

Date of Hearing: April 25, 2017

ASSEMBLY COMMITTEE ON HIGHER EDUCATION
Jose Medina, Chair
AB 1435 (Gonzalez Fletcher) – As Introduced February 17, 2017

SUBJECT: The Athlete Protection Act

SUMMARY: Establishes the College Athlete Protection Act under the administration of the College Athlete Protection Commission, which would be established by the bill, for the protection of college or university athletes participating in intercollegiate athletic programs offered by institutions of higher education located in California. Specifically, **as proposed to be amended, this bill:**

- 1) Establishes the College Athlete Protection Commission with members appointed to four year terms as follows:
 - a) Three members appointed by the Governor;
 - b) Four members appointed by the Speaker of the Assembly; and,
 - c) Four members appointed by the President pro Tempore of the Senate.
- 2) Declares that the appointed members should reflect the diversity of California, including gender.
- 3) States that the commission members should include areas of the following expertise, with no two members having the same expertise:
 - a) Sports medicine;
 - b) Traumatic brain injury in contact sports;
 - c) Athletic strength and conditioning training;
 - d) Athlete abuse;
 - e) College academic advising;
 - f) College athletics governance and reform;
 - g) Sports economics;
 - h) Athlete protection advocacy, specifying that there shall be one male and one female former college athlete appointed pursuant to this clause;
 - i) Two members of the public.

- 4) Prohibits current personnel, as defined, and persons who served as personnel within the one year immediately preceding his or her appointment from serving on the commission.
- 5) Provides that the commission shall have all of the following duties:
 - a) Gather input from relevant stakeholders to establish, and disseminate to every athletic association, athletic conference, and institution of higher education, both of the following:
 - i) Best practices to minimize injuries and ensure transparency of injury treatment options; and,
 - ii) Up-to-date information about pivotal sports-related health risks.
 - b) Develop policy guidelines and mandates that, at minimum, shall ensure that all of the following occurs:
 - i) Medical records of any treatment by personnel of the higher education institution provided to a student athlete in the course of their participation in the athletic program shall be maintained for a period of 10 years after the student leaves the athletic program and shall be timely provided to the student athlete upon request;
 - ii) There is transparency on college athlete protections and the prevention of deceptive or fraudulent business practices that harm college athletes;
 - iii) Conduct surveys of college athletes and personnel;
 - iv) Perform compliance inspections as determined by the commission;
 - v) Exercise subpoena power, if necessary, to obtain information necessary to carry out its duties under this chapter;
 - vi) Hold quarterly meetings;
 - vii) Distribute, commencing in 2021, on or before January 1 of each year, an annual report to each institution of higher education, athletic conference, and athletic association and to the Legislature, pursuant to Section 9795 of the Government Code, regarding the state of college athlete protections under this chapter;
 - viii) Determine which of its guidelines, materials, and other information may benefit high school athletes, high school sports programs, and the California Interscholastic Federation, and make them available and easily accessible to the public;
 - ix) Consider collaborative and cost-reduction efforts with other states, intercollegiate sports conferences and associations that are not comprised of at least one institution of higher education, and higher education institutions with

intercollegiate sports programs that are not located in California to improve the treatment of intercollegiate athletes in other states;

- x) Create advisory boards, as needed, comprised of unpaid volunteer individuals and organizations with expertise relevant to the implementation of this chapter;
 - xi) Use fees appropriated by the Legislature from the College Athlete Protection Act Fund to execute its duties under this chapter;
 - xii) Develop processes for it to receive, track, and investigate complaints regarding suspected violations of this chapter;
 - xiii) Issue penalties and remedies for violations of this chapter, and pass any relevant information regarding their investigations to the appropriate athletic conferences;
 - xiv) States that, until the commission receives fees from the Institutions of Higher Education (IHE), the commission shall only have the power to perform its functions under this chapter that do not incur costs to the commission;
 - xv) Establish penalties for violations of this chapter, as described; and,
 - xvi) Further requires the commission to adopt regulations to implement this chapter.
- 6) Declares that individuals who report suspected violations of this chapter shall have whistleblower protection.
- 7) States those personnel who knowingly provide false information or attempt to obstruct an investigation by the commission of a violation of this chapter shall be subject to penalties.
- 8) Makes knowingly providing false information, attempting to obstruct an investigation, or retaliation, as specified, a violation of this chapter.
- 9) Deems, by January 1, 2020, personnel as mandated reporters required to report each instance of reasonably suspected violations of this chapter to the commission, as provided.
- 10) Requires that all reports of suspected violations of this chapter made before the commission commences its initial operations shall be made to the Department of Justice, as specified.
- 11) States that, by January 1, 2020, each institution of higher education, athletic conference, and athletic association shall comply with all of the following:
- a) Inform their personnel of their responsibilities and college athlete protections established by or pursuant to this chapter;

