

116TH CONGRESS  
2D SESSION

# S. 4004

To ensure that college athletes, and not institutions of higher education, are able to profit from their name, image, and likeness, and for other purposes.

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## IN THE SENATE OF THE UNITED STATES

JUNE 18, 2020

Mr. RUBIO introduced the following bill; which was read twice and referred to the Committee on Commerce, Science, and Transportation

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## A BILL

To ensure that college athletes, and not institutions of higher education, are able to profit from their name, image, and likeness, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Fairness in Collegiate  
5 Athletics Act”.

6 **SEC. 2. DEFINITIONS.**

7 In this Act—

8 (1) COMMISSION.—The term “Commission”  
9 means the Federal Trade Commission.

1           (2) COMPENSATION.—The term “compensa-  
2           tion” means any remuneration, in cash or kind,  
3           whether provided at the time or at any subsequent  
4           date to a student athlete, except such term shall not  
5           include any grant, scholarship, fellowship, tuition as-  
6           sistance, or other form of financial aid provided to  
7           a student for pursuing a postsecondary education.

8           (3) INSTITUTION OF HIGHER EDUCATION.—The  
9           term “institution of higher education” has the  
10          meaning given such term in section 102 of the High-  
11          er Education Act of 1965 (20 U.S.C. 1002).

12          (4) INTERCOLLEGIATE ATHLETIC ASSOCIA-  
13          TION.—The term “intercollegiate athletic associa-  
14          tion”—

15                 (A) means—

16                         (i) the National Collegiate Athletic  
17                         Association (or any successor organiza-  
18                         tion); and

19                         (ii) any intercollegiate athletic associa-  
20                         tion that the Commission determines is  
21                         similar in purpose and scope to the asso-  
22                         ciation described in clause (i), subject to  
23                         subparagraph (B); and

24                         (B) does not include the National Junior  
25                         College Athletic Association (or any successor

1 organization) or the National Association of  
2 Intercollegiate Athletics (or any successor orga-  
3 nization).

4 (5) STUDENT ATHLETE.—The term “student  
5 athlete” means an individual who is enrolled in an  
6 institution of higher education and engages in post-  
7 secondary athletics.

8 (6) THIRD PARTY.—The term “third party”  
9 means, with respect to any student athlete, any enti-  
10 ty other than the institution of higher education in  
11 which such student athlete is enrolled.

12 **SEC. 3. ESTABLISHMENT OF RULES FOR PAYMENT OF STU-**  
13 **DENT ATHLETES.**

14 Not later than June 30, 2021, any intercollegiate ath-  
15 letic association shall establish—

16 (1) a policy that permits any student athlete  
17 to—

18 (A) earn compensation from a third party  
19 as a result of the use of the name, image, or  
20 likeness of such student athlete; and

21 (B) subject to the requirements under sec-  
22 tion 3 of the Sports Agent Responsibility and  
23 Trust Act (15 U.S.C. 7802), obtain professional  
24 representation with respect to matters described  
25 in subparagraph (A); and

1           (2) rules and programs for the administration  
2 of the policy described in paragraph (1), including—

3           (A) requiring student athletes to report  
4 any compensation described in such paragraph,  
5 or any agreement to receive such compensation,  
6 to the institution of higher education in which  
7 they are enrolled and the intercollegiate athletic  
8 association within a reasonable period fol-  
9 lowing—

10           (i) the date on which an agreement to  
11 receive such compensation is reached be-  
12 tween the student athlete and the third  
13 party; and

14           (ii) the date on which such compensa-  
15 tion is received by the student athlete; and

16           (B) such rules and programs as are  
17 deemed necessary to—

18           (i) preserve the amateur status of stu-  
19 dent athletes;

20           (ii) ensure appropriate recruitment of  
21 prospective student athletes; and

22           (iii) prevent illegitimate activity with  
23 respect to any third party seeking to re-  
24 cruit or retain student athletes with re-

1           spect to any institution of higher edu-  
2           cation, including any third party—

3                   (I) with a prior or existing asso-  
4                   ciation, either formally or informally,  
5                   with any institution of higher edu-  
6                   cation; or

7                   (II) with a prior or existing fi-  
8                   nancial involvement with respect to  
9                   postsecondary athletics.

10 **SEC. 4. ENFORCEMENT PROVISIONS.**

11       (a) UNFAIR OR DECEPTIVE ACT OR PRACTICE.—

12           (1) IN GENERAL.—A violation of section 3 shall  
13       be treated as a violation of a rule defining an unfair  
14       or deceptive act or practice prescribed under section  
15       18(a)(1)(B) of the Federal Trade Commission Act  
16       (15 U.S.C. 57a(a)(1)(B)).

17           (2) ACTIONS BY THE COMMISSION.—The Com-  
18       mission shall enforce section 3 in the same manner,  
19       by the same means, and with the same jurisdiction,  
20       powers, and duties as though all applicable terms  
21       and provisions of the Federal Trade Commission Act  
22       (15 U.S.C. 41 et seq.) were incorporated into and  
23       made a part of this Act.

24           (3) ENFORCEMENT RELATED TO NONPROFIT  
25       ORGANIZATIONS.—Notwithstanding section 4,

1       5(a)(2), or 6 of the Federal Trade Commission Act  
2       (15 U.S.C. 44, 45(a)(2), 46) or any jurisdictional  
3       limitation of the Federal Trade Commission, the  
4       Commission shall also enforce this Act and any reg-  
5       ulations promulgated under this Act, in the same  
6       manner provided in paragraphs (1) and (2) of this  
7       subsection, with respect to organizations not orga-  
8       nized to carry on business for their own profit or  
9       that of their members.

10       (b) EXCEPTION.—Except as provided under sub-  
11       section (a), no cause of action shall lie or be maintained  
12       in any court against any intercollegiate athletic associa-  
13       tion, or any institution of higher education which is a  
14       member of such association for the adoption or enforce-  
15       ment of a policy, rule, or program established under sec-  
16       tion 3.

17       **SEC. 5. PREEMPTION.**

18       No State or political subdivision of a State may  
19       adopt, maintain, enforce, or continue in effect any law,  
20       regulation, rule, requirement, or standard related to per-  
21       mitting or prohibiting a student athlete to receive com-  
22       pensation from an institution of higher education or a  
23       third party as a result of such athlete's performance or  
24       participation in postsecondary athletics.

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