

116TH CONGRESS
2D SESSION

H. R. 8382

To prohibit a covered athletic association and institution of higher education from prohibiting a student athlete from participating in intercollegiate athletics because such student athlete enters into an endorsement contract, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

SEPTEMBER 24, 2020

Mr. GONZALEZ of Ohio (for himself, Mr. CLEAVER, Mr. STIVERS, Ms. FUDGE, Mr. RODNEY DAVIS of Illinois, Mr. ALLRED, Mr. DUNCAN, and Mr. GOTTHEIMER) introduced the following bill; which was referred to the Committee on Energy and Commerce, and in addition to the Committee on Education and Labor, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To prohibit a covered athletic association and institution of higher education from prohibiting a student athlete from participating in intercollegiate athletics because such student athlete enters into an endorsement contract, 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 “Student Athlete Level
5 Playing Field Act”.

1 **SEC. 2. STUDENT ATHLETES AND ENDORSEMENT CON-**
2 **TRACTS AND AGENCY CONTRACTS.**

3 (a) ABILITY OF A STUDENT ATHLETE TO ENTER
4 INTO AN ENDORSEMENT CONTRACT OR AN AGENCY CON-
5 TRACT.—

6 (1) PROHIBITION.—Subject to the exceptions in
7 paragraph (2), a covered athletic organization or in-
8 stitution of higher education may not prohibit a stu-
9 dent athlete from participating in intercollegiate ath-
10 letics because such student athlete enters into an en-
11 dorsement contract or an agency contract.

12 (2) EXCEPTIONS FOR ENDORSEMENT CON-
13 TRACTS.—A covered athletic organization or institu-
14 tion of higher education may prohibit a student ath-
15 lete from entering into an endorsement contract with
16 the following categories of brands, companies, or
17 types of contracts:

18 (A) A tobacco company or brand, including
19 any vaping device or e-cigarette or related prod-
20 uct.

21 (B) Any alcohol company or brand.

22 (C) Any seller or dispensary of a controlled
23 substance, including marijuana.

24 (D) Any adult entertainment business.

25 (E) Any casino or entities that sponsor or
26 promote gambling activities.

1 (3) PERMISSIBLE PROHIBITIONS.—A student
2 athlete may be prohibited from wearing any item of
3 clothing or gear with the insignia of any entity dur-
4 ing any athletic competition or university-sponsored
5 event.

6 (b) ENFORCEMENT.—

7 (1) UNFAIR OR DECEPTIVE ACTS OR PRAC-
8 TICES.—A violation of this section shall be treated
9 as an unfair and deceptive act or practice in viola-
10 tion of a regulation under section 18(a)(1)(B) of the
11 Federal Trade Commission Act (15 U.S.C.
12 57a(a)(1)(B)) regarding unfair or deceptive acts or
13 practices.

14 (2) POWERS OF THE FTC.—The Federal Trade
15 Commission shall enforce this section in the same
16 manner, by the same means, and with the same ju-
17 risdiction, powers, and duties as though all applica-
18 ble terms and provisions of the Federal Trade Com-
19 mission Act (15 U.S.C. 41 et seq.). Any person that
20 violates this section shall be subject to the penalties
21 and entitled to the privileges and immunities pro-
22 vided in the Federal Trade Commission Act (15
23 U.S.C. 41 et seq.). Nothing in this Act shall be con-
24 strued to limit the authority of the Federal Trade
25 Commission under any other provision of law.

1 **SEC. 3. COVERED ATHLETIC ORGANIZATION COMMISSION.**

2 (a) ESTABLISHMENT.—There is established the Cov-
3 ered Athletic Organization Commission (in this section re-
4 ferred to as the “Commission”), whose purpose shall be
5 to—

6 (1) make recommendations to Congress and to
7 each covered athletic organization about the imple-
8 mentation of name, image, and likeness rules;

9 (2) recommend to each covered athletic organi-
10 zation such a process to certify or recognize
11 credentialed athlete agents;

12 (3) make recommendations for the establish-
13 ment of an independent dispute resolution process,
14 for any dispute arising between a student athlete
15 and a covered athletic organization or institution of
16 higher education; and

17 (4) make recommendations for additional cat-
18 egories of endorsement contracts that are excepted
19 under section 2(a)(2).

20 (b) MEMBERSHIP.—The Commission shall consist of
21 13 members appointed in accordance with subsection (c)
22 from among or in accordance with the following:

23 (1) Institutions of higher education, including
24 athletic directors and coaches.

1 (2) At least two individuals who are current or
2 former student athletes who advocate for the inter-
3 est of student athletes.

4 (3) The National Collegiate Athletic Associa-
5 tion, athletic conference administrators, and admin-
6 istrators of other covered athletic organizations.

7 (4) Professionals with expertise in sports mar-
8 keting, contracting, and public relations.

9 (5) Individuals—

10 (A) with expertise in corporate governance;
11 and

12 (B) who are not associated with any cov-
13 ered athletic association or institution of higher
14 education.

15 (c) APPOINTMENT.—

16 (1) IN GENERAL.—Not later than 60 days after
17 the date of enactment of this Act, members of the
18 Commission shall be appointed as follows:

19 (A) Three members appointed by the
20 Speaker of the House of Representatives.

21 (B) Three members appointed by the mi-
22 nority leader of the House of Representatives.

23 (C) Three members appointed by the ma-
24 jority leader of the Senate.

1 (D) Three members appointed by the mi-
2 nority leader of the Senate.

3 (E) One member, who shall be the chair of
4 the Commission, selected by the members ap-
5 pointed under subparagraphs (A) through (D)
6 not later than 60 days after the appointment of
7 such members, and agreed upon by no fewer
8 than eight of such members. If eight such mem-
9 bers are unable to agree on an appointment
10 under this subparagraph within such 60 day pe-
11 riod, the Speaker of the House of Representa-
12 tives shall make the appointment under this
13 subparagraph.

14 (2) DIVERSITY.—To the extent practicable, the
15 Speaker and leaders making appointments under
16 paragraph (1) shall coordinate their appointments to
17 ensure that the Commission reflect diversity in gen-
18 der, race, sport with which they are associated, as
19 applicable, and divisions or conferences of applicable
20 covered athletic organizations.

21 (d) MEETINGS AND QUORUM.—Meetings of the Com-
22 mission shall be held at the call of the chair appointed
23 under subsection (c)(1)(E). A meeting may only be held
24 where there is a quorum of at least 7 members, including
25 not fewer than two members who are current or former

1 student athletes who advocate for the interest of student
2 athletes.

3 (e) REPORT.—Not later than one, two, and three
4 years, respectively, after the Commission shall be con-
5 stituted, it shall submit to the Committee on Energy and
6 Commerce of the House of Representatives and the Com-
7 mittee on Commerce, Science, and Transportation of the
8 Senate annual reports that include the recommendations
9 in paragraphs (1) through (4) of subsection (a). The Com-
10 mission shall also make such reports available to the pub-
11 lic.

12 (f) SUNSET.—The Commission shall terminate 60
13 days after submitting the final report required under sub-
14 section (e).

15 **SEC. 4. INSTITUTIONS OF HIGHER EDUCATION AND STU-**
16 **DENT ATHLETES WHO ENTER INTO EN-**
17 **DORSEMENT CONTRACTS.**

18 Section 487(a) of the Higher Education Act of 1965
19 (20 U.S.C. 1094(a)) is amended by adding at the end the
20 following:

21 “(30) In the case of an institution that has a
22 student attending the institution who is an athlete
23 and has entered into an endorsement contract (as
24 defined under section 2 of the Sports Agent Respon-
25 sibility and Trust Act (15 U.S.C. 7801)) or an agen-

cy contract (as defined in section 9 of the Student Athlete Level Playing Field Act), such institution will not—

“(A) prohibit such student from entering into such an endorsement contract or an agency contract, including through a rule, standard, or policy that affects the eligibility of such student to receive athletically related student aid (as defined in section 485(e) of the Higher Education Act of 1965 (20 U.S.C. 1092(e))); or

“(B) compensate such student for the name, image, or likeness of such student.”.

**SEC. 5. PROHIBITING UNFAIR AND DECEPTIVE PRACTICES
AGAINST STUDENT ATHLETES.**

(a) PROHIBITING UNFAIR AND DECEPTIVE PRACTICES BY BOOSTERS.—The Sports Agent Responsibility and Trust Act (15 U.S.C. 7801 et seq.) is amended—

(1) in section 2—

(A) by redesignating paragraphs (4) through (9) as paragraphs (5) through (10), respectively; and

(B) by inserting after paragraph (3) the following new paragraph:

“(4) BOOSTER.—The term ‘booster’ means an individual (other than an individual who is related to

1 a student athlete) or an organization, including a
 2 sponsor of an institution's athletic program, that
 3 provides substantial financial assistance or services
 4 to the athletic program of an institution of higher
 5 education or that promotes a team or athletic pro-
 6 gram of an institution of higher education for such
 7 individual's or organization's own substantial finan-
 8 cial interest.”;

9 (2) by inserting after section 3 the following
 10 new section:

11 **“SEC. 3A. REGULATION OF UNFAIR AND DECEPTIVE ACTS**
 12 **AND PRACTICES IN CONNECTION WITH CON-**
 13 **TACT BETWEEN A BOOSTER AND A STUDENT**
 14 **ATHLETE.**

15 “It is unlawful for a booster to directly or indirectly
 16 provide or offer to provide any funds or thing of value
 17 as an inducement for a student athlete to enroll or remain
 18 at a specific institution or group of institutions.”; and

19 (3) in section 5(a)(1), by inserting “or by the
 20 engagement of any booster in a practice that violates
 21 section 3A” after “section 3”.

22 (b) **ELIGIBILITY TO COMPETE AS A STUDENT ATH-**
 23 **LETE AFTER ENTERING INTO AN AGENCY CONTRACT.—**
 24 Section 3(b)(3) of the Sports Agent Responsibility and
 25 Trust Act (15 U.S.C. 7802(b)(3)) is amended in the

1 quoted part by inserting after “boldface type stating:” the
 2 following: “‘Notice to Student Athlete: If you agree orally
 3 or in writing to be represented by an agent now or in the
 4 future, both you and the agent by whom you are agreeing
 5 to be represented must notify the athletic director of the
 6 educational institution at which you are enrolled, or other
 7 individual responsible for athletic programs at such edu-
 8 cational institution, that you have entered into an agency
 9 contract. Such notification must be within 72 hours after
 10 entering into this contract or before the next athletic event
 11 in which you are eligible to participate, whichever occurs
 12 first.’”.

13 (c) REPORT ON CLAIMS FILED PURSUANT TO THE
 14 SPORTS AGENT RESPONSIBILITY AND TRUST ACT.—The
 15 Sports Agent Responsibility and Trust Act (15 U.S.C.
 16 7801 et seq.) is further amended by inserting after section
 17 6 the following new section:

18 **“SEC. 6A. REPORT TO CONGRESS.**

19 “Not later than 6 months after the date of enactment
 20 of this section, and annually thereafter, the Commission
 21 shall submit to the Committee on Energy and Commerce
 22 of the House of Representatives and the Committee on
 23 Commerce, Science, and Transportation of the Senate a
 24 report summarizing any investigation or enforcement ac-
 25 tion brought by the Commission pursuant to this Act, in-

1 cluding the number of complaints filed with the Commis-
2 sion pursuant to this Act.”.

3 **SEC. 6. STATE PREEMPTION.**

4 No State may enforce a State law or regulation with
5 respect to permitting or abridging the ability of a student
6 athlete attending an institution of higher education to
7 enter into an endorsement contract or agency contract
8 pursuant to this Act or by an amendment made by this
9 Act.

10 **SEC. 7. RULES OF CONSTRUCTION.**

11 (a) TAX PROVISIONS.—Nothing in this Act or the
12 amendments made by this Act shall affect the treatment
13 of qualified scholarships under section 117 of the Internal
14 Revenue Code of 1986.

15 (b) NONDISCRIMINATION OF STUDENT ATHLETES.—
16 Nothing in this Act or the amendments made by this Act
17 may be construed to affect the rights of student athletes
18 or affect any program funded under title IX of the Edu-
19 cation Amendments of 1972 (20 U.S.C. 1681 et seq.).

20 (c) ANTITRUST LAWS.—Nothing in this Act or the
21 amendments made by this Act shall provide a cause of
22 action pursuant to the Sherman Act (15 U.S.C. 1 et seq.).

23 (d) STUDENT ATHLETE NOT CONSIDERED AN EM-
24 PLOYEE.—Nothing in this Act or the amendments made
25 by this Act shall affect the employment status of a student

1 athlete who enters into an endorsement contract with re-
2 spect to a covered athletic organization or institution of
3 higher education.

4 **SEC. 8. SENSE OF CONGRESS.**

5 It is the sense of Congress that—

6 (1) institutions of higher education should de-
7 velop a course or program to assist student athletes
8 with understanding financial literacy with respect to
9 entering into an endorsement contract; and

10 (2) the Federal Trade Commission should in-
11 vestigate each claim filed pursuant to the Sports
12 Agent Responsibility and Trust Act (15 U.S.C. 7801
13 et seq.).

14 **SEC. 9. DEFINITIONS.**

15 In this Act—

16 (1) the term “agency contract” means an oral
17 or written agreement in which a student athlete au-
18 thorizes a person to negotiate or solicit an endorse-
19 ment contract on behalf of the student athlete;

20 (2) the terms “athlete agent”, “endorsement
21 contract”, and “student athlete” shall have the same
22 meaning as such terms defined in section 2 of the
23 Sports Agent Responsibility and Trust Act (15
24 U.S.C. 7801);

1 (3) the term “covered athletic organization”
2 means an athletic association, conference, or other
3 organization with authority over intercollegiate ath-
4 letics or that administers intercollegiate athletics;
5 and

6 (4) the term “institution of higher education”
7 has the same meaning as that term under section
8 101 of the Higher Education Act (20 U.S.C. 1001).

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