

LEGISLATION



2021 NCAA
CONVENTION

DIVISION III SECOND
PUBLICATION OF
PROPOSED
LEGISLATION

115th Annual Convention
January 13-16, 2021

THE NATIONAL COLLEGIATE ATHLETIC ASSOCIATION
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Second Publication of Proposed Legislation 115th Annual Convention

This publication presents the proposed amendment to NCAA Division III legislation that was properly submitted in accordance with the July 15 and September 1 deadlines in the NCAA legislative calendar. The proposal herein appears in the order in which it would appear, if adopted, in the NCAA Manual. No attempt has been made to place it in a topical grouping or in the order in which it eventually might appear in the Convention agenda. **The order of the one proposal in the Second Publication of Proposed Legislation will change in the Official Notice. The numeral 2 has been placed in front of the proposal number to help identify its position in the Second Publication of Proposed Legislation.**

The proposal is accompanied by the traditional statement of intent, proposed effective date and a statement of rationale.

By September 15, any sponsors of a membership-sponsored proposal were permitted to refine and change the amendments in any manner that was germane to the proposal. Such changes could either increase or decrease the modification set forth in the original proposal. For the 2021 Convention, there were no membership sponsored proposals, consequently the Second Publication of Proposed Legislation, includes only the proposal submitted by September 1 by the NCAA Division III Presidents Council and the NCAA Division III Management Council.

No new proposals may be submitted for the 2021 NCAA Convention inasmuch as the July 15 and September 1 deadlines have passed. Member institutions and conferences, as well as the Presidents Council and Management Council, now have until November 1 by 5 p.m. Eastern time to submit amendments to the proposal. Such amendments-to-amendments may not increase the modification set forth in the printed proposal. Amendments-to-amendments submitted by the membership must have 20 or more active member institutions for proper sponsorship in Division III. In addition, amendments-to-amendments may be sponsored by two or more member conferences in Division III. It should be noted that proposals that are withdrawn after the September 15 sponsor-modification deadline appear in the Second Publication of Proposed Legislation; however, information will be included in the Official Notice to indicate the sponsor's intent to withdraw the proposal at the Convention.

Member institutions and conferences are encouraged to request interpretations of the proposed legislation in this Second Publication of Proposed Legislation. Refer to Appendix A for the Request for Interpretation form.

This publication represents the second in a series of three publications addressing Convention legislation, as dictated by the provisions of NCAA Constitution 5. The third publication will be as follows:

Official Notice of the 2021 Convention. Issued on November 15 and contains all Division III legislation for the Convention, including all amendments-to-amendments and resolutions submitted by the November 1 deadline.

2020-21 Legislative Calendar

The legislative calendar, as set forth in Constitution 5, is summarized here for convenience of reference.

July 15: Deadline for submission of amendments by the Division III membership. Each amendment must include a statement of intent and a separate statement of rationale (200 words or less), as well as identification of the designated primary contact person, and must be sponsored by at least one conference or at least 10 individual institution sponsors.

July 20-21: Management Council Consideration. The Management Council considers legislative proposals that it may wish to sponsor. It also reviews proposals submitted by the membership in accordance with the July 15 deadline.

August 6: Presidents Council consideration. The Presidents Council considers legislative proposals that it may wish to sponsor. It also reviews the proposals submitted by the membership in accordance with the July 15 deadline.

Not Later Than August 15: Posting of Initial Publication of Proposed Legislation.

Date IPOPL is Posted through September 15: Sponsor-modification period. Sponsors are permitted to refine and change their proposals in any manner germane to the original proposal. Member institutions and conferences are invited to offer any suggested revisions of a proposal to the primary contact person listed with the proposal. Also, members that believe an amendment should not be modified should so inform the primary contact person.

September 1: Deadline for submission of amendments sponsored by the Presidents Council or Management Council.

September 1: Deadline for proper co-sponsorship of membership proposals. The proposals must receive proper co-sponsorship from one additional conference (if originally sponsored by one conference) or 10 additional individual institutions (if originally sponsored by 10 institutions) or it will be withdrawn.