- b) Inform college athletes of their rights and protections under this chapter, as specified; and,
 - c) Designate at least one employee to oversee compliance with this chapter and to serve as a point of contact for the commission.
- 12) Establishes the College Athlete Protection Act Fund in the State Treasury, and provides that fees received into the fund, as specified, shall be expended upon appropriation by the Legislature to the commission for the purposes of this chapter.
- 13) Requires all IHEs with an athletic program that were members of the National Collegiate Athletic Association (NCAA) in 2016 to pay annual fees, in an amount determined by the commission to cover the reasonable regulatory costs of this chapter, not to exceed \$4 million dollars annually, to be deposited in the Fund established by the chapter for use in carrying out the purposes of the chapter, as specified.
- 14) Contains the following definitions:
- a) “Athletic association” means an association of athletic conferences or institutions of higher education;
 - b) “Athletic conference” means an entity comprised of institutions of higher education that is a member of an athletic association;
 - c) “Athletic program” means an intercollegiate athletic program at an institution of higher education. Club and intramural programs are excluded;
 - d) “College athlete” means a college or university student that participates in an athletic program;
 - e) “Commission” means the Athlete Protection Commission established pursuant to Section 67394.3;
 - f) “Institution of higher education” means, notwithstanding Section 67400, a campus of the University of California, the California State University, a four-year private university or independent institution of higher education located in California, or a public or private two-year college located in California that maintains an athletic program; and,
 - g) “Personnel” means one or more representatives of an athletic association, an athletic conference, or an institution of higher education including an athletics program employee, coach, assistant, or affiliated health care professional.
- 15) Makes various declaration and findings.
- 16) Declares that the provisions of this chapter shall sunset on December 31, 2022.

EXISTING LAW:

- 1) Prohibits any person from giving, offering, promising or attempting to give money or other item of value to a student athlete or member of the athlete's immediate family to induce, encourage or reward a student athlete's application, enrollment or attendance at a public or private institution of higher education (IHE) to participate in intercollegiate sporting activities. (Education Code Section 67360)
- 2) Requires California postsecondary educational institutions that offer athletic scholarships to provide specific information on its Web site, such as the costs of attendance that are prohibited from inclusion in a full grant-in-aid athletic scholarship, National Collegiate Athletic Association policy on scholarship duration, the most recent cost of attendance, the institution's policy on athletically related medical expenses, and athletic release information. (EC Section 67365)

Student Athlete Bill of Rights (SABR)

- 3) Applies the following to an IHE that receives, as an average, at least \$10 million in annual income from media rights for intercollegiate athletics. (EC Section 67452)
- 4) Requires an IHE, if an athletic program does not renew an athletic scholarship of a student athlete who suffers an incapacitating injury or illness resulting from participating in the athletic program and is determined to be medically ineligible, to provide an equivalent scholarship as specified. (EC Section 67452)
- 5) Requires an athletic program to provide an equivalent scholarship to a student athlete who was on an athletic scholarship and is in good standing but has exhausted his or her athletic eligibility, for up to one year. (EC Section 67452)
- 6) Requires each athletic program to be responsible for paying the premiums of each of its student athletes whose household has an income and asset level at or below the level for Cal Grant A recipients for insurance covering claims resulting from their participation in the athletic program. (EC Section 67453)
- 7) Requires an athletic program to be responsible for paying the insurance deductible for a claim of any student athlete who suffers an injury resulting from participation in the athletic program. (EC Section 67453)
- 8) Requires an athletic program, if a student suffers an injury resulting from participation in the athletic program that requires ongoing medical treatment, to provide for at least two years following the student's graduation or separation from the IHE either the necessary medical treatment or health insurance that covers the injury and resulting deductibles. (EC Section 67453)

