

117TH CONGRESS  
1ST SESSION

# H. R. 3895

To establish collective bargaining rights for college athletes, and for other purposes.

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## IN THE HOUSE OF REPRESENTATIVES

JUNE 15, 2021

Mr. BOWMAN (for himself, Mr. LEVIN of Michigan, and Mrs. TRAHAN) introduced the following bill; which was referred to the Committee on Education and Labor

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## A BILL

To establish collective bargaining rights for college athletes, 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 “College Athlete Right  
5 to Organize Act”.

6 **SEC. 2. FINDINGS.**

7 Congress finds the following:

8 (1) The National Labor Relations Act (29  
9 U.S.C. 151 et seq.) seeks to remedy the inequality  
10 of bargaining power between employees and employ-

1       ers primarily through establishing and protecting the  
2       rights of employees to self-organize and designate  
3       representatives of their own choosing for the purpose  
4       of negotiating the terms and conditions of their em-  
5       ployment or other mutual aid or protection.

6               (2) Labor organizations often originate to rem-  
7       edy unfair and exploitative labor practices by em-  
8       ployers through assisting employees in securing more  
9       equitable terms and conditions of their employment,  
10      including fair compensation and safe working condi-  
11      tions, which individual employees would be unlikely  
12      to negotiate successfully for on their own.

13              (3) Labor organizations serve unique and essen-  
14      tial purposes for professional athletes competing in  
15      sports leagues, where it is desirable to establish uni-  
16      form rules and standards across multiple employers.  
17      These rules and standards bear significant con-  
18      sequences to the athletes in terms of compensation,  
19      health and safety, and the ability or lack thereof for  
20      athletes to choose their employer, among other  
21      issues related to the athletes' well-being.

22              (4) The formation of labor organizations rep-  
23      resenting athletes in professional sports leagues in  
24      the United States has helped end exploitative prac-  
25      tices by team owners and management, particularly

1 through establishing collective-bargaining agree-  
2 ments that have secured athletes a fair share of the  
3 revenues their talent and labor produces, as well as  
4 more equitable terms of their employment and pro-  
5 tections for their short- and long-term health.

6 (5) College athletes face exploitative and unfair  
7 labor practices by the National Collegiate Athletic  
8 Association (referred to in this section as the  
9 “NCAA”) and its member institutions, primarily  
10 through the denial of the basic economic and labor  
11 rights of such athletes, which the NCAA and its  
12 member institutions have justified by defining col-  
13 lege athletes as amateurs.

14 (6) The NCAA and its member institutions  
15 have denied college athletes a fair wage for their  
16 labor by colluding to cap compensation; they main-  
17 tain strict and exacting control over the terms and  
18 conditions of college athletes’ labor; and they exer-  
19 cise the ability to terminate an athlete’s eligibility to  
20 compete if the athlete violates these terms and con-  
21 ditions.

22 (7) College athletes exhibit the markers of em-  
23 ployment as established under the common law defi-  
24 nition of the term “employee”: They perform a valu-  
25 able service for their respective colleges under a con-

1       tract for hire in the form of grant-in-aid agreements;  
2       these agreements assert significant control over how  
3       athletes perform their work and the conditions under  
4       which they work; and they receive compensation in  
5       the form of grant-in-aid and stipends in exchange  
6       for their athletic services.

7               (8) To establish more equitable terms and con-  
8       ditions for college athletes' labor, college athletes  
9       need representation of their own choosing to nego-  
10      tiate collective-bargaining agreements with their re-  
11      spective colleges and the athletic conferences that  
12      help set rules and standards across an entire league.

13              (9) To organize effectively, college athletes  
14      must be able to form collective bargaining units  
15      across institutions of higher education that compete  
16      against each other, including within athletic con-  
17      ferences; and, accordingly, to establish effective col-  
18      lective bargaining rights for college athletes under  
19      this Act, the National Labor Relations Act must be  
20      amended to cover both private and public institu-  
21      tions of higher education to the extent that college  
22      athletes attending such institutions fall within the  
23      definition of "employee" under that Act, as amended  
24      by this Act.

1           (10) The Constitution of the United States  
2 vests Congress with the power to regulate commerce  
3 between the States, and intercollegiate sports, which  
4 are maintained by athletic associations that host  
5 competitions between colleges across States, involves  
6 interstate commerce that generates annual revenue  
7 of more than \$15,000,000,000.

8           (11) Intercollegiate sports' significant engage-  
9 ment in interstate commerce justifies application of  
10 the National Labor Relations Act (29 U.S.C. 151 et  
11 seq.) to regulate the labor market within which pub-  
12 lic and private institutions of higher education com-  
13 pete and set rules pertaining to the wages and work-  
14 ing conditions of college athletes.