September 15: Deadline for submission by all sponsors (with submission by the primary contact person) of any modification to their original amendments. These modifications may represent either greater or lesser changes; they need only be germane to the original amendment.

Not Later Than September 23: Posting of Second Publication of Proposed Legislation. This publication includes all membership-sponsored proposals as modified and includes all proposals sponsored by the Presidents Council or Management Council.

Date SPOPL is Posted through November 1: Amendment-to-amendment period. The Presidents Council and Management Council as well as the membership (see Constitution 5.3.5.3) may submit amendments to the proposals in the Second Publication of Proposed Legislation. These amendments-to-amendments may not increase the modification of the provisions to be amended; they must fall between the provisions of the original proposed amendment and the current provisions.

November 1: Deadline for all amendments-to-amendments and resolutions to be received in the national office. No amendments-to-amendments sponsored by the membership may be submitted after this date. The councils are authorized to submit further amendments-to-amendments at the Convention if they deem such action necessary (see Constitution 5.3.5.3.2.1).

November 15: Publishing the Official Notice of the Convention. This publication includes all Division III proposed legislation and the properly submitted amendments-to-amendments and resolutions.

January 13-16, 2021: NCAA Convention. Voting on proposals will occur at the business session.

Division III Interpretations and Legislation Committee

Amy J. Backus, Case Western Reserve University

Anthony Francois, John Jay College of Criminal Justice (student-athlete)

Matt Hill, University of Northwestern - St. Paul

Alexandra Littlefox, Mills College

Angie Morenz, Blackburn College (chair)

Joseph Pavlow, Rosemont College

Patrick B. Summers, New England Women's & Men's Athletic Conference

Mila C. Su, Plattsburgh State University of New York

115th Annual Convention
LEGISLATIVE PROPOSALS SUBMITTED BY THE MEMBERSHIP

[Note: Pursuant to Constitution 5.3.12, all amendments shall become effective not earlier than the first day of August following adoption by the Convention; however, if a voting delegate wishes to propose an immediate effective date, or an effective date other than the first day of August following the Convention, the rationale statement shall contain reasons why the amendment has an alternative effective date. Those proposals that are given an immediate effective date and are adopted become effective on adjournment of the Convention.]

Note: In the following proposals:

- Those letters and words that appears in *italics and strikethrough* are to be deleted.
- Those letters and words that appear in **boldface and are underlined** are to be added; and
- Those letters and words that appear in normal text are unchanged from the current Division III legislation.

Presidents Council Grouping

No. 2-1 STUDENT ATHLETE USE OF NAME IMAGE AND LIKENESS FOR PROMOTIONAL PURPOSES

Intent: To permit Division III student-athletes to use their name, image and likeness, to promote their own work product or services and to promote third party products and services consistent with the Board of Governors guiding principles and subject to the conditions set forth in the proposal.

A. Bylaws: Amend 12.02, as follows:

[Roll Call]

12.02 Definitions and Applications.

12.02.1 Agent. An agent is any individual who, directly or indirectly:

(a) Represents or attempts to represent an individual for the purpose of marketing their athletics ability or reputation ~~for financial gain;~~ **or to secure professional sports opportunities.**

[12.02.1-(b) unchanged.]

[12.02.1.1 unchanged.]

[12.02.2 through 12.02.7 unchanged.]

B. Bylaws: Amend 12.1.3, as follows:

[Roll Call]

12.1.3 Amateurism Status -- Before Initial, Full-Time Collegiate Enrollment. Before initial, full-time collegiate enrollment, an individual's amateur status shall be determined using the following:

12.1.3.1 Permissible Activities -- Before Initial, Full-Time Collegiate Enrollment. Before initial, full-time collegiate enrollment, an individual may engage in the following without jeopardizing their amateur status:

[12.1.3.1-(a) through 12.1.3.1-(r) unchanged.]

(s) Name, Image and Likeness. An individual may use their name, image and likeness to promote their own work product or service, or a third-party product or service in the same manner as student-athletes (see Bylaw 12.5.2).

[12.1.3.2 unchanged.]