FISCAL EFFECT: Unknown

COMMENTS: *Purpose.* According to the author, "...AB 1435 would establish a commission that would gather input from relevant stakeholders to establish, and disseminate to every athletic association, athletic conference, and institution of higher education best practices guidelines and mandates regarding athlete health and safety, player abuse, and academic achievement. In addition, it would designate athletic personnel as mandated reporters of suspected violations of

best practice mandates and player abuse. Mandated reporters would also be granted whistleblower protection.

Background. California's student athlete bill of rights only applies to 4 universities. The protections for California student athletes contained in the SABR (discussed in the Existing Law section above) are limited to universities that receive, as an average, at least \$10 million in annual income from media rights for intercollegiate athletics. Based on annual revenues from media rights, the Student Athlete Bill of Rights currently only applies to four institutions of higher education: the University of California (UC) at Berkeley and Los Angeles, Stanford University, and the University of Southern California (USC).

Student athletics are governed by many different sanctioning bodies with different rules. In California, we have at last count 58,000 student athletes competing at the collegiate level. The welfare of these student-athletes are overseen by a variety of athletic sanctioning bodies, whose rules and oversight ability differ depending on the size, location and course offering of the various institutions of higher education.

The major sanctioning organizations include the National Collegiate Athletic Association (NCAA), the National Association of Intercollegiate Athletics (NAIA), the National Junior College Athletic Association (NJCAA), the California Community College Athletic Association, and the National Christian College Athletic Association (NCCAA). Even within these major sanctioning bodies, rules differ. For instance, the NCAA rules governing Division I, II and III institutions of higher education are not necessarily the same across divisions.

National Collegiate Athletic Association and Pac-12 Conference rules. According to the National Collegiate Athletic Association's (NCAA) Web site, "NCAA full scholarships cover tuition and fees, room, board and course-related books. Most student-athletes who receive athletic scholarships receive an amount covering a portion of these costs. Division I schools may provide student-athletes with multiyear scholarships. Additionally, Division I schools may pay for student-athletes to finish their bachelor's or master's degrees after they finish playing NCAA sports. If a school plans to reduce or not renew a student-athlete's aid, the school must notify the student-athlete in writing by July 1 and provide an opportunity to appeal. In most cases, coaches decide who receives a scholarship, the scholarship amount and whether it will be renewed."

"NCAA bylaws require that member institutions verify student-athletes have insurance coverage for athletically related injuries, with limits up to the deductible of the National Collegiate Athletic Association (NCAA) Catastrophic Injury Insurance Program (currently \$90,000), before they can practice or play. Members are permitted to provide that coverage, but they are not required to do so. Coverage can be provided through the school, a parent/guardian policy or a policy student-athletes have on their own. If coverage by some source is not in place, the student-athlete cannot practice or play. The NCAA provides all student-athletes at all active member institutions coverage under the catastrophic program. This program provides \$20 million in lifetime benefits to student-athletes who become totally disabled while practicing or playing. These benefits include medical expenses as well as disability benefits. An injured student-athlete is eligible to receive medical benefits after the policy deductible (currently \$90,000) is met."

According to the Pac-12 Conference's Web site, rules adopted in 2014, which apply to all Pac-12 student-athletes across all sports, include:

- 1) Athletic scholarships are guaranteed for four years for student-athletes in all sports.

- 2) Student-athletes who leave school before graduating can use the remainder of their educational expenses later to earn their degrees.
- 3) Medical expenses for student-athletes who are injured during their college athletic careers are covered for up to four years after a student-athlete leaves the institution.
- 4) Student-athletes who transfer between Pac-12 institutions are able to receive athletic scholarships immediately.
- 5) Student-athletes are represented in the Conference governance structure.