15 **SEC. 3. COLLECTIVE BARGAINING RIGHTS OF COLLEGE**  
16 **ATHLETES.**

17           (a) DEFINITIONS.—Section 2 of the National Labor  
18 Relations Act (29 U.S.C. 152) is amended—

19           (1) in paragraph (2), by adding at the end the  
20 following: “Notwithstanding the previous sentence,  
21 the term ‘employer’ includes a public institution of  
22 higher education with respect to the employment of  
23 college athlete employees of the institution.”;

24           (2) in paragraph (3), by adding at the end the  
25 following: “Any individual who participates in an

1 intercollegiate sport for an institution of higher edu-  
2 cation, and is a student enrolled in the institution of  
3 higher education, shall be considered an employee of  
4 the institution of higher education if—

5 “(A) the individual receives any form of direct  
6 compensation, including grant-in-aid, from the insti-  
7 tution of higher education; and

8 “(B) any terms or conditions of such compensa-  
9 tion require participation in an intercollegiate  
10 sport.”; and

11 (3) by adding at the end the following:

12 “(15) The term ‘grant-in-aid’ means a scholarship,  
13 grant, or other form of financial assistance that is pro-  
14 vided by an institution of higher education to an individual  
15 for the individual’s undergraduate or graduate course of  
16 study.

17 “(16) The term ‘institution of higher education’ has  
18 the meaning given the term in section 102 of the Higher  
19 Education Act of 1965 (20 U.S.C. 1002).

20 “(17) The term ‘intercollegiate athletic conference’—

21 “(A) means any conference, or other group or  
22 organization, of institutions of higher education  
23 that—

1           “(i) exercises authority over intercollegiate  
2           sports at such institutions of higher education;  
3           and

4           “(ii) is engaged in commerce or an indus-  
5           try or activity affecting commerce; and

6           “(B) notwithstanding subparagraph (A), does  
7           not include the National Collegiate Athletic Associa-  
8           tion.

9           “(18) The term ‘college athlete employee’ means an  
10          individual described in the second sentence of paragraph  
11          (3).”.

12          (b) **MULTIEMPLOYER BARGAINING UNIT.**—Section  
13          9(b) of the National Labor Relations Act (29 U.S.C.  
14          159(b)) is amended by striking the period at the end and  
15          inserting the following: “: *Provided*, That, for the purpose  
16          of establishing an appropriate bargaining unit for college  
17          athlete employees at institutions of higher education in an  
18          intercollegiate athletic conference, the Board shall recog-  
19          nize multiple institutions of higher education within an  
20          intercollegiate athletic conference as a multiemployer bar-  
21          gaining unit, but only if consented to by the employee rep-  
22          resentatives for the intercollegiate sports bargaining units  
23          at the institutions of higher education that will be included  
24          in the multiemployer bargaining unit.”.

1           (c) JURISDICTION RELATED TO INTERCOLLEGIATE  
2 SPORTS.—Section 14(c)(1) of the National Labor Rela-  
3 tions Act (29 U.S.C. 164(c)(1)) is amended by striking  
4 “*Provided*,” and inserting the following: “*Provided*, That  
5 the Board shall exercise jurisdiction over institutions of  
6 higher education and college athlete employees of such in-  
7 stitutions in relation to all collective bargaining matters  
8 under this Act pertaining to such employees, including any  
9 representation matter, such as recognizing or establishing  
10 a bargaining unit for such employees and any labor dis-  
11 pute involving such institutions and employees: *Provided*  
12 *further*,”.

13           (d) PROHIBITION ON WAIVER.—An individual may  
14 not enter into any agreement (including a grant-in-aid  
15 agreement, as defined in section 3(15) of the National  
16 Labor Relations Act (29 U.S.C. 152(15)) or legal settle-  
17 ment that waives or permits noncompliance with this Act  
18 or the amendments made by this Act.

19 **SEC. 4. TREATMENT OF DIRECT COMPENSATION FOR TAX**  
20                           **PURPOSES AND ELIGIBILITY FOR FEDERAL**  
21                           **FINANCIAL ASSISTANCE.**

22           Nothing in this Act, or an amendment made by this  
23 Act, shall—

24                   (1) cause any type of direct compensation de-  
25                   scribed in section 2(3) of the National Labor Rela-

1 tions Act (29 U.S.C. 152(3)) that was not previously  
2 treated as income for which a tax may be imposed  
3 under the Internal Revenue Code of 1986 to become  
4 a type of direct compensation for which such a tax  
5 may be imposed;

6 (2) cause any individual to be treated as an em-  
7 ployee, or cause any amounts received by an indi-  
8 vidual to be treated as wages, for purposes of any  
9 provision in the Internal Revenue Code of 1986 re-  
10 lating to employment taxes or the withholding of  
11 taxes by an employer if such individual or amounts  
12 would not otherwise be so treated;

13 (3) affect the treatment of qualified scholar-  
14 ships under section 117 of the Internal Revenue  
15 Code of 1986; or

16 (4) otherwise affect the treatment of any direct  
17 compensation described in such section 2(3) in de-  
18 termining income, including gross income or ad-  
19 justed gross income, for purposes of—

20 (A) the Internal Revenue Code of 1986, in-  
21 cluding any reporting requirements under such  
22 Code; or

23 (B) determining eligibility for any form of  
24 Federal financial assistance, including assist-  
25 ance under subpart 1 of part A of title IV of

1           the Higher Education Act of 1965 (20 U.S.C.  
2           1070a et seq.).

3 **SEC. 5. SEVERABILITY.**

4       If any provision of this Act, an amendment made by  
5 this Act, or the application of such provision or amend-  
6 ment to any person or circumstance is held to be unconsti-  
7 tutional, the remainder of this Act and the amendments  
8 made by this Act, and the application of the provision or  
9 amendment to any other person or circumstance, shall not  
10 be affected.

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