C. Bylaws: Amend 12.3, as follows:

[Roll Call]

12.3 Use of Agents.

12.3.1 General Rule. An individual shall be ineligible for participation in an intercollegiate sport if they have ever agreed (orally or in writing) to be represented by an agent ~~for the purpose of marketing their athletics ability or reputation in that sport~~ **to secure professional sports opportunities.** Further, an agency contract not specifically limited in writing to a sport or particular sports shall be deemed applicable to all sports, and the individual shall be ineligible to participate in any sport.

12.3.1.1 Representation for Future Negotiations. An individual shall be ineligible per Bylaw 12.3.1 if they enter into a verbal or written agreement with an agent for representation in future professional sports negotiations that are to take place after the individual has completed their eligibility in that sport.

12.3.1.2 Benefits from Prospective Agents. An individual shall be ineligible per Bylaw 12.3.1 if they (or their relatives or friends) accept transportation or other benefits from:

(a) Any person who represents any individual ~~in the marketing of their athletics ability~~ **with the intent of securing professional sports opportunities.** The receipt of such expenses constitutes compensation based on athletics skill and is an extra benefit not available to the student body in general; or

- (b) An agent, even if the agent has indicated that they have no interest in representing the student-athlete ~~in the marketing of their athletics ability or reputation and does not represent individuals in the student-athlete's sport~~ **with the intent of securing professional sports opportunities.**

[12.3.2 through 12.3.3 unchanged.]

12.3.4 General Rule -- Professional Service Providers. A student-athlete may use the services of a professional service provider in the following name, image and likeness activities:

- (a) Advice regarding name, image and likeness activities;**
(b) Representation in contract negotiations related to name, image and likeness activities: and
(c) Marketing of the student-athlete's name, image and likeness activities.

12.3.4.1 Limitation on Marketing Athletics Ability or Reputation. A professional service provider that represents a student-athlete in name, image and likeness activities may not also represent a student-athlete for the purpose of marketing their athletics ability or reputation in order to secure a professional sports contract.

12.3.4.2 Institutional Involvement. An institution may provide information and education related to name, image and likeness activities and may assist a student-athlete with evaluating professional service providers related to such activities. However, an institution may not identify or select a professional service provider or arrange for or provide payment for services rendered to the student-athlete.

12.3.4.3 Institutional Employees. An institutional employee may not be employed as a professional service provider for a prospective student-athlete's name, image and likeness activities.

D. Bylaws: Amend 12.5, as follows:

[Roll Call]

12.5 Promotional Activities.

12.5.1 Permissible. Student-athletes may participate in promotional activities as provided in this bylaw. Any promotional activity not listed is specifically prohibited.

[12.5.1.1 unchanged.]

~~12.5.1.1.5 Use of a Student-Athlete's Name or Picture without Knowledge or Permission. If a student-athlete's name or picture appears on commercial items (e.g., T-shirts, sweatshirts, serving trays, playing cards, posters) or is used to promote a commercial product sold by an individual or agency without the student-athlete's knowledge or permission, the student-athlete (or the institution acting on behalf of the student-athlete) is required to take steps to stop such an activity in order to retain their eligibility for intercollegiate athletics. Such steps are not required when a student-athlete's photograph is sold by an individual or agency (e.g., private photographer, news agency) for private use.~~

~~12.5.1.1.6~~ **5** Prospective Student-Athlete's Participation in Institutional Fundraisers or Promotions. Prospective student-athletes may not be involved in institutional fundraisers or promotional activities. (see Bylaw 13.02.7). [D]

~~12.5.1.1.6~~ **5.1** Exception. A prospective student-athlete who has graduated from high school and has forwarded the paid acceptance of the institution's written offer of admission and/or financial aid may be involved in institutional fundraisers.

~~12.5.1.1.7~~ **6** Effect of Violations. The following violations of Bylaw 12.5.1.1 shall be considered institutional violations per Constitution 2.8.1; however, the student-athlete's eligibility shall not be affected:

[12.5.1.1.7-(a) through 12.5.1.1.7-(d) renumbered as 12.5.1.1.6-(a) through 12.5.1.1.6-(d) unchanged.]

