

Date of Hearing: January 7, 2014

ASSEMBLY COMMITTEE ON HIGHER EDUCATION
Das Williams, Chair
AB 475 (Brown) – As Amended: January 6, 2014

[Note: This bill is doubled referred to the Assembly Arts, Entertainment, Sports, Tourism and Internet Media Committee and will be heard as it relates to issues under its jurisdiction.]

SUBJECT: Student athletes: scholarships.

SUMMARY: Requires that, commencing with the 2015-16 academic year, certain requirements are placed on four-year universities located in California as it relates to student athletes; defines the terms "licensing fees" and "permission-to-contact letter" for purposes of the Student Athlete Bill of Rights; and, specifies an institution of higher education (IHE) that receives, as an average, less than twenty million dollars in annual income derived from media rights and licensing fees for intercollegiate athletics shall not be subject to the requirements of this measure. Specifically, this bill:

- 1) Specifies that, commencing with the 2015–16 academic year, an athletic scholarship given out by a public IHE in the state shall be guaranteed for five academic years or for the completion of a student athlete's eligibility if the student athlete maintains good standing with the institution he or she attends and continues his or her participation in the sport.
- 2) Specifies that, commencing with the 2015–16 academic year, a full athletic scholarship given by a public IHE shall cover the full cost of attendance for that institution and shall include an additional three-thousand-six-hundred-dollar (\$3,600) student athlete participation stipend.
- 3) Specifies that, commencing with the 2015-16 academic year, if a student athlete decides to transfer from a four-year university located in California, the IHE shall give the student athlete a permission-to-contact letter, and not place any restrictions or conditions on where the student athlete may transfer.
- 4) Defines "licensing fees" as fees received by an IHE for the use of likeness of the school or one or more student athletes to market, promote, or advertise products, jerseys, video games, events, literature, or signage.
- 5) Defines "permission-to contact letter" as written permission from the student athlete's athletic director or designated athletic administrator granting the student athlete permission to begin the transfer process.
- 6) Specifies that an IHE to which this measure applies shall rely exclusively on revenue derived from media rights and licensing fees for intercollegiate athletics to defray any costs accrued under this measure.
- 7) Specifies that IHEs that receive, as an average, less than twenty million dollars in annual income derived from media rights and licensing fees for intercollegiate athletics shall not be subject to the requirements of this measure.

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 IHE to participate in intercollegiate sporting activities. Some exceptions may be granted in accordance with National Collegiate Athletic Association (NCAA) rules. A person who violates these rules is subject to a civil penalty of up to \$10,000, or three times the amount given, offered or promised, whichever is greater (Education Code § 67360).
- 2) Prohibits student athletes and members of their immediate family from soliciting or accepting money or other item of value as an inducement, encouragement or reward, subject to the same exceptions and penalty listed above (EC § 67361).
- 3) Requires California postsecondary educational institutions that offer athletic scholarships to provide specific information on its website, such as NCAA policy on scholarship duration, the most recent cost of attendance, and their policy on athletically related medical expenses (EC § 67365).
- 4) Defines the following: “athletic association” to mean any organization that is responsible for governing intercollegiate athletic programs; “athletic program” to mean an intercollegiate athletic program at any IHE; “graduation success rate” to mean the percentage of student athletes who graduate from that IHE within six years of their initial enrollment, excluding outgoing transfers in good academic standing with athletic eligibility remaining, and including incoming transfers. The rate is to be calculated by combining the rates of the four most recent classes that are available in the exact manner as the rate is calculated under NCAA rules; “IHE” to mean any campus of the University of California or the California State University, or any four-year private university located in California, that maintains an intercollegiate athletic program; “media rights” means the rights to media coverage of intercollegiate athletics included in contracts that are entered into by intercollegiate athletic conferences and television networks and that generate monetary payments to individual IHEs; and, “student athlete” to mean any college student who participates in an intercollegiate athletic program of an IHE, and includes student athletes who participate in basketball, football, and other intercollegiate sports (EC § 67451).
- 5) Specifies the following: 1) unless a student athlete declines the payment of premiums, an athletic program shall be responsible for paying the premiums of each of its student athletes whose household has an income and asset level that does not exceed the level for Cal Grant A recipients set forth in EC § 69432.7 for insurance covering claims resulting from their participation in the athletic program; 2) an athletic program shall be responsible for paying the insurance deductible amount applicable to the claim of any student athlete who suffers an injury resulting from his or her participation in the athletic program and makes a claim relating to that injury; 3) if a student athlete suffers an injury resulting from his or her participation in the athletic program that requires ongoing medical treatment, the athletic program shall provide, for a minimum of two years following the student athlete’s graduation or separation from the IHE, one of the following: a) the necessary medical treatment and b) health insurance that covers the injury and the resulting deductible amounts; 4) three "a" and "b" shall not apply to preexisting medical conditions that predate the student athlete’s

participation in the athletic program; 5) an athletic program shall adopt and implement guidelines to prevent, assess, and treat sports-related concussions and dehydration. Additionally, an athletic program shall adopt and implement exercise and supervision guidelines for any student athlete identified with potentially life-threatening health conditions who participates in an athletic program; 6) an IHE that receives, as an average, less than ten million dollars in annual income derived from media rights for intercollegiate athletics shall not be subject to the requirements of this section; and, 7) an IHE to which this section applies shall rely exclusively on revenue derived from media rights for intercollegiate athletics to defray any costs accrued under this section (EC § 67452).

- 6) Mandates that athletic programs shall comply with all of the following: 1) if an athletic program does not renew an athletic scholarship of a student athlete who suffers an incapacitating injury or illness resulting from his or her participation in the athletic program, and the IHE medical staff determines that he or she is medically ineligible to participate in intercollegiate athletics, the IHE shall provide an equivalent scholarship that, combined with the total duration of any previous athletic scholarship or scholarships received by the student athlete, will be provided for a total of up to five academic years or until the student athlete completes his or her undergraduate degree, whichever period is shorter. Additional years may be provided at the discretion of the IHE; 2) if a student athlete takes a temporary leave of absence from an IHE, the duration of that leave of absence shall not count against the five-year limit on eligibility for an equivalent scholarship as determined; 3) an athletic program shall 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 or until the student athlete completes his or her primary undergraduate degree, whichever is shorter, except that an athletic program with a graduation success rate that is above 60 percent, disaggregated by team, shall not be subject to the requirements; 4) a student athlete whose athletic scholarship is not renewed for cause by an athletic program shall receive no benefits under this part, but may appeal this decision within the IHE attended by the student or within the athletic conference or association of which that IHE is a member, as appropriate; 5) each athletic program shall conduct a financial and life skills workshop for all of its first-year and third-year student athletes at the beginning of the academic year. This workshop shall include, but not be limited to, information concerning financial aid, debt management, and a recommended budget for full- and partial-scholarship student athletes living on or off campus during the academic year and the summer term based on the current academic year's cost of attendance. The workshop shall also include information on time management skills necessary for success as a student athlete, and academic resources available on campus; 6) an IHE shall grant a student athlete the same rights as other students with regard to any and all matters related to possible adverse or disciplinary actions, including, but not necessarily limited to, actions involving athletically related financial aid; 7) an athletic program shall respond within seven business days with an answer to a student athlete's written request to transfer to another IHE; 8) An IHE that receives, as an average, less than ten million dollars in annual income derived from media rights for intercollegiate athletics shall not be subject to the requirements of this section of law; and, 9) an IHE to which this section of law applies shall rely exclusively on revenue derived from media rights for intercollegiate athletics to defray any costs accrued under this section (EC § 67453).

- 7) See comments below for relevant NCAA rules.

FISCAL EFFECT: Unknown

COMMENTS: Need for the bill. According to the author, major college athletics is an \$11.4 billion a year industry that does not compensate the student-athletes, "whose dedication in the classroom and exploits on the field make the industry commercially viable." The author states, "Many [student athletes] do not receive the full educational opportunities and financial support they were promised. In fact, because of the athletic eligibility requirements imposed by the NCAA, the Pac-12 Conference and the university, student-athletes are not given scholarships that cover the full cost of attendance and foster academic retention and graduation. "

Additionally, the author states, "Currently, scholarships do not cover the full cost of attending the university. As result student-athletes are forced to get Pell-grants and other financial aid to cover the cost of attendance, even though the Pac-12 just signed a \$3 billion television contract."

