

The Deadline for Amending Retirement Plans is December 31, 2022—Are Your Plans SECURE and CARES Acts Compliant?



2022 NIL Updates: States, Players Seek to Expand NIL Rights

[Reece Brassler, Esq.](#)

As the seasons change, so does the Name, Image, and Likeness (“NIL”) landscape. Indeed, since [my last article in November 2021](#), there seems to be a shift in focus toward expanding the already unchecked NIL rights of student-athletes, whether by way of amending state laws, repealing state laws, or suing state organizations.



Specifically, Florida lawmakers are attempting to amend Florida’s NIL bill which prohibits universities from causing compensation “to be directed to” athletes, thereby hamstringing their universities’ abilities to compete with schools in other states that are less restricted. Alabama has gone a step further by repealing its NIL law entirely to ensure that its universities can fully take advantage of the extremely broad NIL permissions granted by the NCAA.

The moves by Florida and Alabama have caused states considering new legislation, like Kentucky, to expressly permits universities to establish programs to provide “NIL

agreement resources” and to support student athletes, even by way of “referring third parties soliciting potential NIL agreements to student athletes or their agents.” (See **KY Senate Bill 6**.) Likewise, they are giving states with currently enacted legislation reason to reconsider their policies. For instances, Tennessee’s NIL law states NIL compensation “may only be provided by a third party” and prohibits “[a]n institution, or an officer, director, or employee of the institution” from being “involved in the development, operation, and promotion of a prospective intercollegiate athlete’s [NIL], including actions that compensate or cause compensation to be provided to athletes.” It is possible a waterfall of changes in NIL state laws are on the horizon.

Further, with the continued expansion of NIL rights, it appears to be only a matter of time before high school athletes are granted the same privileges as their college counterparts and intercollegiate athletes are able to get paid for their name, image, and likeness after graduating college. That is exactly what Sal Stewart and Gilbert Frierson seek to accomplish in their **class action lawsuit** against the Florida High School Athletic Association, Inc. (“FSHAA”), the National Federation of State High School Associations (“NFHSA”) and the National Collegiate Athletic Association (“NCAA”).

As laws continue to change and rights continue to expand, make sure that you are staying aware of you or your athlete’s NIL rights and the restrictions on the same. Kennerly, Montgomery & Finley, P.C. is here to offer invaluable guidance to student-athletes navigating the uncharted realm of NIL.

What's the Fuss with GRATs?



Michael R. Crowder, Esq.

On March 28, 2022, the Biden administration released its 2023 budget and tax proposals (referred to each year as “the Greenbook”). This year’s Greenbook includes proposed changes to the rules governing Grantor Retained Annuity Trusts (“GRATs”) that have been on this (and some prior) administration’s wish list for quite some time. These proposals, if ever enacted, would significantly limit the benefit of most GRATs. The proposed changes include:

- GRATs have a minimum term of 10 years and a maximum term of the grantor’s life expectancy plus 10 years; and
- GRATs be required to recognize a minimum value for gift tax purposes equal to the greater of 25% of the value of the assets transferred to the GRAT or \$500,000 (but not more than the value of the assets transferred).

So, what is a GRAT?

In short, a GRAT is a wealth transfer tool that can provide a host of benefits with minimal risk. Specifically, a GRAT is an irrevocable trust to which the grantor transfers assets in exchange for a fixed payment, or annuity, for a term of years chosen by the grantor. The term is typically measured by a fixed number of years, but it may also be measured by the grantor’s life or the shorter (but not longer) of a fixed number of years or grantor’s life. Upon completion of the annuity payment term, the GRAT’s remaining assets pass to the named beneficiaries, either outright or in a further trust. GRATs have several advantages, including:

- GRATs can be structured such that no taxable gift or corresponding gift tax liability results from the ultimate transfer of assets to the named beneficiaries. If the annuity amount and term are high enough or long enough, or both, the value of the grantor’s

retained annuity for gift tax purposes could equal 100% of the value of the assets transferred. Thus, when subtracting the grantor's retained annuity value from the value of the assets transferred to the GRAT, the resulting gift tax liability is zero. This type of a GRAT is known as a "zeroed out GRAT."

- GRATs can be structured to have minimal downside risk other than any applicable legal and administrative costs.
- GRATs are currently sanctioned by the Internal Revenue Code (IRC Section 2702).

For now, GRATs remain an effective estate planning strategy. And although interest rates are rising, they remain relatively low—which magnifies the potential wealth transfer opportunity with GRATs. Generally, if the overall investment rate of return on the GRAT assets exceeds the Section 7520 rate, the GRAT will be successful.

If you are interested in GRATs or other wealth transfer strategies, we'd be happy to help. Give us a call at (865) 546-7311.

SECURE 2.0 A Look at Possible Retirement Changes

Kathy D. Aslinger, Esq.

At the end of March, the House passed retirement plan legislation—SECURE 2.0 ("Securing a Strong Retirement Act of 2022")—with near unanimous bi-partisan support.

The Bill, which must be passed by the Senate to become law, includes, among other items, the following changes:



1. Increasing limits on annual catch-up contributions to \$10,000 for those 401(k), 457(b) and 403(b) Participants age 62-64;
2. Requiring catch-up contributions to be in the form of Roth (after tax) contributions;
3. Allowing participants to elect to have employer matching contributions made as Roth contributions;
4. Gradually raising the starting age for Required Minimum Distributions to 75 by 2032;
5. Allowing employer matching contributions on account of student loan payments for 457(b), 403(b), and 401(k) plans;
6. Increasing participant flexibility by eliminating the obsolete first day of the month deferral commencement rule for 457(b) plans;
7. Allowing 403(b) plans to participate in multiple employer plans;
8. Increasing the mandatory cashout limit from \$5,000 to \$7,500; and
9. Allowing small financial incentives, such as gift cards, to encourage employees to participate in a 401(k) or 403(b) plan.

At Kennerly Montgomery, we are here and ready to answer questions you may have about SECURE 2.0 and your business, your employees, and your retirement needs. Please do not hesitate to reach out to me or Ashley at 865-546-7311.

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