Arguments in support. According to supporters, California college athletes face unnecessary health and safety risks due to the lack of best practices requirements to prevent serious injury and death. "It is important to maintain safeguards and ensure compliance when it comes to traumatic brain injury, heat stroke, misuse of pain medications, and other high-risk areas associated with college athletics. In addition, the state should act to help prevent and properly address players' mistreatment and abuse," states Timothy M. Nevius, former NCAA Enforcement Department employee. He adds, "For five years I worked in the NCAA enforcement department where I was responsible for investigating and prosecuting violations of NCAA legislation. During that time I received information regarding athlete mistreatment that often went unaddressed. Reports included academic fraud, grossly exceeding practice time limitations, required participation in practice outside the presence of training staff, and a variety of related concerns. I received reports that demonstrated failures of leadership by the coaches, athletics staff, and university administrators, who often ignored, permitted, or sometimes encouraged these problems, and frequently failed to take action to correct or prevent situations that put athletes at risk."

The issue is one of guidelines verses safety mandates, according to the United Steelworkers. "The NCAA and other athletic associations have many safety guidelines, but they are voluntary. Athletic personnel are free to ignore best health and safety practices, which leave college athletes in California vulnerable to preventable injury or death." They add, "It is important to establish a state commission to establish safeguards and ensure compliance when it comes to traumatic brain injury, heat stroke, misuse of pain medications and other high-risk areas associated with college athletics."

According to the bill's sponsor, the National College Players Association, tragedy is what gave rise to this proposal. "Last year, UC Berkeley admitted negligence in the death of football player Ted Agu, who had sickle cell trait. In the summer of 2016, Fresno State football player Shane Gama succumbed to heatstroke in 102 degree weather at 1pm wearing dark clothes without an emergency ice tub available – factors that do not coincide with NATA best practice guidelines to prevent heat illness. In a deposition statement published in 2015 by Vice Sports, the University of Southern California team doctor admitted to using the controversial pain medicine Torydol in a manner against FDA warnings because he did not agree with them. USC football player Armond Armstead suffered a heart attack after abiding by the doctor's off-label use of Torydol. It is worth noting that five college athletes died from the misuse of prescription medicine in 2011 alone."

Arguments in opposition. Higher education institutions expressed concerns with the provisions of AB 1435 as introduced, and maintain concerns with the language as proposed to be amended.

The California State University (CSU) writes that, "...AB 1435 creates a commission that duplicates the roles and functions of the National Collegiate Athletic Association (NCAA) and would have very limited collegiate athletics experience or collegiate institutional knowledge. The commission would be granted broad powers and authority to develop and implement guidelines, mandates and sanctions for college athletics in California. Additionally, the commission would be authorized to assess fees on institutions to support these efforts."

The University of California (UC) notes that "...we are concerned that the proposed members appointed to the Commission will not have the necessary expertise to meet its charge. The proposed Commission specifically excludes individuals with expertise that have worked in college athletics within the last year. It is unclear how the appointees envisioned in the bill would help protect student-athletes if the Commission fails to include individuals that are currently working in the field. We are also concerned about the Commission accessing records protected under the federal Health Insurance Portability and Accountability Act (HIPAA) and Family Educational Rights and Privacy Act (FERPA)."

The Association of Independent California Colleges and Universities (AICCU) believes, "...The powers of this new Commission are wide-ranging, with duties that include oversight of health and safety, academic performance, practice time, and sexual assault. This would be duplicative and perhaps conflicting with other organizations, such as the Federal Office of Civil Rights and the NCAA, which have oversight of these subject areas."

Stanford University notes the lack of an appeals process, writing, "...policy decisions and guidelines created by the commission could be arbitrary since the bill doesn't contain any appeal or review process. The bill would also give the Commission unprecedented discretion to impose penalties of any size without providing clear legislative guidance on what the mandates are for the higher education sector. In most regulatory settings, the legislature sets the specific duties and penalties."

