA Tournament and the College Football Playoff.
- Scholarship commitment
 - Institutions must honor the original scholarship commitment made to a student athlete (any obligations assumed by new institution upon transfer of the student-athlete)
 - 4-year institutions may not revoke or reduce or condition a scholarship due to student athlete's existing NIL contract or injury

After reviewing marketing contracts across the country, *NBC News* found widespread abuse, with contracts providing commissions up to 40% and others reducing athletes' freedom to enter into other deals. To address these exploitative practices, the PASS Act also includes the following provisions:

- Uniform Standard Contract for student athlete use for NIL deals
 - Contracts may not extend beyond the duration of a student-athlete's expected enrollment
- Enhanced curriculum on financial literacy, NIL rights and related legal and regulatory issues
- Equal Representation
 - Before NIL, boosters gave their money to the school's athletic department, which paid salaries, funded recruiting trips, chartered transportation, and upgrade facilities. Now those checks go to collectives, which are not subject to Title IX. For some schools, that means that one men's player's income is double the entire budget of some female teams. That's why the PASS Act requires that collectives and other third parties must provide equal services to all student athletes, not just men's football and basketball players

Strengthening Enforcement & Oversight

None of this is achievable without strong enforcement and oversight. That's why violations of this Act are subject to enforcement by the Federal Trade Commission (FTC), while the NCAA is charged with overseeing and investigating NIL activities and can refer violations to the FTC. At the same time, we do not need overzealous federal agencies to upend the college landscape with overregulation. That's why the bill includes strict parameters for federal oversight in this space.