



# UNIVERSITY OF HAWAII SYSTEM

## Legislative Testimony

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Testimony Presented Before the  
Senate Committee on Judiciary  
Tuesday, February 25, 2020 at 12:15 p.m.

by  
David A. K. Matlin, Athletic Director  
University of Hawai'i at Mānoa  
and  
Patrick Guillen, Athletic Director  
University of Hawai'i at Hilo

### SB 2673 SD1 – RELATING TO INTERCOLLEGIATE ATHLETICS

Chair Rhoads, Vice Chair Keohokalole, and members of the committee:

Thank you for this opportunity to submit this joint testimony of the University of Hawai'i's athletic departments at Mānoa and at Hilo, in opposition to SB 2673 SD1.

SB 2673 SD1 would allow student athletes participating in collegiate athletics at the University of Hawai'i, and other postsecondary educational institutions, to be compensated for the use of their "name, image or likeness" (NIL). SB 2673 SD1 includes provisions that have requirements on the student-athletes, as well as on the educational institution, and athletics associations and conferences.

The issue being addressed in SB 2673 SD1, the compensating of student athletes for use of their NIL, is also before multiple other forums. Most significantly:

In 2019, the State of California passed legislation (SB206), and the NCAA announced its intent, to allow student athletes to be compensated for the use of their NIL. However, recognizing that there remains considerable development of how the legislation and/or NCAA intent is to be implemented, both are not scheduled to take effect in the near future to allow time for more work to be done on the issue.

Recently, at its convention in Anaheim, California, NCAA President, Mark Emmert stated that the NCAA working committee crafting new NIL rules is targeted to provide recommendations to the NCAA Board of Governors in April 2020. Those rules would be the basis for NCAA legislation to be voted on next January.

At the same time, various members of the U.S. Congress have indicated a willingness to have Congress involved in addressing the NIL issue. For example a bill has been introduced by Rep. Mark Walker (North Carolina) and a bipartisan working group headed by Sen. Chris Murphy (Connecticut) and Mitt Romney (Utah) has been announced.

While all movement is toward providing student athletes the opportunity to be compensated for use of their NIL, the changes are expected to have far reaching and significant impact across collegiate athletics. Recognizing the far reaching impact of the changes, and the complex and interrelated nature of collegiate athletics, the implementation dates for the changes have been deferred (i.e., 2023) to allow more time to define the rules under how it will be done.

The University of Hawai'i believes in the importance of continuing to make advancements for our student athletes and has actively participated in recent changes such as student athlete stipends and improved nutrition. There is more that we need to do and hopefully the new NCAA initiative will improve the collegiate experience.

While the recent developments regarding the NIL issues are important to address, it is imperative that we look after the interests of all of our student athletes and carefully avoid unintended consequences, but also implement any changes to provide the benefits intended.

It is for those reasons that the University of Hawai'i's recommendation is that Hawai'i-specific legislation be held off for now to allow it to benefit from the further definition of the issue that is ongoing. Allowing the time to have the issue develop more fully will benefit the eventual introduction of any needed legislation so that it better benefits the University of Hawai'i's student-athletes.

The University of Hawai'i at Mānoa Athletics Department and the University of Hawai'i at Hilo Athletics Department respectfully request that SB 2673 SD1 be held and thank you for your consideration of this joint testimony.



**WRITTEN TESTIMONY OF  
THE DEPARTMENT OF THE ATTORNEY GENERAL  
THIRTIETH LEGISLATURE, 2020**

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**ON THE FOLLOWING MEASURE:**

S.B. NO. 2673, S.D. 1, RELATING TO INTERCOLLEGIATE ATHLETICS.

**BEFORE THE:**

SENATE COMMITTEE ON JUDICIARY

**LATE**

**DATE:** Tuesday, February 25, 2020 **TIME:** 12:15 p.m.

**LOCATION:** State Capitol, Room 016

**TESTIFIER(S):** **WRITTEN TESTIMONY ONLY.**  
(For more information, contact Lori N. Tanigawa,  
Deputy Attorney General, at 586-1271)

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Chair Rhoads and Members of the Committee:

The Department of the Attorney General provides the following comments.

The purpose of this bill is to establish the right of postsecondary student athletes in intercollegiate athletics to receive compensation for the use of their name, image, or likeness.

The bill is intended to apply to both public and private colleges or universities, but only amends chapter 304A, Hawaii Revised Statutes (HRS), which applies to the University of Hawai'i (UH) system. We therefore recommend that on page 1, lines 1 and 2 of the bill be amended as follows:

The Hawaii Revised Statutes is amended by adding a new chapter [~~to chapter 304A and~~] to read as follows:

The bill precludes UH from preventing its student athletes from earning compensation as a result of the student athlete's name, image, or likeness. Article X, section 6, of the Hawai'i Constitution, gives the UH Board of Regents "exclusive jurisdiction over the internal structure, management, and operation of the university." Section 6 further provides: "This section shall not limit the power of the legislature to enact laws of statewide concern. The legislature shall have the exclusive jurisdiction to identify laws of statewide concern." We therefore suggest that the Legislature consider amending this bill to add a statement identifying this bill as a law of statewide concern.

The bill, on page 1, lines 11 to 16, states:

No postsecondary educational institution shall uphold any rule, requirement, standard, or other limitation that prevents a student athlete of the institution participating in intercollegiate athletics from earning compensation as a result of the use of the student athlete's name, image, or likeness.

We believe that such wording may inadvertently include laws that a postsecondary educational institution is otherwise required to uphold. We therefore suggest that this provision of the bill be amended as follows:

To the extent allowed by law, no postsecondary educational institution shall [~~uphold any rule, requirements, standard, or other limitation that prevents~~] prevent a student athlete of the institution participating in intercollegiate athletics from earning compensation as a result of the use of the student athlete's name, image, or likeness.

Lastly, we are concerned that this bill may run afoul of the Contract Clause of the United States Constitution, which states, "No State shall . . . pass any . . . Law impairing the Obligation of Contracts[.]" U.S. Const. art. I, § 10, cl. 1. Not knowing what contractual agreements could be substantially impaired by this bill, we recommend the bill include a statement of the significant and legitimate public purpose behind the bill, such as the remedying of a broad and general social or economic problem.

Thank you for the opportunity to provide these comments.