Background. NCAA Rules: The NCAA is a voluntary association of about 1,200 colleges and universities, athletic conferences, and sports organizations that administer intercollegiate athletics. Volunteer representatives from these schools and conferences establish rules that govern the NCAA and programs designed to further its purposes and goals.

Rules Regarding Transfers. An athletics staff member or other representative of an institution may not make contact with a student-athlete of another NCAA or NAIA four-year collegiate institution without first obtaining written permission of the first institution's athletic director. If permission is granted, all NCAA recruiting rules apply.

If an institution receives a written request from a student-athlete to permit another institution to contact the student-athlete about transferring, the institution shall grant or deny the request within seven business days.

If the institution denies the student-athlete's request to permit any other institution to contact them about transferring, the institution shall inform the student-athlete in writing that s/he may request a hearing conducted by an institutional entity or committee outside of the athletics department. The hearing shall be conducted and a decision rendered in writing within 15 days of receipt of the written request for a hearing.

A one-time transfer exception exists for student-athletes competing in sports other than baseball, basketball, bowl subdivision football or men's ice hockey, if specified conditions are met. This rule also has exceptions for student-athletes in the specified sports that were not recruited by the original institution and have never received athletic aid from any institution. Also, student-athletes who have earned a bachelor's degree may also use the one-time transfer exception under specified conditions.

Rules Regarding Student-Athlete Finances. The 2012-13 Guide for the College-Bound Student-Athlete, and other links on the NCAA's website, provides information about several aspects of becoming a collegiate athlete, including athletically related financial aid and recruiting regulations. Specifically:

- 1) Athletic scholarships in Divisions I and II are initially awarded for up to one academic year, and may be renewed annually for up to five years (D-I) or up to a total of 10 semesters/15 quarters (D-II). Division III institutions do not award athletic financial aid.

- 2) Effective August 1, 2012, Division I allows institutions to provide athletic aid for a period not less than one year and that does not exceed the student's five-year period of eligibility.
- 3) Athletic scholarships can be renewed, reduced, increased or canceled from year to year for any reason.
- 4) During the one-year period of the award, the athletic scholarship may not be renewed, reduced or canceled except under four specified conditions: 1) the student-athlete rendered himself or herself ineligible; 2) the student-athlete fraudulently misrepresents himself or herself; 3) the student-athlete engages in serious misconduct as determined by the institution's regular student disciplinary authority; and 4) the student voluntarily withdraws from the team (and requesting permission to contact or transfer does not constitute withdrawing from the team).
- 5) Any time the athletics aid is not renewed, or is reduced or canceled, the student-athlete must be notified in writing of his or her right to request an appeal, and the appeal must be heard by the institution's regular financial aid authority.
- 6) Athletic scholarships are awarded in a variety of amounts.
- 7) The total amount of financial aid a student-athlete can receive may be limited, and may affect whether a student-athlete may accept additional financial aid.

The NCAA recently updated their bylaws that regulate recruiting, scholarship levels, timing and methods of communication between IHEs and student athletes. Rules governing Division I, II and III IHEs are not necessarily the same across divisions. Currently, NCAA bylaws impose a number of restrictions on student athlete financial assistance. For example, NCAA D-1 schools:

Effective August 1, 2012, Division I allows institutions to provide athletic aid for a period not less than one year and that does not exceed the student's five-year period of eligibility.

- 1) Under the new Division I multiyear aid legislation, any athletic scholarship that is awarded for more than one year cannot be renewed, reduced or canceled during the period of the award except under four specified conditions: 1) the student-athlete rendered himself or herself ineligible; 2) the student-athlete fraudulently misrepresents himself or herself; 3) the student-athlete engages in serious misconduct as determined by the institution's regular student disciplinary authority; and 4) the student voluntarily withdraws from the team (and requesting permission to contact or transfer does not constitute withdrawing from the team).
- 2) Are permitted to provide medical insurance for its student-athletes.
- 3) Cannot award financial aid to a student athlete that exceeds the cost of attendance that normally is incurred by students enrolled in a comparable program at that institution.
- 4) A student-athlete may be employed, provided they are only paid for work actually performed and the pay rate must be commensurate with the going rate for someone with

similar skills and experience and the employer does not pay the student-athlete based on his or her athletics reputation.

SB 1525 (Padilla, Chapter 625, Statutes of 2012). This measure enacted a Student Athlete Bill of Rights and placed specified requirements on collegiate athletic programs commencing with the 2013-14 academic year and ending January 1, 2021.

Over the course of several months in 2012, this measure was amended five times; the chaptered version of the measure changed significantly from the original version of the measure. Prior versions of SB1525 included guaranteed scholarships for five years for student-athletes and removed transfer restrictions for student athletes. These provisions were negotiated out of SB 1525 because they proved detrimental to the student-athletes. The signed version of SB 1525 codified into law practices that support student-athlete welfare and minimized the disadvantages to student-athletes.

To note, just weeks after SB 1525 was chaptered, AB 475 was introduced; AB 475 revisits the same issues that were negotiated at length and subsequently removed from SB 1525 prior to the Governor signing SB 1525 into law.

Issues to consider. Ed O'Bannon lawsuit. The O'Bannon lawsuit began in 2009 as a case about the NCAA profiting off the likenesses of former athletes in Electronic Arts (EA) Sports video games. In January 2013, a federal judge ruled that the plaintiffs could add current athletes to the case and that the plaintiffs could go after everyone profiting off the likenesses of college athletes. That includes the conferences and the networks that televise the games. In November 2013, the judge partially granted a full class-action status in the Ed O'Bannon lawsuit against the NCAA. Trial date is set for June 2014. It is very possible that the jury will side with the plaintiffs, subsequently changing the entire NCAA model.

To note, when student-athletes play an NCAA sport, they have to sign a waiver that relinquishes their right to make money off of their likeness as an NCAA athlete. In the case of the O'Bannon lawsuit, because EA and NCAA used classic teams, like the 1996 UCLA Bruins basketball team, this caught the attention of Mr. O'Bannon and because he felt that he was forced to sign the waiver, today he feels he forfeited being able to make additional money post being a student-athlete.

The Sherman Antitrust Act specifically bans artificially fixing prices, aiming to mean people and businesses are paid what they deserve. Mr. O'Bannon, et al., are alleging that if the NCAA did not force them to sign the waiver contracts, they could have gotten money from someone else (potentially an EA competitor) to use their likeness. If you consider student-athletes' scholarships adequate payment for their services, this could still artificially depress how much they are paid. If the judge agrees, the waiver would be considered an illegal restraint of trade under the act.

NCAA compliance. The proposed cost of living scholarship increase and \$3,600 stipend for California public schools participating in NCAA, as called for in this bill, are impermissible under NCAA rules. If University of California, Berkeley (UCB) and University of California, Los Angeles (UCLA) are required to provide these scholarship amounts, the NCAA will declare our CA student-athletes ineligible, and they will no longer be able to compete in the NCAA. The following are the NCAA Bylaws on this issue:

- a) Bylaw 15.2 lists the only permissible types of financial aid.
- b) Bylaw 15.01.6 explains that we may not exceed the cost of attendance.
- c) Bylaw 12.1.2 makes it clear that student-athletes may not be paid to compete in their sports.

The NCAA continues to work on a nation-wide solution to provide stipends to student-athletes. California needs to wait (like all other states) and see the outcome.

Additionally, this measure requires UCB and UCLA to guarantee scholarships to all students for 5 years. While these schools currently maintain scholarships for student-athletes who can no longer compete due to injury, they have made it clear that they are strongly opposed to guaranteeing scholarships across the board. The NCAA rules permit students to seek 5-year scholarships from any school. This creates the opportunity for students and schools to negotiate during the recruitment process about the contract duration and monies provided.

Under this bill UCB and UCLA will no longer have that right. Therefore, these scholarships will then count against their scholarship limits for the next five years, while every other school in the country will be able to adjust scholarship amounts on an annual basis.

As a result, the persons who stand to be most negatively impacted are California's student-athletes that have to compete against every other institution that can reshape its scholarship allotments every year.

Lastly, the proposed licensing fees definition would require CA to quantify alleged profits from impermissible conduct. Section 12.5 of the NCAA Bylaws addresses the limited use in which student-athletes may promote their own events and incidental activities, but does not allow institutions to earn these kinds of "licensing fees."

Transfer provision. Existing NCAA and Pac-12 transfer policies serve as a deterrent to competing schools from tampering with another institution's student-athletes. The loss of that deterrent for only the four targeted institutions would place student-athletes at UCB, UCLA, Stanford and University of Southern California (USC) in the position of being highly desirable new additions for other programs seeking to lure transfers without penalty.

As a result, the bill's transfer provisions put the four targeted universities at a clear competitive disadvantage since each would be compelled to follow rules that would not apply to any other university not only in the State of California, but in the entire country.

Graduation rates. Recently, there has been concern over the graduation rates of California student-athletes. However, the four institutions that would be effected by this measure have worked hard to implement success strategies that go beyond the goals of the NCAA.

The NCAA passed rules outlining an academic reform package for all member institutions in 2002. These reforms were created in order to provide a more accurate and "real-time" depiction of student-athlete academic success, as well as to provide a series of incentives and disincentives for institutions based upon their respective performance rates.

The Academic Progress Rate (APR) is a term-by-term measure of eligibility, retention and graduation for student athletes who have received athletics grant-in-aid during the academic terms in question. A score of 1000 on the APR is the highest score possible for any given intercollegiate athletic team.

The Graduation Success Rate (GSR) represents a four-year average based on a six-year cohort, meaning that the latest report includes only those student athletes who received athletic scholarships and enrolled at a participating NCAA school as freshmen or incoming transfers from 2002-05, and completed their degree within six years. Each intercollegiate athletic team receives an individual GSR score.

Data collection began with the 2003-2004 academic year, resulting in completion of the first four-year rate in fall 2007. Individual institutional and team rates are reported at the beginning of each fall, based upon student-athlete academic performance during the previous academic year. Teams and institutions not meeting the established national benchmark were subject to contemporaneous penalties beginning with the 2005-2006 academic year.

In 2011, the minimum APR increased from 900 to 930, setting a new national benchmark with corresponding penalties. NCAA penalties are sport specific and can include scholarship reduction, practice reduction and ban on post-season competition.

Below is the average GSR for the four effected schools with the most recent data (data past 2007-2008 will not be calculated until May 2014):

Institution	Years	GSR
Stanford	2003/04 -2006/07	96%
UCB	2003/04 -2006/07	78%
UCLA	2003/04 -2006/07	87%
USC	2003/04 -2006/07	77%

To note, since the implementation of the NCAA APR, none of the above institutions' athletics teams have ever been penalized for not meeting the required APR benchmark.

Committee considerations. It is unclear as to the present issue at hand that needs to be resolved. The bill is poorly drafted in that parts of the bill would only apply to the two public NCAA schools (UCB and UCLA), not the two private schools (Stanford and USC). Additionally, these four institutions provide unparalleled support for student-athletes, yet AB 475 seeks to penalize only them. To impose one set of rules on California, places our student-athletes at a disadvantage with the other schools against whom they compete.

Should the committee act on a measure when there is no justification for raising the same issues SB 1525 addressed before there is time to even measure the impact or benefits of SB 1525? Should the committee act on a measure that would make the effected four current NCAA participating schools incompliant? And, should the committee act on a measure that has an active related lawsuit set for trial in June of this year?

Prior and Related Legislation:

- 1) SB 1525 (Padilla), see above for description.
- 2) 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."
- 3) 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.
- 4) AB 95 (Torlakson), of the 2009-10 Legislative Session, which died in the Assembly Higher Education Committee, 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.
- 5) SB 193 (Murray), of the 2002-03 Legislative Session, which was 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

None on file.

Opposition

Stanford University
University of California
University of Southern California

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