Policy considerations. This bill was previously heard in the Assembly Committee on Arts, Entertainment, Sports, Tourism, and Internet Media. The legislation was considered "as proposed to be amended" – those same proposed amendments are being considered in Assembly Higher Education. The amendments accomplish the following:

- 1) *Findings and declarations.* The tone and content of the legislative findings and declarations has been reworked to present a foundation for the legislation and guidance for the commission created by its terms.
- 2) Insertion of a sunset date; the bill's provisions will sunset in 2022.
- 3) Delayed implementation dates; provide a rolling implementation, with institutions given until 2020 for initial compliance, and until 2021 for the first reports to the legislature.
- 4) Definition of "personnel" was limited, striking the provision which included stakeholders, contractors, conference employees and employees of IHE.

- 5) Cap placed on ability of commission to raise and spend funds, at \$4 million, and expenditures will be subject to annual legislative appropriation, not continuously appropriated.
- 6) Clarifies that commission members may not be current IHE employees, and may not have served as athletic personnel for one (1) year prior to appointment, rather than ten (10) in the original draft.
- 7) Requirement for IHE to maintain medical records has been clarified to refer to records of treatment, medication or services provided by personnel to the student in the course of their participation in the athletic program, and caps the IHE maintenance of health records requirement at 10 years.
- 8) Allows the commission to share relevant information gathered in the course of any investigation with the appropriate conference.
- 9) Limits exercise of subpoena powers to when necessary to obtain needed information, and no longer allows issuance for "useful" information.
- 10) Narrows penalties the commission may establish to strike "civil liability" and instead provides that the bill's penalties are in addition to any other remedy available at law.
- 11) Provides guidance to the commission as they create and then implement their penalty system to require they must consider the number and duration of violations; whether the violation was the result of intentional or negligent actions, and; the nature and extent of harm caused by the violation.
- 12) Creates a fee structure so that the schools can reasonably anticipate their obligations and may budget accordingly.

Suggested further amendments as the bill moves forward. The amendments under consideration provide for a delayed implementation date for the IHE to comply with the mandates established by the commission, which states they must begin compliance in 2020. However, the language does not contain any date for the commission to establish those mandates. Rather, they are allowed to delay action until fees accrue in the College Athlete Protection Act Fund, sufficient to cover their activities. This could inadvertently create a situation where the IHEs could be subject to penalty for failure to act, but with no commission guidance for them to act on.

Moving forward, the author and stakeholders should establish a reasonable time for the commission to establish initial mandates and protocols, and adjust the implementation, reporting and sunset provisions accordingly.

In addition, the author may wish to clarify the intent regarding the two public members of the commission, and determine whether they may or may not have overlapping expertise with the members in the prescribed commission positions.

Related legislation.

- a) AB 735 (Ridley-Thomas), Chapter 220, Statutes of 2016, removed the sunset from the SABR.
- b) SB 1525 (Padilla), Chapter 625, Statutes of 2012, created the original SABR discussed as "Existing Law" above.
- c) AB 1743 (Campos), Chapter 16, Statutes of 2012, clarified that the online scholarship disclosures required of a California postsecondary educational institution only apply to institutions that offer athletic scholarships to "student athletes".
- d) AB 2079 (Torlakson), Chapter 592, Statutes of 2010, provided that all California postsecondary educational institutions that offer athletic scholarships are required to provide specified scholarship information on their websites.
- e) AB 95 (Torlakson) of 2008-09, would have required athletic recruiters to provide student athletes with specified information relating to the college athletic program within one week of initiating personal contact with the student athlete for purposes of athletic recruiting.
- f) SB 193 (Murray,) of 2002-03, held in the Assembly Higher Education Committee, would have prohibited California institutions of higher education from participating in any organizations that regulates student athletic scholarships, including the NCAA.

REGISTERED SUPPORT / OPPOSITION:

Support

College Athletes Players Association
College Athletes Rights and Empowerment-Faculty Coalition co-founders
National College Players Association (Sponsor)
NFL Players Association
One Hit Away
The Los Angeles Stentorians
United Steelworkers
Former NCAA Associate Director of Enforcement Timothy Nevius
Ronald S. Katz, Chair Emeritus of the Institute of Sports Law and Ethics at University of Pacific
Numerous individuals, former athletes and parents

Opposition

Association of Independent California Colleges and Universities
California State University
Stanford University
University of California
University of Southern California

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