~~12.5.1.2 U.S. Olympic and Paralympic Committee or National Governing Body Advertisement Before Collegiate Enrollment. Before initial, full-time collegiate enrollment, an individual may receive payment for the display of athletics skill in a commercial advertisement, provided:~~

- ~~(a) The individual receives prior approval to appear in the advertisement from the U.S. Olympic and Paralympic Committee or the applicable national governing body;~~
~~(b) The U.S. Olympic and Paralympic Committee or national governing body approves of the content and the production of the advertisement;~~

~~(c) The individual forwards the payment to the U.S. Olympic and Paralympic Committee or national governing body for the general use of the organization(s); and~~

~~(d) The funds are not earmarked for the individual.~~

~~12.5.1.3 Modeling and Other Nonathletically Related Promotional Activities. It is permissible for an individual to accept remuneration for or permit the use of their name or picture to advertise or promote the sale or use of a commercial product or service without jeopardizing their eligibility to participate in intercollegiate athletics only if all of the following conditions apply:~~

~~(a) The individual became involved in such activities for reasons independent of athletics ability;~~

~~(b) No reference is made in these activities to the individual's involvement in intercollegiate athletics; and~~

~~(c) The individual's remuneration under such circumstances is at a rate commensurate with the individual's skills and experience as a model or performer and is not based in any way upon the individual's athletics ability or reputation.~~

[12.5.1.4 renumbered as 12.5.1.2, unchanged.]

~~12.5.1.4.2 Commercial Advertisements Not Permitted. If, before enrollment at a member institution, the student-athlete received remuneration for endorsing a commercial product or service through the student-athlete's use of such product or service and the student-athlete does not meet the requirements of Bylaw 12.5.1.3 or 12.5.1.4, the student-athlete must take appropriate steps once becoming a student-athlete at a member institution to retract permission for the use of their name or picture and must cease receipt of any remuneration for such an arrangement in order to retain their eligibility.~~

~~12.5.1.4.3 Use of a Student-Athlete's Name or Picture without Knowledge or Permission. If a student-athlete's name or picture appears on commercial items (e.g., T-shirts, sweatshirts, serving trays, playing cards, posters) or is used to promote a commercial product sold by an individual or agency without the student-athlete's knowledge or permission, the student-athlete (or the institution acting on behalf of the student-athlete) is required to take steps to stop such an activity in order to retain their eligibility for intercollegiate athletics. Such steps are not required when a student-athlete's photograph is sold by an individual or agency (e.g., private photographer, news agency) for private use.~~

[12.5.1.5 renumbered as 12.5.1.3, unchanged.]

~~12.5.1.6 Educational Products Related to Sport-Skill Instruction. It is permissible for a student-athlete's name or picture to appear in books, articles and other publications, films, videos, and other types of electronic reproduction related to sport-skill demonstration, analysis or instruction, provided:~~

~~(a) Such print and electronic media productions are for educational purposes;~~

~~(b) There is no indication that the student-athlete expressly or implicitly endorses a commercial product or service;~~

~~(c) The student-athlete receives only actual and necessary expenses related to such participation;~~

~~(d) The student-athlete does not miss class; and~~

~~(e) The student-athlete has signed a release statement ensuring that the student-athlete's name or image is used in a manner consistent with the requirements of this section and has filed a copy of the statement with the student-athlete's member institution.~~

~~12.5.1.74 Camps and Clinics. A member institution may use the name or picture of any student-athlete to publicize or promote its camps or clinics, including the use of the student-athlete's name or picture in camp brochures or other advertising. However, a privately-owned camp or clinic may only use the name or picture of any student-athlete employed as a counselor to publicize or promote the camp or clinic. [D]~~

[12.5.1.8 through 12.5.1.11 renumbered as 12.5.1.5 through 12.5.1.8, unchanged.]

~~12.5.2 Media Activities. **Student-athlete Promotional Activities.** A student-athlete may participate in media activities (e.g., appearance on radio, television, in films or stage productions, or participate in writing projects) and may receive legitimate and normal expenses when the student-athlete's appearance or participation is related in any way to athletics ability or prestige. The student-athlete may engage in such activities at any time and may receive compensation at a rate commensurate with the going rate in that locale for similar services. Further, the student-athlete's name may be used to advertise their participation in such activity, provided the student-athlete's status as a student-athlete is not used for promotional purposes.~~

12.5.2.1 Student-Athlete Work Product and Services. A student-athlete may use their name, image and likeness to promote their athletically and nonathletically related work product and services.

12.5.2.1.1 Restrictions. A student-athlete shall not receive compensation for athletics performance or participation. In addition, potential promotional opportunities shall not be provided as an inducement for enrollment (see Bylaw 13.2).

12.5.2.1.2 Institutional Involvement. An institution may provide information and education related to name, image and likeness activities and may assist a student-athlete with evaluating professional service providers related to such activities (see Bylaw 12.3.5). Neither the institution nor an institutional staff member shall be involved in the development, operation or promotion of a student-athlete's business activity except to the extent such is provided to students generally at the institution.

12.5.2.1.3 Use of Institutional Marks. A student-athlete's promotion of their work product or service may include a reference to the student-athlete's involvement in intercollegiate athletics and a reference to their institution consistent with institutional policies applicable to any student. A student-athlete must adhere to all applicable institutional processes for use of institutional marks in a manner consistent for the general student-body.

12.5.2.1.4 Use of Professional Service Providers. See Bylaw 12.3.

12.5.2.2 Advertisements and Promotions. A student-athlete may permit the use of their name, image or likeness and receive remuneration to advertise or promote the sale or use of a commercial product or service.

12.5.2.2.1 Restrictions. A student-athlete shall not receive compensation for athletics performance or participation. Additionally, potential promotional opportunities shall not be provided as an inducement for enrollment (see Bylaw 13.2).

12.5.2.2.2 Specifically Prohibited Promotional Activities. A student-athlete shall not engage in promotional activities for a product or service that, per NCAA policy, is specifically prohibited from being promoted during an NCAA championship.

12.5.2.2.3 Conflicts With Institutional Agreements and Other Considerations. An institution or conference, at its discretion, may prohibit a student-athlete from engaging in promotional activities that may conflict with institutional or conference values, to the same extent students generally are prohibited from engaging in those promotional activities.

12.5.2.2.4 Use of Institutional Marks. A student-athlete may include a reference to the student-athlete's involvement in intercollegiate athletics and a reference to their institution, consistent with institutional policies applicable to any student. A student-athlete must adhere to all applicable institutional processes for use of institutional marks in a manner consistent for the general student-body.

12.5.2.2.5 Use of Professional Service Providers. See Bylaw 12.3.

[12.5.3 unchanged.]

Source: NCAA Division III Presidents Council [Management Council (Interpretations and Legislation Committee)].

Effective Date: August 1, 2021

Rationale: This proposal would permit Division III student-athletes to benefit from the use of their name, image and likeness in a manner that is consistent with the NCAA Board of Governors' guiding principles and with the Board's direction to consider appropriate rules changes based on recommendations from the Federal and State Legislation Working Group. These recommendations fall into two categories: (1) activities related to a student-athlete's work product or service; and (2) promotion/endorsement of third-party products and services. Student-athletes should have full use of their name, image and likeness for commercial promotional purposes. Importantly, these opportunities can occur in a manner that is consistent with the NCAA's core values, mission and principles, while prioritizing student-athlete well-being. Further, the recommended administrative framework for these legislative changes ensures that the legislation will be transparent and enforceable, in line with the Board's principles.

Budget Impact:

Appendix A

Request for Interpretation

Member institutions and conferences are encouraged to request interpretations of the proposed legislation in this Second Publication of Proposed Legislation. Interpretations related to the proposed legislation in this Second Publication of Proposed Legislation may be requested via electronic mail to the primary contact persons at bfregan@ncaa.org or jmyers@ncaa.org, not later than November 21. When submitting such a request, please include the proposal number in question, your institution's name and your title. All resulting interpretations will be distributed to the delegates in time for the conference meetings held in conjunction with the Convention.