

Date of Hearing: April 18, 2023

ASSEMBLY COMMITTEE ON HIGHER EDUCATION

Mike Fong, Chair

AB 252 (Holden) – As Amended March 6, 2023

SUBJECT: The College Athlete Protection Act

SUMMARY: Establishes the College Athlete Protection Act for purposes of providing various rights, benefits, and protections to college athletes. Specifically, **this bill:**

- 1) Creates the College Athlete Protection (CAP) Act.

Definitions

- 2) Establishes the following definitions for the CAP Act:
 - a) “Affiliated medical personnel” means individuals who provide medical, rehabilitation, or athletic training diagnoses, opinions, or services to college athletes, in collaboration with an institution of higher education (IHE). “Affiliated medical personnel” include, but are not limited to, physicians, mental health professionals, physical therapists, and athletic trainers. Individuals do not have to receive compensation from an institution of higher education to be affiliated medical personnel;
 - b) “Aggregate athletic grants” means the total amount of athletic grants that an IHE annually reports pursuant to the federal Equity in Athletics Disclosure Act (EADA) to the United States Department of Education (USDE) for each intercollegiate athletics team at the institution. “Aggregate athletic grants” shall not include any difference in athletic grant amounts based on cost of attendance disparities between an institution’s in-state or out-of-state college athletes;
 - c) “Athletic association” means any organization that is responsible for governing intercollegiate athletic programs;
 - d) “Athletic grant” means an athletics scholarship or grant that an IHE pays to a college athlete;
 - e) “Athletic program” means an intercollegiate athletic program at an IHE;
 - f) “CAP Fund” means the Fund established as specified;
 - g) “CAP Panel” means the Panel established as specified;
 - h) “CAP Program” means the Program established as specified;
 - i) “College athlete” means a student who is enrolled at an IHE and is listed as a member of an intercollegiate athletics team at the institution. A student’s participation in club or intramural sports at an institution does not meet the definition of college athlete;

- j) “Fair market value compensation” means an amount of compensation for each college athlete who receives an athletic grant that is determined annually by subtracting the intercollegiate athletic team’s aggregate athletic grants from one-half of the intercollegiate athletic team’s revenue and dividing that difference by the number of athletic grants provided to college athletes on that team;
- k) “IHE” or “institution” means any campus of the University of California (UC), the California State University (CSU), the California Community Colleges (CCC), an independent institution of higher education, as defined in Section 66010, or a private postsecondary educational institution, as defined in Section 94858, that maintains an athletic program;
- l) “Intercollegiate athlete” means a California resident who is enrolled at an out-of-state college or university and is listed as a member of an intercollegiate athletics team at the out-of-state college or university. A student’s participation in club or intramural sports at an out-of-state college or university does not meet the definition of intercollegiate athlete;
- m) “NCAA” means the National Collegiate Athletic Association;
- n) “NIL” means the use of a college athlete’s name, image, and likeness;
- o) “Office for Civil Rights” means the Office for Civil Rights within the USDE;
- p) “Revenue” means annual intercollegiate athletics revenue as calculated and reported pursuant to the federal Equity in Athletics Disclosure Act by an institution of higher education to the USDE; and,
- q) “Title IX” means Title IX of the federal Education Amendments of 1972 (20 U.S.C. 1681 et seq.).

Legislative findings

- 3) Establishes the following findings and declarations of the Legislature:
 - a) The safety, transparency, and quality education for college athletes should be prioritized for athletic programs, conferences, and associations and the state;
 - b) IHEs exist to educate all students. Once athletic recruits sign an agreement to attend a particular university, they should feel confident that they will be able to complete their degrees regardless of sports-related injury or poor athletic performance;
 - c) To increase graduation rates and ensure economic equity, institutions of higher education need to establish a degree completion fund for each college athlete with specified rules and manage that fund as a fiduciary for the college athlete without charging the college athlete for any costs incurred;
 - d) The State needs to design and enforce vital safety standards and return-to-play protocols to protect college athletes from serious injuries, sexual abuse, and death;

- e) Student sexual abuse is an important issue on college campuses. Providing information and notice to college athletes about their rights under Title IX and other pertinent statutes is necessary to ensure their physical and psychological safety;
- f) College athletes face intense pressure to return to play when injured. Intercollegiate sports programs, including coaches and team medical staff, should collaborate to ensure that a college athlete's interests are always put first;
- g) Athletic programs must have a health care model that vests autonomous medical management decisions in primary athletic health care providers, such as team physicians and athletic trainers. These providers, their decision-making related to the health and safety of college athletes, and their health care delivery should be protected from outside, nonmedical influences;
- h) To prevent college athletes from being left to pay an excessive financial burden, institutions of higher education should pay medical costs for college athletes' sports-related injuries;
- i) Transparency in athletic recruiting is a high priority given the complexities created by various athletic program policies, including the use of a college athlete's NIL. Institutions of higher education should disclose to college athletes the financial benefits and risks associated with NIL agreements;
- j) A proper oversight system should be developed to ensure that appropriate safeguards are in place to avoid the exploitation of college athletes; and
- k) Intercollegiate athletic laws and rules in other states affect the well-being of intercollegiate athletes.

Degree Completion Fund

- 4) Requires an IHE to establish a degree completion fund for its college athletes who receive athletic grants but do not receive fair market value compensation in an academic year.
- 5) Specifies that an IHE must use degree completion funds to compensate each college athlete who receives an athletic grant at the institution, but does not receive fair market value compensation in an academic year, in a total amount that provides fair market compensation to the college athlete for the academic year.
- 6) Requires that a college athlete on the same intercollegiate athletics team at an institution of higher education during the same academic year will be designated an equal payment from that institution's degree completion fund for that academic year.
- 7) Specifies that all degree completion funds of up to \$25,000 must be paid to each college athlete for their participation on the intercollegiate athletics team in an academic year.
 - a) Commencing on or before March 15, 2024, and on or before every March 15 thereafter, payments described in paragraph 7) must be made in an amount based on the institution's revenue reported for the previous academic year.

- 8) Requires an institution to not use payment designations in its degree completion fund as a reason to reduce or cancel athletic grants provided to any college athlete.
- 9) Specifies that all degree completion fund payments above the amount determined pursuant to subdivision 7) designated for a college athlete must be paid within 60 days of the college athlete earning a baccalaureate degree or submitting proof, as determined by the CAP Panel, of having a severe medical condition that prevents the college athlete from completing a baccalaureate degree program.
 - a) All degree completion fund payments designated for a college athlete who transferred to another institution of higher education or an out-of-state college or university must be paid within 60 days of the athlete earning a baccalaureate degree or submitting proof, as determined by the CAP Panel, of having a severe medical condition that prevents the athlete from completing a baccalaureate degree program.
- 10) Requires an IHE to accurately account its aggregate athletic grants and revenue. An institution must not undercount, overcount, or fail to accurately categorize its aggregate athletic grants or revenue.
 - a) The CAP Panel may audit an IHE's aggregate athletic grant and revenue accounting methods, materials, and information to ensure compliance, as specified. This audit may include review of the institution's aggregate athletic grant and revenue accounting methods reported by the institution in its previous revenue reports. This will be implemented only in a manner that protects the personally identifiable information of college athletes consistent with state and federal privacy laws.
- 11) Declares that all degree completion fund payments above the amount determined pursuant to 7) above designated for a college athlete will be forfeited if the college athlete does not complete a baccalaureate degree program within six years of full-time college enrollment or submit proof, as determined by the CAP Panel, of having a severe medical condition that prevents the college athlete from completing a baccalaureate degree program. All forfeited funds must be deposited in the institution's degree completion fund and used for degree completion fund payments to college athletes pursuant to this section.
- 12) In making annual degree completion fund payment designations, an institution of higher education may:
 - a) Opt to only use all revenue reported for an academic year that exceeds its revenue reported for the 2021–2022 academic year. Notwithstanding 5) above, if the institution uses this option, the institution does not have to pay any remaining fair market value compensation owed to a college athlete into the degree completion fund for the academic year in which the institution uses this option so long as all of the conditions are satisfied, as specified.
 - i) The institution will use the difference in revenue calculated pursuant to 12(a) above in its entirety, to make degree completion fund payment designations pursuant to this paragraph;

- ii) The institution will determine, for an academic year, the percentage of the total fair market compensation that college athletes on an intercollegiate athletics team at the institution represent of the total fair market compensation owed to all college athletes at the institution, regardless of sport. College athletes on the same intercollegiate team, regardless of sport, shall collectively receive this percentage of the difference in revenue calculated pursuant to 12(a) for the academic year;
 - iii) Each college athlete on the same intercollegiate team, regardless of sport, at the institution who qualifies for a degree completion fund payment designation pursuant to this paragraph shall receive an equal share of moneys calculated; and,
 - iv) Degree completion fund payment designations made pursuant to this paragraph will not result in any college athlete being designated more than fair market value compensation for any academic year.
- b) Specifies that an institution may opt to pay CAP Program fees before using revenue described in 12(a) for degree completion fund payment designations for college athletes.
- c) Requires that on or before June 15, 2025, and on or before every June 15 thereafter, each IHE must disclose publicly on its internet website, to its college athletes, to prospective college athletes it is recruiting for intercollegiate athletics, and to the CAP Recruiting Transparency Subpanel, as specified, whether the institution, for college athlete degree completion fund payment designations in the subsequent academic year, will use revenue calculated pursuant to this subdivision or provide fair market value compensation to qualifying college athletes pursuant to subdivision 5) above.
- i) Each IHE will include the information disclosed pursuant to 12(c) above in all of its written athletic grant agreement offers.
 - ii) On or before February 1, 2024, each institution of higher education shall disclose, for college athlete degree completion fund payment designations in the 2023–24 academic year, whether the institution will use revenue calculated pursuant to this subdivision or provide fair market value compensation to qualifying college athletes pursuant to 5) above.
- 13) Specifies that degree completion funds are the property of college athletes and not the property of institutions of higher education. Institutions of higher education will have a fiduciary duty to its college athletes to manage these funds.
- 14) Establishes that, if an IHE deems it necessary, the institution may adjust the amounts of degree completion fund payment designations only to comply with Title IX financial aid proportionality comparisons in athletics, so long as all of the following conditions are met:
- a) The aggregate total amount of degree completion fund payment designations made to the institution's college athletes is not reduced.
 - b) The institution is in compliance with Title IX financial aid proportionality comparisons in athletics independent of degree completion fund payment designations.

- c) On or before March 15, 2024, and on or before every March 15 thereafter, the institution publishes on its internet website and submits to the CAP Panel a written explanation about why an adjustment made pursuant to this subdivision is necessary to comply with Title IX proportionality comparisons in athletics, and includes both of the following in this written explanation:
 - i) Published communications, determinations, and rulings by the Office for Civil Rights used as the basis for the adjustment, as applicable.
 - ii) The amount of funds in aggregate and per college athlete directed from college athletes in one sport to college athletes in another sport, the names of each sport involved in the adjustment, and the corresponding fair market value compensation paid to college athletes in each sport involved in the adjustment. This subparagraph shall be implemented only in a manner that protects the personally identifiable information of college athletes consistent with state and federal privacy laws.
- 15) Declares that degree completion fund payment designations or payments will not serve as evidence of an employment relationship.
- 16) Specifies that, within 15 days of making degree completion fund payment designations, each IHE will submit annually to the CAP Panel a list of all college athletes qualifying for a degree completion fund payment designation, each qualifying college athlete's intercollegiate team, the amount paid to each qualifying college athlete, and the aggregate amount paid to qualifying college athletes by team. This subdivision shall be implemented only in a manner that protects the personally identifiable information of college athletes consistent with state and federal privacy laws.
- 17) Establishes that these provisions will apply only to a IHE with an intercollegiate sports team that participated in a NCAA Conference Division I sport on or after January 1, 2022.

Required notices

- 18) Establishes that an institution of higher education will distribute a notice to each college athlete at the institution containing all of the following information:
 - a) A college athlete's rights pursuant to Title IX of the federal Education Amendments of 1972 (20 U.S.C. Sec. 1681 et seq.);
 - b) An individual notice stating: "All students have the right to report a sexual assault, without retaliation, to law enforcement, the office of the Attorney General, the USDE's Office for Civil Rights, (insert name of institution)'s mandated reporters, (insert name of institution)'s Title IX office, and the College Athlete Protection Program director.";
 - c) A college athlete's rights pursuant to the federal Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act (20 U.S.C. Sec. 1092(f));
 - d) A college athlete's rights, as specified; and,
 - e) Additional rights that the state affords specifically to college athletes.

- 19) Requires the notice distributed pursuant 18) above will contain sufficient information to enable a college athlete to file a complaint for a violation of any of the rights identified in the notice. This information must include, but is not limited to, all of the following:
- a) The telephone number used by the Office for Civil Rights for complaint reporting intake, and the telephone number of the Office for Civil Rights' regional enforcement office;
 - b) The internet website address of the Office for Civil Rights' online complaint form for Title IX complaint reporting;
 - c) The internet website address used by the USDE for reporting violations of the federal Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act , as specified;
 - d) A list of the job classifications employed by the institution that are deemed mandated reporters, as specified, and the obligations of these mandated reporters;
 - e) The telephone number and internet website address for the CAP Program, once the program is operational pursuant to this chapter; and,
 - f) The telephone number of the Attorney General.
- 20) Specifies that an IHE will post on campus in conspicuous locations frequented by college athletes, including, but not limited to, the institution's athletic training facilities, the notice distributed pursuant to this section.
- 21) Requires that, upon the commencement of each academic year, the IHE will provide each college athlete a copy of the notice described in this section.

CAP Program

- 22) Establishes the CAP Program as a program in the Office of Planning and Research.
- 23) Specifies that the CAP Program will be administered by the CAP Panel. The CAP Panel will be housed in the Office of Planning and Research.
- 24) Establishes the 21-member CAP Panel shall be appointed as follows:
- a) Eleven members appointed by the Governor;
 - b) Five members appointed by the Speaker of the Assembly; and,
 - c) Five members appointed by the Senate Committee on Rules.
- 25) Specifies that the 21-member CAP Panel will consist of at least four former college athletes with experience in college athlete protection advocacy.

- 26) Specifies that CAP Panel members will be voluntary positions that receive per diem and paid travel accommodations, as determined by the CAP Program director. One member will be appointed by a majority vote of the CAP Panel's members to serve as chairperson of the CAP Panel.
- 27) Requires the Office of Planning and Research to hire and establish compensation for a CAP Program director. The CAP Program director will be a full-time position and serve a six-year term that may be renewed with no term limits. The CAP Program director will hire additional staff to assist in the implementation and enforcement of this chapter. The CAP Program director, within 10 days of being hired, will initiate staff hiring activities with the goal of completing hiring activities by April 15, 2024. Additionally:
- a) The CAP Program director will provide CAP Panel members with the information necessary to fulfill their duties pursuant to this chapter;
 - b) The CAP Panel will consult with the CAP Program director when establishing CAP Program regulations, standards, and policies pursuant to this chapter; and,
 - c) The CAP Program director may engage with intercollegiate athletics stakeholders, including state and federal legislators and agencies, to provide information and encourage policies and action to support the implementation, operation, and expansion of college athlete rights and protections pursuant to this chapter.
- 28) Specifies that a CAP Panel member on the initial 21-member board shall serve a four-year, five-year, or six-year term, as determined by the appointing authority. Additionally:
- a) It is the intent of the Legislature that the 21-member CAP Panel's members serve staggered terms;
 - b) All subsequent appointments made after the initial 21-member CAP Panel is appointed will be six-year terms with no term limits; and,
 - c) A CAP Panel member and the CAP Program director may be reappointed to their position or appointed to a new position as specified.
- 29) Specifies that a CAP Panel member and the CAP Program director must not have served, within five years of being appointed as a CAP Panel member or hired as the CAP Program director, respectively, as an affiliated medical personnel, employee, or member of a governing body of an IHE, an out-of-state college or university that has an intercollegiate sports program, an intercollegiate sports conference, or an intercollegiate sports association.
- 30) Requires the racial, ethnic, gender, and geographic diversity of California to be considered by the appointing authority when appointing CAP Panel members.
- 31) Specifies that the CAP Panel will consist of members who shall serve on the following CAP Subpanels, according to their expertise:
- a) The CAP Health and Safety Subpanel, which shall consist of all of the following:

- i) One member with expertise in sports medicine and traumatic brain injury;
 - ii) One member with expertise in athletic training or physical therapy in sports;
 - iii) One member with expertise in mental health;
 - iv) One member with expertise in workplace health and safety compliance and investigations;
 - v) One member with expertise in sexual misconduct investigations; and,
 - vi) Two members who are former college athletes with experience in athlete health and safety issues.
- b) The CAP Recruiting Transparency Subpanel, which shall consist of all of the following:
- i) One member with expertise in contract law;
 - ii) One member with expertise in college sports recruiting;
 - iii) One member with expertise in college athlete publicity rights law; and,
 - iv) One member who is a former college athlete with experience in the recruiting process.
- c) The CAP Certification Subpanel, which shall consist of all of the following:
- i) One member with expertise in sports agent certification;
 - ii) One member with expertise in financial advising standards;
 - iii) One member with expertise in marketing standards; and,
 - iv) One member who is a former college athlete with experience in agreements related to CAP certification duties.
- d) The General CAP Subpanel, which shall consist of all of the following:
- i) One member with expertise in health care administration, medical claims, and the federal Health Insurance Portability and Accountability Act of 1996, as specified;
 - ii) One member with expertise in compliance with Title IX in athletics;
 - iii) One member who is a certified public accountant with expertise in corporate financial audits and corporate compliance investigations;
 - iv) One member with expertise in arbitration;
 - v) One member with expertise in grievance and appeals processes; and,

vi) One member with expertise in producing educational materials.

32) Establishes that the CAP Panel will have all of the following enforcement duties and powers:

- a) Receive, track, and investigate complaints regarding reported violations, as specified;
- b) Issue subpoenas, if necessary, to obtain information necessary to carry out its duties;
- c) Require an IHE and out-of-state college or university, as specified, to provide athletic grants, make payments for college athlete medical coverage and expenses, and provide other remedies that the CAP Panel deems necessary to ensure compliance with this chapter;
- d) Refer individuals, institutions of higher education, and out-of-state colleges and universities that are subject to this chapter who do not comply with a CAP Panel penalty or remedy imposed as specified to the Attorney General for prosecution, as appropriate;
 - i) Establishes that the Attorney General will have the authority to prosecute individuals and entities that do not comply with a CAP Panel penalty or remedy, as appropriate.
- e) Determine the best practice guidelines, health and safety standards, policies, or other informational materials that may benefit high school athletes, high school sports programs, and the California Interscholastic Federation, and make them available and easily accessible to the public;
- f) At its discretion, implement collaborative and cost-reduction efforts with other states, local governments, intercollegiate sports conferences, intercollegiate sports associations, or other stakeholders to help protect the well-being of intercollegiate athletes in other states;
- g) Hold quarterly meetings;
- h) Distribute, on or before January 15, 2025, and each year thereafter, an annual report to each IHE, intercollegiate athletic conference, athletic association, and the Legislature, as specified, on the state of college athlete protections established pursuant to this chapter;
- i) Communicate with the Legislature about ways to improve these provisions; and,
- j) Upon appropriation by the Legislature, use funds in the CAP Fund to execute its duties and powers under this chapter.

33) Specifies that, in addition to any other remedy or penalty authorized by law, individuals who violate this chapter may be subject to remedies and penalties established pursuant to regulations adopted by the CAP Panel. These regulations will include a system to appeal the CAP Panel's rulings. Penalties and remedies established by the CAP Panel may include any, or any combination, of the following:

- a) Training to help prevent future violations;

- b) Temporary or permanent prohibition from being involved in intercollegiate athletics at any institution of higher education;
- c) Other penalties and remedies imposed by the CAP Panel; and,
- d) The CAP Panel shall consider all of the following factors when imposing penalties and remedies for a violation of this chapter:
 - i) The number and duration of violations;
 - ii) Whether the violation was the result of an intentional or negligent action; and,
 - iii) The nature and extent of harm caused by the violation.

Health and Safety Standards, CAP Health and Safety Subpanel

- 34) Requires an IHE to meet the health and safety standards that are developed, published, adopted, and enforced by the CAP Health and Safety Subpanel established as specified. In developing the health and safety standards, the CAP Health and Safety Subpanel must do all of the following:
- a) Consult with athletic associations, the UC, the CSU, and the athlete health and safety advocacy community;
 - b) Consider existing health and safety guidelines of relevant entities, including, but not limited to, the NCAA, intercollegiate athletic conferences, professional sports leagues, and the National Athletic Trainers' Association; and,
 - c) Develop health and safety standards to prevent serious sports-related injuries, abuse, health conditions, and death, including, but not limited to, those related to traumatic brain injury, sexual harassment and abuse, athlete mistreatment, interpersonal violence, mental health, heat illnesses, sickle cell trait, rhabdomyolysis, asthma, cardiac health, weight management, and pain management.
- 35) Specifies that all reports of suspected health and safety violations at an institution of higher education that occur on or after January 1, 2023, but before the CAP Health and Safety Subpanel adopts the health and safety standards pursuant to this section, will be submitted to the Department of Justice. The Department of Justice must forward the reports of suspected health and safety violations to the CAP Program director once the CAP Health and Safety Subpanel commences enforcing the health and safety standards adopted as specified.
- a) Requires, within 90 days of implementation of the CAP Health and Safety Subpanel's health and safety standards developed, published, and adopted pursuant to 34) above, an IHE to comply with all of the following:
 - i) Inform its athletic program employees and affiliated medical personnel of their responsibilities established pursuant to the standards;

- ii) Inform college athletes of their rights and protections established pursuant to the standards, and inform college athletes of their right to report suspected violations of the standards to the athletic program personnel of their choice, the Attorney General, and, once the CAP Health and Safety Subpanel commences enforcing the standards adopted pursuant to this section, the CAP Program director; and,
 - iii) Designate at least one employee to oversee compliance with this section and to serve as a point of contact for the CAP Health and Safety Subpanel and submit to the CAP Health and Safety Subpanel the point of contact's email address, telephone number, and mailing address. If the institution of higher education fails to designate the point of contact for the CAP Health and Safety Subpanel, the institution's athletic director shall serve as the point of contact.
- b) Notwithstanding 35(a) above, the CAP Health and Safety Subpanel may require institutions of higher education to comply with the health and safety standards earlier than 90 days after they are adopted if the CAP Health and Safety Subpanel determines, in its discretion, that such compliance is important to prevent great harm to college athletes.
- 36) Specifies that the CAP Health and Safety Subpanel will have all of the following duties and powers:
- a) Require transparency from IHEs on injury treatment options for college athletes;
 - b) Provide up-to-date information about sports-related health risks;
 - c) Ensure that physician, physical therapy, and athletic training records for all treatments of a college athlete by athletic program personnel in the course of the college athlete's participation in an athletic program are maintained for a period of 10 years after the college athlete leaves the athletic program. These records shall be provided to the college athlete or former college athlete in a timely manner upon request;
 - d) Ensure college athletes, athletic program personnel, and affiliated medical personnel are informed about their rights and responsibilities as specified;
 - e) Prevent deceptive or fraudulent practices that harm college athletes;
 - f) Calibrate mandates in consideration of athletic program size and resources when it deems it appropriate or necessary;
 - g) Require assistance from institutions of higher education to help survey college athletes and athletic program personnel, as necessary, under the CAP Program;
 - h) Conduct site visits and audits of athletic departments, as necessary, to verify compliance as specified;
 - i) Maintain and make publicly available on its internet website a list of individuals who are banned as specified from being involved in intercollegiate athletics at institutions of higher education; and,

- j) Adopt regulations to implement and enforce this section.
- 37) Specifies that all athletic program personnel, including employees, coaches, and affiliated medical personnel, must report suspected violations of this section to the president or chancellor of the institution, the athletic director of the institution, and the CAP Program director.
- 38) Specifies that an individual shall be banned for life from being involved in intercollegiate athletics at any IHE if the individual has been found by the CAP Health and Safety Subpanel or a court of law to have done any of the following:
- a) Caused a life-threatening medical condition, sexual abuse, or death due to noncompliance with a health and safety standard adopted as specified;
 - b) Caused a life-threatening medical condition, sexual abuse, or death by failing to address noncompliance with a health and safety standard adopted pursuant to this section;
 - c) Threatened or retaliated against a college athlete or any individual or entity that reported noncompliance with a standard adopted pursuant to this section that caused a life-threatening medical condition, sexual abuse, or death; and,
 - d) Obstructed or knowingly provided false information related to an investigation of noncompliance with a health and safety standard adopted pursuant to this section that caused a life-threatening medical condition, sexual abuse, or death.
- 39) Requires that, before a ban may be imposed pursuant to paragraph 38) above, the individual will be provided adequate notice and an opportunity for an administrative hearing conducted by an administrative law judge at which the individual shall have the right to defend themselves against any allegation of a violation as specified.
- 40) Requires any individual or entity designated by an IHE to investigate allegations of a violation of these provisions that knowingly omits evidence, conceals or obscures wrongdoing, undermines an investigation, or fails to carry out the responsibilities required by this section may be subject to a penalty imposed by the CAP Health and Safety Subpanel. Additionally:
- a) Before a penalty may be imposed as specified, the individual or entity must be provided adequate notice and an opportunity for an administrative hearing conducted by an administrative law judge at which the individual or entity shall have the right to defend themselves against any allegation of a violation as specified.
- 41) Provides that, except as determined by a college athlete, affiliated medical personnel will have the autonomous, unchallengeable authority to determine medical management and return-to-play decisions for the college athlete. Coaches and athletic program personnel who are not affiliated medical personnel must not give the college athlete medical advice or attempt to influence or disregard affiliated medical personnel decisions.
- 42) Requires that affiliated medical personnel will be supervised and held accountable to comply with the health and safety standards adopted pursuant to this section by an institution of

higher education's office or department that is independent of the institution's athletic department.

Medical expenses

43) Requires an IHE that reports \$20,000,000 or more in annual revenue to the USDE will be financially responsible for the out-of-pocket sports-related medical expenses of each college athlete at the institution, and during the two-year period beginning on the date on which the college athlete officially becomes a former college athlete.

- a) 43) above will not apply to a college athlete who transfers to another institution of higher education or out-of-state higher education institution and participates on an intercollegiate athletics team at that institution; and,
- b) 43) above will not apply to a college athlete's medical expenses for medical conditions unrelated to the college athlete's intercollegiate sports participation that arise after the expiration of the college athlete's intercollegiate athletics eligibility.

44) Requires an IHE that reports \$50,000,000 or more in annual revenue to the USDE to comply with both of the following:

- a) Offer nationally portable primary medical insurance to each college athlete who is enrolled at the institution. This insurance will be paid for by the institution. The institution must not discourage a college athlete from accepting this insurance; and,
- b) Pay the out-of-pocket sports-related medical expenses of each college athlete at the institution, and during the four-year period beginning on the date the college athlete officially becomes a former college athlete.
 - i) 44) above will not apply to a college athlete that transfers to another institution of higher education or out-of-state college or university and participates on an intercollegiate athletics team at that institution; and,
 - ii) 44) above will not apply to a college athlete's medical expenses for medical conditions unrelated to the college athlete's intercollegiate sports participation that arise after the expiration of the college athlete's intercollegiate athletics eligibility.

45) Establishes that, if a college athlete at an IHE that is responsible for the college athlete's medical expenses, as specified, chooses to receive medical care that is not provided as specified or is not otherwise provided or paid for by the institution, the institution will offer to the college athlete to pay an amount that is the lesser of the following:

- a) The out-of-pocket expenses for that medical care; and,
- b) The amount the institution would have paid if the college athlete had received the medical care provided or paid for by the institution.

46) Requires an IHE to pay for a college athlete to obtain an independent second opinion on an athletic program-related injury or medical condition endured by the college athlete.

Additionally:

- a) IHE personnel and affiliated medical personnel must not withhold a college athlete's medical or athletic training records if the college athlete requests that those records be released to obtain an independent second opinion as specified, or otherwise impede a college athlete's right to obtain an independent second opinion.

47) Requires that, no later than three days after the end of a college athlete's team season in the final year of the college athlete's intercollegiate athletics eligibility, or in the case of a transfer, no later than three days after the institution's receipt of a college athlete's notice of intent to transfer to another college or university, an institution of higher education must provide the college athlete notice of, and an opportunity to undergo, a physical examination within or independent of the institution for the purpose of diagnosing an athletic program-related injury or medical condition.

- a) Institution of higher education personnel and affiliated medical personnel must not discourage a college athlete or former college athlete from obtaining a physical examination; and,
- b) A former college athlete will be provided no less than 60 days to complete a physical examination.

Title IX compliance evaluation

47) Requires that, on or before July 1 of each year, an IHE must comply with both of the following:

- a) Complete an evaluation of its compliance with Title IX in athletics and the Office for Civil Rights' Title IX in athletics regulations. The evaluation must include an aggregate analysis to determine all of the following:
 - i) Whether financial aid is provided on a substantially proportional basis to the number of the institution's male and female college athletes;
 - ii) Whether the institution's male and female college athletes receive equivalent nonfinancial aid athletic treatment, benefits, and opportunities;
 - iii) Whether the interests and abilities of the institution's male and female college athletes are equally effectively accommodated. Evaluation as specified will include measures of the institution's performance on each part of the three-part test described in the Office for Civil Rights' Title IX in athletics regulations published on December 11, 1979; and,
 - iv) The institution's determination about whether it is in compliance with Title IX in athletics and the specific indicators that provide evidence of its compliance or noncompliance.

- b) Publish the evaluation on a publicly accessible internet website of the institution.
- 48) Requires that, at the beginning of the evaluation published pursuant to 47) above, the institution shall include the following statement: “To submit a Title IX complaint, you may contact” (contact information of the Office for Civil Rights and the institution’s Title IX coordinator) and state the appropriate contact information of the Office for Civil Rights and the institution’s Title IX coordinator.
- 49) Requires that an individual who is determined by the CAP Panel in an administrative hearing to have knowingly refused to comply with these provisions, or knowingly provided misleading information or knowingly omitted information that created an inaccuracy in an evaluation will be banned from being involved in intercollegiate athletics at any institution of higher education.
- a) Before a ban may be imposed, an individual must be provided adequate notice and an opportunity for an administrative hearing conducted by an administrative law judge to defend themselves against any allegation of a violation as specified.

Six year athletic grants, punishment for program reduction

- 50) Requires an IHE with an intercollegiate sports team that participated in a NCAA Division I sport on or after January 1, 2022, or becomes a member of a NCAA Division I sport thereafter, and that provides a college athlete with an athletic grant to provide the college athlete with an athletic grant for each subsequent year in which the college athlete is enrolled at the institution for up to six academic years of total full-time college attendance, or until the college athlete receives a baccalaureate degree from the institution, whichever occurs first. The athletic grant must be provided regardless of the college athlete’s lack of participation due to injury or poor athletic performance on an intercollegiate athletics team at the institution.
- a) The amount of an athletic grant provided to a college athlete each subsequent award year will be no less than the sum of the amount of the athletic grant provided to the college athlete for the previous year plus the amount of any increase in the cost of attendance at the institution from the previous year to the subsequent award year.
- 51) Specifies that a college athlete who transfers to an IHE will receive an athletic grant in an amount determined pursuant to 50) above for up to one academic year beyond the college athlete’s remaining intercollegiate athletics eligibility in which the college athlete is enrolled at the institution, or until the college athlete receives a baccalaureate degree from the institution, whichever occurs first. Additionally:
- a) Unless a college athlete is granted a leave of absence in accordance with the IHE’s leave of absence policies that apply to the general student body, 50) above will only apply to a college athlete who is enrolled as a full-time student for each regular academic term of an award year;
- b) 50) above will not apply to a college athlete who provides a written notice of voluntary withdrawal from an intercollegiate athletics team at the institution, or who fails to consistently participate in mandatory team athletics activities for nonmedical reasons

after having been fully informed that their participation in those activities is mandatory;
and,

- c) 50) above will not apply to a college athlete who meets any of the following:
- i) Is found by the institution of higher education to have committed academic fraud or other misconduct that would ordinarily result in expulsion;
 - ii) Earns a grade point average of less than the grade point average required for the college athlete to maintain intercollegiate athletics eligibility for two or more semesters;
 - iii) Fails to meet intercollegiate athletic association progress toward degree completion requirements; or,
 - iv) Is found guilty of a criminal act by a court.

52) Specifies that, if the CAP Panel determines in an administrative hearing that an IHE has eliminated roster slots on an athletic program's team, reduced aggregate athletic grant amounts, or eliminated an intercollegiate sport entirely while paying an athletics administrator or coach an annual salary of \$500,000 or more, the athletic director or equivalent representative of the institution of higher education shall be suspended from involvement in intercollegiate athletics at an institution of higher education for, at minimum, three academic years, as determined by the CAP Panel.

- a) Before a suspension may be imposed, the individual shall be provided adequate notice and an opportunity for an administrative hearing conducted by an administrative law judge to defend themselves against any allegation of a violation.

53) Specifies that an individual employed by or volunteering for an athletic program at an IHE will not do either of the following:

- a) Attempt to discourage or in any way punish a college athlete from selecting a course or an academic major unless it prevents the college athlete from intercollegiate athletic association progress towards baccalaureate or postgraduate degree completion; and,
- b) Punish, reduce intercollegiate athletics eligibility, or otherwise retaliate against a college athlete based on the college athlete's selection of any course, academic major, or baccalaureate or postgraduate degree program at the institution.

54) Requires an individual employed by an athletic program at an IHE to not interfere with or discourage any college athlete from securing employment or internships, participating in student groups or events, or serving as a volunteer so long as those activities do not interfere with mandatory class time, examination periods, or the athletic program's mandatory team activities.

55) Specifies that an IHE must not comply with any athletic association's or athletic conference's policy that does not count completed high school financial education and personal finance coursework toward athletic eligibility standards for incoming college athletes.

Recruiting transparency

- 56) Requires an IHE or an out-of-state college or university conducting college athlete recruiting activities in the state shall submit, as determined by the CAP Recruiting Transparency Subpanel, all of the following information to the CAP Recruiting Transparency Subpanel:
- a) A complete list of companies and industries that the institution prohibits a prospective college athlete from entering into an NIL agreement with as a college athlete or intercollegiate athlete;
 - b) Whether or not the IHE or out-of-state college or university may interfere with or otherwise attempt to influence a prospective college athlete's, college athlete's, or intercollegiate athlete's choice of athlete representation;
 - c) Whether or not the IHE or out-of-state college or university may limit a prospective athlete's, college athlete's, or intercollegiate athlete's representation to NIL activities; and,
 - d) Whether or not the IHE or out-of-state college or university receives any payment or benefit from an individual or entity in exchange for granting the individual or entity access to their college athletes or intercollegiate athletes for any NIL-related purpose.
- 57) Requires that the CAP Recruiting Transparency Subpanel must solicit the information described in 56) above and post information obtained on a publicly accessible internet website for prospective college athletes, college athletes, and intercollegiate athletes. The information described must be posted on or before October 1, 2024, and regularly updated thereafter.
- 58) Specifies that an IHE will only use a document created by the CAP Recruiting Transparency Subpanel to offer an athletic grant or intercollegiate athletics participation opportunity to a prospective college athlete. An out-of-state college or university offering an intercollegiate athletics grant or intercollegiate athletics participation opportunity to a California resident will only use a document created by the CAP Recruiting Transparency Subpanel to offer an intercollegiate athletics grant or intercollegiate athletics participation opportunity to a California resident. A document developed as specified may be annually updated by the CAP Recruiting Transparency Subpanel and must include, but is not limited to, all of the following disclosures:
- a) The amount of intercollegiate sports grants to be offered to the prospective college athlete, relative to the most recent cost of attendance at the institution, for each academic year of the prospective athlete's intercollegiate athletics eligibility;
 - b) The total amount of possible annual education-related compensation allowable in accordance with the *United States Supreme Court decision in National Collegiate Athletic Association v. Alston (2021) 141 S.Ct. 2141* and the annual amount of education-related compensation to be offered to the prospective college athlete at the institution throughout the prospective college athlete's intercollegiate athletics eligibility;

- c) The amount of an intercollegiate sports grant, if any, that will be provided to assist the prospective college athlete with undergraduate and graduate school degree completion at the institution following the expiration of the college athlete's intercollegiate athletics eligibility;
 - d) The percentage of comprehensive medical coverage, including any minimum required coverage to participate in intercollegiate athletics and enroll as a student at the institution, that will be paid for by the institution throughout the college athlete's intercollegiate athletics eligibility;
 - e) The percentage of any out-of-pocket sports-related medical expenses, including deductibles, copays, and coinsurance, that will be paid by the institution during the college athlete's intercollegiate athletics eligibility, and the duration for which those expenses will be covered after the prospective athlete's intercollegiate athletics eligibility expires. The percentage of out-of-pocket sports-related medical expenses covered by the institution's in-network and out-of-network services shall be stated on the CAP Panel's internet website pursuant to this section;
 - f) Whether or not the institution will pay for a disability insurance policy for the college athlete in order to cover any future loss of earnings by the athlete due to a sports-related injury or medical condition, and any limits to that policy's benefits or coverage, including the maximum possible benefits based on similarly situated college athletes;
 - g) A list of all colleges and universities, if any, that the institution will not allow the athlete to freely transfer to once the agreement to attend the institution is executed; and,
 - h) The disclosures described in 56) above, as determined by the CAP Recruiting Transparency Subpanel, at the beginning of the first page of a document provided to a college athlete pursuant to this subdivision.
- 59) Specifies that this section does not prohibit an IHE or out-of-state college or university this is subject to this section from providing protections or benefits that exceed those required by this section.

CAP Certification Subpanel

- 60) Requires the CAP Certification Subpanel established as specified to certify an individual or entity to provide intercollegiate athletics agent, marketing, and financial advising services to college athletes.
- 61) Specifies that, no later than six months after the launch of the CAP Certification Subpanel's certification operations, an individual or entity will not provide intercollegiate athletics agent, marketing, or financial advising services to college athletes without the CAP Certification Subpanel's certified approval or receipt of other certification to provide those services established under law.
- 62) Requires the CAP Certification Subpanel to develop and adopt standards for it to do all of the following:

- a) Certify all of the following:
 - i) College athlete agents;
 - ii) Agencies and entities that employ college athlete agents;
 - iii) Attorneys that represent college athletes in NIL contracts. This does not replace or preempt any other state or local regulation of attorneys in the state;
 - iv) Individuals and entities that provide financial advising or marketing services to college athletes. This does not replace or preempt any federal, state, or local regulation of financial advising or marketing services in the state;
 - b) Revoke certifications provided pursuant to 62(a) above; and,
 - c) Protect college athletes from unfair fees and conditions for intercollegiate athletics agent, marketing, and financial advising services.
- 63) Specifies that the CAP Certification Subpanel may assess certification fees, certification renewal fees, fines, and penalties on individuals and entities that do not comply with the standards developed and adopted pursuant 62) above. Fees assessed by the CAP Certification Subpanel pursuant to this paragraph shall not exceed the reasonable regulatory costs incurred by the CAP Certification Subpanel incident to issuing certifications, performing investigations, inspections, and audits related to certification, and the administrative enforcement and adjudication of the certification process.
- a) The CAP Certification Subpanel must develop an appeals process for an individual or entity to challenge a certification denial or revocation or any fee, fine, or penalty levied against the individual or entity; and,
 - b) Fees and fines collected must be deposited in the CAP Fund as specified.
- 64) Specifies that the CAP Certification Subpanel will not adopt a standard that requires an individual to have a baccalaureate degree, an associate's degree, or a graduate degree to provide athletic agency, marketing, or financial advising services to college athletes.
- 65) Establishes that, notwithstanding any other provision, the CAP Certification Subpanel may authorize individuals and entities who have college athlete representation certifications issued by other states or entities to operate as college athlete representatives without obtaining certification from the CAP Certification Subpanel or paying certification fees assessed by the CAP Certification Subpanel. Additionally:
- a) The CAP Certification Subpanel may enter into collaborative college athlete certification program agreements with other states or entities; and,
 - b) To prevent conflicts of interest, the CAP Certification Subpanel will not certify college athlete representation provided by an institution of higher education, an out-of-state college or university, an intercollegiate athletic conference, or an athletic association.

66) Requires the CAP Certification Subpanel shall promulgate regulations for purposes of implementing and enforcing this section, as necessary.

CAP Panel IHE fees

67) Requires that, on or before January 15, 2024, and annually thereafter, each institution of higher education that was a member of the NCAA on or after January 1, 2022, must pay an annual fee to the Office of Planning and Research, in an amount determined by the CAP Panel pursuant to 68) below, to cover the reasonable regulatory costs of the CAP Program. The annual fees collected pursuant to this section shall not exceed seven million dollars (\$7,000,000) in aggregate per year. The CAP Panel may increase the annual fee limit to account for inflation. The annual fees shall be deposited in the CAP Fund as specified.

68) Specifies that the CAP Panel shall base the annual fees on each institution's total athletics revenue in the most recently published report that was submitted pursuant to the federal EADA to the USDE. The CAP Panel must establish the annual fees pursuant to all of the following requirements, and may adjust these fees, without exceeding the annual aggregate limit determined as specified:

- a) IHEs with athletic revenue of less than \$2,499,999 shall each pay an annual fee of up to \$100;
- b) IHEs with athletic revenue between \$2,500,000 and \$19,999,999, inclusive, will each pay an annual fee of up to 0.01 percent of their total athletics revenue from the previous year;
- c) IHEs with athletic revenue between \$20,000,000 and \$29,999,999, inclusive, will each pay an annual fee of up to 0.1% of their total athletics revenue from the previous year;
- d) IHEs with athletic revenue between \$30,000,000 and \$59,999,999, inclusive, will each pay an annual fee of up to 0.3% of their total athletics revenue from the previous year;
- e) IHEs with athletic revenue of at least \$60,000,000 will each pay an annual fee of up to 1.3% of their total athletics revenue from the previous year; and,
- f) Two-year institutions of higher education shall each pay an annual fee of up to one \$100.

69) Specifies that, notwithstanding 67) and 68) above, for the first year in which an annual fee is assessed on IHEs, an IHE's annual fee shall be the maximum amount that may be assessed to the institution. Additionally,

- a) If the total amount of annual fees collected exceeds the reasonable regulatory costs of the CAP Program, up to \$7,000,000, the CAP Program director shall return from the fund, upon appropriation by the Legislature, one-half of the annual fee paid by institutions of higher education pursuant to the following priority schedule until the total amount exceeding the reasonable regulatory costs of the CAP Program, up to seven million dollars (\$7,000,000), is returned:
 - i) Institutions described in paragraphs (1) and (6) shall receive first priority;

- ii) Institutions described in paragraph (2) shall receive second priority;
 - iii) Institutions described in paragraph (3) shall receive third priority;
 - iv) Institutions described in paragraph (4) shall receive fourth priority; and,
 - v) Institutions described in paragraph (5) shall receive fifth priority;
- b) It is the intent of the Legislature that the CAP Program director return annual fees pursuant to this paragraph within 60 days of being hired.

Financial workshops

- 70) Requires an IHE to administer a financial and life skills development workshop program. An IHE will require each college athlete at the institution to attend the financial and life skills development workshop program during the college athlete's first and third year of participation in an athletics program at the institution.
- 71) Specifies that a program developed pursuant to this section will include, but is not limited to, information on both of the following:
- a) The rights of college athletes, as specified; and,
 - b) State and federal tax information, including NIL-related taxes, time management skills, personal budgeting, debt management, credit management, and interest rates information.
- 72) Requires a program developed as specified will not include any marketing, advertising, referral, or solicitation by providers of commercial products or services.

Penalty exemptions for college athletes

- 73) An IHE will not uphold any rule, requirement, standard, or other limitation that prevents a college athlete at the institution from fully participating in intercollegiate athletics without penalty for any of the following:
- a) For receiving food, shelter, medical expenses, or medical or disability insurance from any source;
 - b) For receiving payment to cover expenses, direct provisions, or in-kind benefits from any source for purposes of transportation, room, board, and incidentals at college, or for purposes of meeting with legislators, providing testimony, or meeting with government agencies regarding intercollegiate athletics; and,
 - c) For a college athlete's family member or friend receiving payment, direct provisions, or in-kind benefits from any source for transportation, room, board, and incidentals to support the college athlete during any period in which the college athlete is addressing a physical or mental health concern.

Retaliation

- 74) Requires that an IHE and the institution's employees, coaches, and affiliated medical personnel will not retaliate against a college athlete for filing a complaint or reporting a violation of a college athlete's rights as specified.
- 75) For purposes of this chapter, "retaliation" includes all of the following:
- a) A reduction in or loss of playing time that is not justified by objective measures of athletic performance or compliance with team or the institution of higher education's policies that do not conflict with this chapter or any federal or state laws;
 - b) A reduction in or loss of any education benefits, including athletic grants, merit-based scholarships, or any other compensation;
 - c) A reduction in or loss of any meal benefits provided to the college athlete;
 - d) A reduction in or loss of any housing benefits provided to the college athlete, including the relocation of the college athlete's housing owned by the institution of higher education;
 - e) A reduction in or loss of athletics or team communications, academic support or records, access to training facilities, or medical treatment;
 - f) Pressure to not file a complaint or to withdraw a complaint; and,
 - g) Threats, ridicule, or physical punishment.

CAP Fund

- 76) Establishes the CAP Fund. The CAP Panel will administer the CAP Fund. The CAP Fund will serve as the repository of all moneys appropriated or collected pursuant to this chapter, except as specified. Moneys in the fund may be used, upon appropriation by the Legislature, by the CAP Panel or a CAP Subpanel for purposes of implementing and enforcing this chapter. Up to 5 percent of moneys in the CAP Fund, unless otherwise encumbered, may be used, upon appropriation by the Legislature, by the CAP Panel or a CAP Subpanel for administrative costs of implementing and enforcing these provisions.

Broad regulatory authority

- 77) Authorizes the CAP Panel to promulgate regulations for purposes of implementing and enforcing this chapter, as the CAP Panel deems appropriate or necessary.

Enforcement provision

- 78) Specifies that the Act not limit the enforcement authority of any state or federal agency or shield violators from liability.

Severability

- 79) Declares that the provisions of the Act are severable. If any provision or its application is held invalid, that invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application.

Repeals elements of current law

- 80) Repeals sections of current law pertaining to the degree completion fund, a notice of student rights, and retaliation.

Reimbursement

- 81) If the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code.

EXISTING LAW:

- 1) Defines a “postsecondary educational institution” as any campus of the University of California or the California State University, an independent institution of higher education, or a private postsecondary educational institution. (Education Code (EDC) Section 67456)
- 2) Establishes that an IHE may establish a degree completion fund, in accordance with applicable rules and bylaws of the governing body of the institution and applicable rules and bylaws of any athletic association of which the institution is a member. (EDC Section 67452.3)
- 3) Requires each athletic program at an IHE to 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. (EDC Section 67452)
- 4) Clarifies retaliation by an IHE includes but is not necessarily limited to, a reduction in or loss of any education benefits, including scholarships and stipends; meal benefits provided to a student athlete; or any housing benefits provided to a student athlete, including the relocation of a student athlete to different housing owned by the IHE. (EDC Section 67455)
- 5) Prohibits a postsecondary educational institution from upholding any rule, requirement, standard, or other limitation that prevents a student of that institution participating in intercollegiate athletics from earning compensation as a result of the use of the student’s name, image, or likeness. Earning compensation from the use of a student’s name, image, or likeness shall not affect the student’s scholarship eligibility. (EDC Section 67456(a)(1).)
- 6) Prohibits an athletic association, conference, or other group or organization with authority over intercollegiate athletics, including the NCAA, from preventing a student of a postsecondary educational institution participating in intercollegiate athletics from earning compensation as a result of the use of the student’s name, image, likeness, or athletic reputation, and from preventing a postsecondary educational institution from participating in intercollegiate athletics as a result of that compensation. (EDC Sections 67456(a)(2) & (3).)

- 7) Restricts a postsecondary educational institution, athletic association, conference, or other group or organization with authority over intercollegiate athletics from providing a prospective student athlete with compensation in relation to the athlete's name, image, likeness, or athletic reputation. (EDC Sections 67456(b).)
- 8) Prohibits a postsecondary educational institution, athletic association, conference, or other group or organization with authority over intercollegiate athletics from preventing a California student participating in intercollegiate athletics from obtaining professional representation in relation to contracts or legal matters, including, but not limited to, representation provided by athlete agents or legal representation provided by attorneys. Representation obtained by student athletes shall be from persons licensed by the state, as specified. (EDC Sections 67456(c).)
- 9) States that no public funds should be used in connection with any athletic program conducted under the auspices of a public postsecondary educational institution, or any student organization within the postsecondary educational institution, that does not provide an equivalent opportunity to both sexes for participation and use of facilities. The factors considered when determining whether an educational institution has provided equivalent opportunity include, but are not limited to, travel arrangements, scholarships, medical facilities, and compensation of coaches. (EDC Section 66271.8)

FISCAL EFFECT: Unknown

COMMENTS: *Purpose.* According to the author, “there is a tremendous need for AB 252 because California’s college athletes are governed by athletic associations that do not enforce health and safety standards to prevent serious injury, abuse, and death; and impose rules that have violated antitrust laws and have caused athletes economic harm. College athletes’ athletic time demands result in unacceptably low federal graduation rates among Black college athletes that produce the most athletic revenue, there is a lack of transparency and accountability regarding important athletic program policies for college athletes and recruits, and there is a need to certify athlete agent representatives to help prevent college athletes from bad actors.”

The author also noted that “college athletes are often put in harm's way as the institutions they represent prioritize winning over athlete safety. Coaches are incentivized to secure victories as it can lead to job stability and salary increments, while athletic trainers are often driven by the fear of being fired if they raise concerns that could potentially impact the team's performance. This misplaced emphasis on winning over athlete well-being is a concerning trend that requires immediate attention and resolution. It is an ongoing hazard to allow universities to police the treatment of their athletes when the universities’ negligence and mistreatment are primary forces in harming the well-being of so many athletes.”

Background- what is the NCAA? The NCAA is a voluntary, membership association of nearly 1,100 colleges and universities, athletics conferences and sports organizations that administer intercollegiate athletics. Although the NCAA promotes intercollegiate athletics and student-athletes, its core function is to create rules and ensure a level playing field in intercollegiate athletic competition. Representatives from member schools and conferences propose, debate, and vote on bylaws that govern the association. The NCAA enforces these rules, which govern, among other things, student-athlete financial aid, employment, and transfer eligibility.

The Intercollegiate Athletic Association, the predecessor of the NCAA, was founded in 1906 to address the violence then plaguing college football. More broadly, the founders sought to set national standards for all collegiate sports. It adopted the NCAA name in 1910. The NCAA constitution states that the organization’s purpose is to “provide student-athletes with the opportunity to participate in sports and compete as a vital, co-curricular part of their educational experience. The member schools and conferences likewise are committed to integrity and sportsmanship in their athletics programs and to institutional control of and responsibility for those programs. The basic purpose of the NCAA is to support and promote healthy and safe intercollegiate athletics, including national championships, as an integral part of the education program and the student-athlete as an integral part of the student body.” To achieve its goals, the NCAA issues and enforces rules that govern aspects such as recruiting, eligibility, academic standards, and the requirements for schools to be classified into Divisions I, II, and III.

Name, Image, Likeness: On June 30, 2021, the NCAA Division 1 Board of Directors approved an interim name, image and likeness (NIL) policy. This new policy allows all NCAA Division I, II, and III student-athletes to be compensated for their NIL as of July 1, 2021, regardless of whether their state has a NIL law in place or not. California was one of the first states to establish an NIL policy, as passed by SB 206 (Skinner), Chapter 383, Statutes of 2019, and strongly influenced the implementation of NCAA’s policy.

The NCAA NIL rules do not override state, college/university or conference specific NIL rules. This means student-athletes need to review the NIL rules in the state where their school is located and check with their athletic department for any school and conference-specific rules to understand what limitations they will have on their NIL.

NCAA v. Alston (Jan. 2021). The Supreme Court found that by limiting education-related compensation that college athletes are permitted to receive from their schools, the NCAA is acting in violation of Section 1 of the Sherman Act, which prohibits any “contract, combination, or conspiracy in restraint of trade or commerce.” The Court reached this conclusion by affirming the lower court’s application of the “rule of reason” – a judicial doctrine of antitrust law.

In *Alston*, the athletes challenged the NCAA compensation limits as reducing competition among colleges and universities as to what those schools would otherwise provide the athletes. Given this restriction on competition, the NCAA relied on its longstanding position that the uniqueness of its product – the status of student athletes as amateurs – required antitrust deference and pointed for support to the 1984 decision in *NCAA v. Board of Regents*. Specifically, the NCAA’s procompetitive justification for the status quo (whereby the NCAA limits athlete compensation tied to academics and athletics and mostly prohibits athlete monetization of name, image, and likeness rights) was that the survival of the *product* of college athletics depends on such restrictions by the NCAA. It reasoned that intercollegiate athletics differentiates itself from professional sports chiefly through the amateur (read, *unpaid*) status of its athletes, therefore diminishing the purity of amateurism through unrestrained athlete payment—even for academic expenses—would render intercollegiate athletics obsolete.

The *Alston* Court rejected this argument, holding that the *Board of Regents* was inapplicable to questions of athlete compensation and that the decision’s oft-cited commentary that the NCAA enjoys “ample latitude” under federal antitrust law was mere dicta that could not insulate the NCAA from antitrust scrutiny. Specifically, the Court found the NCAA had failed to show any economic analysis as to how or why the consumer market for college sports might be irrevocably

destroyed by teenage athletes receiving from their school's unrestrained *educational benefits*. The Court noted, in contrast, that the *Alston* plaintiffs were able to show the very opposite—namely that the popularity of college sports had *increased* in the years following increased allowances in educational benefits allocation.

In its unanimous 9-0 decision in *NCAA v. Alston*, the Supreme Court upheld a ruling by the U.S. Court of Appeals for the Ninth Circuit that struck down NCAA caps on student athlete academic benefits (*i.e.* reimbursements and pay for academic-related expenses) on antitrust grounds.

The Student Athlete's Bill of Rights (SABR). Several of the protections provided for California student athletes contained in the SABR (specifically EDC Sections 67452 and 67453) are limited to universities that receive, on average, at least \$10 million in annual income from media rights for intercollegiate athletics. This number is a minority of California colleges and universities, and has traditionally only included UC Berkeley, Stanford, the University of Southern California (USC), and UC Los Angeles. The rapid increase in athletics media rights deals – and the lack of inflation growth built into current law – means that other universities with robust athletics programs might also soon fall under these specific provisions of SABR.

Specifically, these SABR provisions requires an intercollegiate athletic program at any campus of the UC, CSU, or private four-year university in California to provide to students whose athletic scholarship is not renewed, an equivalent scholarship (when combined with the total duration of any previous athletic or other scholarship received by the student) for a total of at least five years or until the student completes his or her undergraduate degree, whichever period is shorter.

The law also requires athletic programs to promptly approve a qualifying student athlete's written request to transfer to another institution without actively or passively imposing any restrictions or condition. Implementation must include granting other institutions permission to contact the student athlete and waiving residency requirements, as permitted by athletic association rules.

The SABR also requires an athletic program to be responsible for any and all medical expenses of its student athletes resulting from their participation in the athletic program, irrespective of whether the student athlete is still in school, has graduated, or is no longer enrolled in the school, so long as the medical expenses result from the student athlete's participation in the athletic program, and to adopt and implement guidelines to prevent, assess, and treat sports-related concussions and dehydration, and exercise and supervision guidelines for any student athlete identified with potentially life-threatening health conditions who participates in an athletic program.

Colleges must also 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 actions involving his or her participation in the athletic program.

Committee staff notes that the provisions of AB 252 (Holden) significantly exceed those outlined in SABR - specifically the requirement to provide medical care following the conclusion of one's athletic career and the addition provision for six years of scholarship time for athletes receiving an athletic grant both. The annual revenue metric used for expanded medical care detailed 43) and 44) above makes it difficult to account for the change from media rights fees; however, the requirement that all Division I athletes receiving an athletic grant be granted up to six academic

years of total full-time college attendance detailed in 50) above significantly expands on the provisions of EDC Section 67452.

Degree completion fund. AB 252 (Holden) recasts and expands upon the degree completion fund established in current law by AB 1573 (Holden), Chapter 382, Statutes of 2019. As was noted in Committee analyses when AB 1573 was moving through the process, the Degree Completion Fund was instituted, in part, to allow California to comply with new NCAA Bylaws creating such funds for former basketball student-athletes. The bylaw, now known as Bylaw 15.01.5.2.1, specifies that “an institution that provides athletically related financial aid to basketball student-athletes shall provide, at a minimum, tuition and fees, and course-related books to a former basketball student-athlete who requests financial aid to complete his or her first baccalaureate degree, provided:

- 1) The former student-athlete received athletically related financial aid while previously enrolled at the institution.
- 2) Fewer than 10 years have elapsed since the former student-athlete's departure from the institution.
- 3) The former student-athlete's most recent enrollment as a full-time student occurred at the institution.
- 4) The former student-athlete was previously enrolled as a full-time student at the institution for a minimum of two academic years (four semesters or six quarters).
- 5) The former student-athlete meets all institutional admissions and financial aid requirements.
- 6) The former student-athlete has exhausted other available degree completion funding options (e.g., funds from a professional league or contract).
- 7) The former student-athlete is in good academic standing at the institution and meets NCAA and institutional progress-toward-degree requirements. This requirement applies to initial and continuing eligibility for degree completion funds.

Committee staff notes that provisions of AB 252 (Holden) detailed starting with 50) above will, if implemented, likely render the current version of the degree completion fund unnecessary.

The sponsor of AB 252 (Holden), the National College Players Association (NCPA), writes that “California colleges impose a collusive athlete compensation limit that is far below fair market compensation. The US Supreme Court’s 9-0 ruling against the NCAA in *NCAA v Alston* affirms this fact. Collusive athlete pay limits violate antitrust laws and California colleges are participating in this illegal activity. This multibillion college sports enterprise imposes discriminatory practices that disproportionately harm Black athletes, while predominantly White coaches and administrators make millions of dollars. College athletes throughout predominantly White sports receive fair market compensation, but athletes in the only predominantly Black sports (FBS football and men’s and women’s basketball) do not. All college athletes should have the opportunity to receive fair market pay.”

NCPA continues that “this racially unjust exploitation is amplified by the fact that Black men’s basketball players, women’s basketball players, and FBS football players have unacceptably low graduation rates – 42.6%, 62.7%, and 63.9%, respectively. Chronically low graduation rates among Black athletes persist as do the 40-50 hours/week athletes report spending on their sport. AB 252 (Holden) would be a powerful counterweight to structural obstacles that work against athletes’ academic success because it would condition much of the pay on degree completion. This is a much better use for athletic revenue that will otherwise be spent on ever increasing raises for coaching salaries. Head football coaches at UC Berkeley, UCLA, Stanford, and USC are \$4.75 million, \$4.8 million, \$8.9 million, and \$11 million, respectively.”

As noted by NCPA, this reenvisioning of the Degree Completion Fund would condition the payment of funds upon graduation, and is designed “for its college athletes who receive athletic grants but do not receive fair market value compensation in an academic year” (see 4) above).

Fair market value compensation. Fair market value is defined in 252 (Holden) (see 2(j) above) as “an amount of compensation for each college athlete who receives an athletic grant that is determined annually by subtracting the intercollegiate athletic team’s aggregate athletic grants from one-half of the intercollegiate athletic team’s revenue and dividing that difference by the number of athletic grants provided to college athletes on that team”.

The author noted in his committee background sheet that “AB 252 would ensure Division I college athletes have a potential path toward receiving 50% of the revenue their team generates. This percentage is defined as Fair Market Value pay in AB 252 because it reflects a revenue share percentage based on agreements that professional athletes and their respective leagues negotiate in good faith.”

Committee staff notes that revenue share varies greatly based on the sport. For example, while athletes in the National Basketball Association and Major League Baseball receive close to 50% fighters in the United Fighting Championship receive 16-20%, while athletes in the Women’s National Basketball Association receive approximately 25%.

The mechanisms for determining revenue distribution in AB 252 (Holden) are outlined beginning with 5) and 12) above, respectively.

Multiple intuitions wrote in opposition the degree completion fund and fair market value compensation formula contained within AB 252. The UC Office of the President wrote that “AB 252 would create numerous problems for UC athletic programs, including diverting funds to a select group of UC student-athletes and limiting a program's ability to fund and support other athletic teams, notably women's teams. UC athletic departments use their revenues to fund student-athlete-related support for all teams, including meals, nutritional services, team travel, academic counseling, athletic trainers, medical personnel and treatment, team equipment, mental health counseling, and more. UC estimates that requirements outlined in AB 252 to create, manage, and distribute degree completion funds for qualifying student-athletes would have a fiscal impact in the range of \$38 million to \$40 million annually systemwide.”

The University of Southern California wrote that “AB 252 would require a massive rerouting of funds away from sports that do not generate revenue—women’s and Olympic sports—in order to make substantial payments to male student-athletes (specifically, football and men’s basketball players). USC Athletics operates with the expectation that almost all of our 21 sports programs will not generate revenue to cover their costs. Instead, those programs rely on funding from the

positive revenue generated by football and men's basketball. USC projects that AB 252's revenue scheme would direct payments to its male football and basketball student-athletes each year that would be nearly equal to the entire combined annual cost of operating its other 19 sports. The net result is that AB 252 will force USC and other California universities to cut funding to and potentially eliminate, non-revenue and lower-revenue sports programs. One of the devastating potential effects of this change would be to drive Olympic athletes out of California."

The concern about fund redistribution negatively impacting non-revenue generating sports is echoed by opposition from the Team USA Athletes' Commission, which wrote that "we are very concerned that the bill as drafted positively impacts a few athletes in revenue generating sports to the detriment of many. We believe that there must be a better solution to help athletes with high-market value access funding and enhance the student-athlete experience that does not have such significant negative impacts on the broad-based athletics system. Without requiring a specific reallocation of athletic department dollars, we believe the ramifications of the passage of AB 252 would likely result in the loss of Olympic and Paralympic sport opportunities. The redirection of compensation as proposed in this bill will likely result in the loss of sports and/or the reduction of other sport/athlete support."

Title IX. Title IX prohibits sex discrimination in all educational institutions that receive federal funding. This applies to all aspects of education and types of sex discrimination including athletics, sexual harassment and assault, harassment based on gender identity, science and math education, and facilities and course offerings.

The California Labor Federation wrote that "Black college athletes make up the majority of revenue for sport athletes yet, suffer some of the lowest graduation rates. And although Title IX—federal law that sought to ensure gender equity in education settings—has been in place for 50 years, a clear lack of Title IX compliance in athletics programs persists across many colleges."

The sponsor, NCPA, also wrote that "We are in the 50th year anniversary of Title IX, but there is still a glaring difference between the college sports participation between men and women. There are 8000 fewer female college athletes compared to male college athletes in California. This is a red flag that screams for both transparency and accountability related to California colleges' Title IX compliance."

Yet, Title IX implications regarding the degree completion fund and revenue sharing implications were a major note of opposition to AB 252 (Holden). Stanford University wrote that "The Title IX implications of AB 252 are of great concern. Whereas AB 252 purports to provide equal opportunity among all student-athletes, pragmatic application of the bill will result in substantial revenue payments to the benefit of a disproportionate number of male student-athletes. Additionally, in order to maintain gender equity and comply with their federal law compliance obligations, schools will be required to make legal arguments to a body not charged or employed to enforce Title IX before allocating athletics-related financial assistance equitably. The convoluted revenue sharing model proposed in AB 252 and the burdensome requirements related to Title IX would make it exceptionally challenging for California higher education institutions to comply with their Title IX obligations."

The California State University Chancellor's Office also expressed Title IX concerns, writing that "CSU athletic departments operate under tight budgets, and this reallocation of revenue

would harm smaller, non-revenue generating athletic programs and the services provided to all student athletes. The revenue sharing framework may also create gender inequities among our student athletes and place CSU campuses out of compliance with federal Title IX regulations. Our analysis shows that the redistribution of revenue between male and female student athletes would be disproportional. At one campus, for example, male student athletes make up thirty-eight percent of all student athletes but would receive sixty-five percent of the funds. The majority of funds would go to football, men's basketball, and women's basketball players, which are only a small portion of all student athletes."

AB 252 (Holden) address the proportionality requirement in Title IX, making explicit provisions that IHEs may make adjustments to degree completion fund payments, provided the aggregate total amount of degree completion fund payment designations made to the institution's college athletes is not reduced, and that the IHE is in compliance with Title IX financial aid proportionality comparisons in athletics independent of degree completion fund payment designations.

CAP Program. The CAP Program and Panel established pursuant to AB 252 (Holden) is a wide-ranging oversight body that is similar to the body proposed in AB 1435 (Gonzalez Fletcher), of 2017. This Program, located in the Office of Planning and Research, would include a 21-member panel comprised of individuals with specific backgrounds and experiences. The body would also have the authority to conduct investigations, issue subpoenas, create regulations, evaluate misconduct, and determine sanctions up to and including a lifetime ban from being involved in intercollegiate athletics at any institution of higher education.

The author wrote in his background sheet that this CAP Program and Panel will be crucial in identifying and enforcing health and safety standards to prevent serious injury, abuse, and death among college athletes. The author also contends that the various subpanels will:

- 1) Require California colleges to provide transparency about the degree to which they are complying with Title IX;
- 2) Prioritizes the preservation of all sports by suspending an athletic director that chooses to cut sports participation while paying athletic personnel \$500,000 or more;
- 3) Establishes an athlete representative certification program; and,
- 4) Creates a state program funded by college athletic revenue fees to carry out functions to fulfill and enforce the Act.

Opposition raised major concerns about the Cap Panel. The Association of Independent California Colleges and Universities (AICCU) wrote that, "the creation of the CAP Panel, funded by a mandatory fee structure imposed on all colleges and universities, creates a new layer of state bureaucracy. The powers of the panel are extensive, with duties and powers that include, but are not limited to, investigating complaints for violations of the bill provisions, issuing subpoenas, referring colleges and universities to the Attorney General for prosecution, and implementing cost-reduction efforts with other states and sports conferences. It is unclear why a new state entity is needed, or appropriate, to carry out the duties proposed for the CAP Panel, and what compelling reason there is to create a framework that further diminishes institutional athletics budgets to fund it."

Committee comments. Should the Committee wish to pass AB 252 (Holden), the author may wish to consider the following:

- 1) *Modifying implementation dates.* The implementation dates in AB 252 (Holden) are extremely ambitious, and would likely be impossible to meet in practice. For example, the bill would require payment of fees for the CAP Panel to be paid on January 15, 2024, a mere 14 days after this legislation would go in effect (see 67) above). The author may wish to consider delaying all dates by at least one year to give the CAP Program time to hire a Director.
- 2) *Panel composition.* The CAP Panel composition is very complex. The split in appointment authority, combined with the requirement that nearly all members have a relevant expertise, will likely make it difficult to manage Panel appointment and thus impact the work for the Subpanels. The author may wish to consider alternate options for committee appointment and membership that create flexibility and build in the possibility for membership vacancies.
- 3) *Degree Completion Fund Construct and Distribution.* The author may consider working with stakeholders to find an appropriate mechanism that properly compensates student athletes while ensuring an institution of higher education's athletic program continues to be sustained and equitable. This is especially true when considering the impact that degree completion fund distribution would have on non-revenue generating programs.

Prior legislation. SB 26 (Skinner), Chapter 159, Statutes of 2021, expanded the existing authority for a collegiate student athlete to receive compensation to also include compensation earned from the use of the student's athletic reputation and moves up the implementation date of existing statutes relative to compensation earned from the use of a student athlete's name, image, or likeness.

AB 609 (Kamlager, 2021) would have required institutions of higher learning to (1) pay their athletes in sports generating high revenue in comparison to the amount of scholarships awarded; (2) comply with federal law requiring equal opportunity to participate in college athletics, regardless of gender and to suspend an athletic director from intercollegiate athletics responsibilities in the state for three years if such compliance is not achieved; and (3) limit compensation for athletics administrative personnel. AB 609 died in the Assembly Committee on Arts, Entertainment, Sports, Tourism, and Internet Media.

AB 1573 (Holden), Chapter 382, Statutes of 2019, added three provisions of law designed to support and protect the rights of student athletes at institutions of higher learning. Specifically, the bill: 1) authorizes schools to establish degree completion funds; 2) directs schools to develop, post, and disseminate specified information regarding existing student athlete rights; and, 3) prohibits schools from retaliating against student athletes who report violations of student athletes' rights.

SB 206 (Skinner), Chapter 383, Statutes of 2012, allows, commencing on January 1, 2023, college student athletes to earn compensation for the use of their own name, image, or likeness (athletic endorsements). This bill allows student athletes to obtain professional legal representation, such as that provided by a sports agent, in relation to their college athletics. This bill provides protections for student athletes that elect to engage in the compensation and representation activities described therein.

SB1525 (Padilla) Chapter 625, Statutes of 2012, enacted a SABR and places specified requirements on collegiate athletic programs commencing with the 2013-14 academic year and ending January 1, 2021. (Chapter 625; 2012)

REGISTERED SUPPORT / OPPOSITION:

Support

California Labor Federation, AFL-CIO
National College Players Association
United Steelworkers District 12
5 Individuals

Opposition

Association of Independent California Colleges & Universities (AICCU)
California State University, Office of the Chancellor
Stanford University
Team USA Athletes' Commission
United States Olympic & