

117TH CONGRESS
2D SESSION

S. 3943

To establish due process requirements for the investigation of intercollegiate athletics, and for other purposes.

IN THE SENATE OF THE UNITED STATES

MARCH 29, 2022

Mrs. BLACKBURN (for herself and Mr. BOOKER) introduced the following bill;
which was read twice and referred to the Committee on Commerce,
Science, and Transportation

A BILL

To establish due process requirements for the investigation
of intercollegiate athletics, 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 “NCAA Accountability
5 Act of 2022”.

6 **SEC. 2. DUE PROCESS REQUIREMENTS.**

7 (a) IN GENERAL.—Each covered athletic association
8 shall establish and administer due process requirements
9 for the investigation of any member institution, student
10 athlete enrolled in such member institution, or other indi-

1 vidual for any alleged infraction of the covered athletic as-
2 sociation's bylaws or failure to meet the conditions and
3 obligations of membership if the matter cannot be resolved
4 without a formal investigation, consistent with the fol-
5 lowing:

6 (1) If the covered athletic association initiates
7 an investigation into a member institution, the cov-
8 ered athletic association shall provide written notice
9 to the member institution detailing the nature of the
10 inquiry by not later than 60 days after the covered
11 athletic association receives information indicating
12 that a bylaw violation may have occurred, and that
13 the covered athletic association has determined that
14 an investigation is warranted. The notice shall in-
15 clude, to the extent such information is available, the
16 following:

17 (A) Each program under investigation.

18 (B) All persons under investigation.

19 (C) The specific alleged violations under
20 investigation.

21 (D) Each date or time period an alleged
22 violation may have occurred.

23 (E) The rights and resources available to
24 the accused.

1 (2) The notice under paragraph (1)(C) shall be
2 limited to possible violations occurring not earlier
3 than 2 years before the date the notice is provided
4 to the member institution. The covered athletic asso-
5 ciation shall thereafter promptly notify the member
6 institution of any other relevant information discov-
7 ered in the course of the investigation.

8 (3) Prior to commencing any enforcement pro-
9 ceeding, the covered athletic association shall provide
10 the member institution with a notice of allegations
11 not later than 8 months after the notice of inquiry
12 is received under paragraph (1), which shall include
13 the following:

14 (A) Details about each allegation.

15 (B) The potential penalties for each allega-
16 tion.

17 (C) The information and factors the cov-
18 ered athletic association considered in its deter-
19 mination to file charges.

20 (D) The rights and resources available to
21 the member institution and involved individuals.

22 (4) Not earlier than 60 days after the notice of
23 allegations is received, there shall be a hearing be-
24 fore the covered athletic association's infractions
25 committee or body with authorization to hear cases

1 and prescribe punishments to member institutions
2 which shall conform to the following requirements:

3 (A) The hearing shall commence not later
4 than 1 year after the notice is provided under
5 paragraph (1).

6 (B) No information from confidential
7 sources may be offered into evidence or form
8 the basis for any decision.

9 (5) In the event that there is any dispute re-
10 garding the covered athletic association's punish-
11 ment of a member institution, the member institu-
12 tion may compel entry into arbitration conducted in
13 accordance with the standard commercial arbitration
14 rules of an established major national provider of ar-
15 bitration and mediation services based in the United
16 States, which will provide an independent review and
17 binding decision. The arbitration shall be conducted
18 by a three-person panel. The covered athletic asso-
19 ciation and member institution shall each appoint
20 one arbitrator of their respective choosing. The third
21 arbitrator shall be appointed in agreement by the
22 two arbitrators appointed by each party.

23 (6) The covered athletic association shall con-
24 duct its enforcement proceedings and investigations
25 in a fair and consistent manner, and the penalties

1 issued against member institutions for bylaw infrac-
2 tions shall be equitable with respect to severity of
3 the infraction and the member institution's history
4 of infractions.

5 (7) The covered athletic association shall not
6 disclose information relating to an ongoing investiga-
7 tion into a member institution until formal charges
8 are filed in the notice of allegations submitted under
9 paragraph (3). The member institution shall have
10 discretionary authority to disclose any information
11 relating to an ongoing investigation, and no informa-
12 tion relating to an ongoing investigation shall be
13 subject to any disclosure requirement under State
14 law.

15 (b) REPORT.—A covered athletic association shall
16 submit an annual report to the Attorney General summa-
17 rizing its enforcement proceedings, investigations, and
18 issuance of punishments to member organizations under
19 this Act over the preceding year. A covered athletic asso-
20 ciation shall submit an annual report to each State Attor-
21 ney General (and the Attorney General for the District
22 of Columbia) summarizing its enforcement proceedings,
23 investigations, and issuance of punishments to member in-
24 stitutions headquartered in the State.

1 **SEC. 3. LIMITATION.**

2 The privileges of membership of any member institu-
3 tion in the covered athletic association may not be im-
4 paired as a consequence of any rights granted under this
5 Act.

6 **SEC. 4. ENFORCEMENT.**

7 (a) PROCEDURES.—The Attorney General shall es-
8 tablish procedures—

9 (1) for individuals and entities to file written,
10 signed complaints respecting potential violations of
11 this Act by a covered athletic association or any per-
12 son acting as an agent thereof;

13 (2) for the investigation of those complaints
14 which have a substantial probability of validity;

15 (3) for the investigation of such other violations
16 of this Act as the Attorney General determines to be
17 appropriate; and

18 (4) for the evaluation of a covered athletic asso-
19 ciation's annual report to determine compliance with
20 this Act.

21 (b) INVESTIGATIONS AND HEARINGS.—In conducting
22 investigations and hearings pursuant to this section, the
23 following shall apply:

24 (1) Any hearing so requested shall be conducted
25 before an administrative law judge of the Depart-
26 ment of Justice determined by the Attorney General.

1 The hearing shall be conducted in accordance with
2 the requirements of section 554 of title 5, United
3 States Code. The hearing shall be held at the near-
4 est practicable place to the place where the person
5 or covered athletic association resides or of the place
6 where the alleged violation occurred. If no hearing is
7 so requested, the Attorney General's imposition of
8 the order shall constitute a final and unappealable
9 order.

10 (2) Officers and employees of the Department
11 of Justice (including the administrative law judges
12 referred to in paragraph (1)) shall have reasonable
13 access to examine evidence of any person or covered
14 athletic association being investigated.

15 (3) If the administrative law judge determines,
16 upon the preponderance of the evidence received,
17 that a person or covered athletic association named
18 in the complaint has violated the statute, the admin-
19 istrative law judge shall state his findings of fact
20 and issue and cause to be served on such person or
21 covered athletic association an order as follows:

22 (A) The administrative law judge shall
23 order the person or covered athletic association
24 to cease and desist from such violations and to

1 pay a civil penalty in an amount of not less
2 than \$10,000 and not more than \$15,000,000.

3 (B) In determining the amount of the pen-
4 alty, due consideration shall be given to the
5 good faith of the covered athletic association or
6 person, the seriousness of the violation, and the
7 history of previous violations.

8 (C) The administrative law judge may
9 order the permanent removal of any member of
10 the covered athletic association's governing
11 body in the case of a violation.

12 (4) The Attorney General may, not earlier than
13 30 days after providing notice thereof to the person
14 or covered athletic association, commence a hearing
15 before an administrative law judge of the Depart-
16 ment of Justice for any alleged violation of this Act
17 by that person or covered athletic association. The
18 administrative law judge may impose a civil penalty
19 for any violation determined to have occurred.

20 (5) Administrative law judges may, if necessary,
21 compel by subpoena the attendance of witnesses and
22 the production of evidence at any designated place
23 or hearing case of contumacy or refusal to obey a
24 subpoena lawfully issued under this paragraph and
25 upon application of the Attorney General, an appro-

1 piate district court of the United States may issue
2 an order requiring compliance with such subpoena
3 and any failure to obey such order may be punished
4 by such court as a contempt thereof.

5 (6) The decision and order of an administrative
6 law judge shall become the final agency decision and
7 order of the Attorney General unless, within 30 days
8 after the administrative law judge issues such order,
9 the Attorney General modifies or vacates the deci-
10 sion and order, in which case the decision and order
11 of the Attorney General shall become a final order
12 under this subsection.

13 (7) A person or covered athletic association ad-
14 versely affected by a final order (including an order
15 for assessment of a civil penalty) under this section
16 may, within 45 days after the date the final order
17 is issued, file a petition in the Court of Appeals for
18 the appropriate circuit for review of the order.

19 **SEC. 5. DEFINITIONS.**

20 In this Act:

21 (1) COVERED ATHLETIC ASSOCIATION.—The
22 term “covered athletic association” means an inter-
23 state athletic association, conference, or other orga-
24 nization with authority over intercollegiate athletics

1 or that administers intercollegiate athletics, with at
2 least 900 member institutions.

3 (2) MEMBER INSTITUTION.—The term “mem-
4 ber institution” means an institution of higher edu-
5 cation that maintains at least one intercollegiate
6 athletic program that is a member of a covered ath-
7 letic association.

8 (3) INSTITUTION OF HIGHER EDUCATION.—The
9 term “institution of higher education” has the
10 meaning given the term “college” or “university” in
11 section 1404 of the National Agricultural Research,
12 Extension, and Teaching Policy Act of 1977 (7
13 U.S.C. 3103).

14 **SEC. 6. EFFECTIVE DATE.**

15 A covered athletic association shall carry out the re-
16 quirements of this Act by not later than 1 year after the
17 date of enactment of this Act.

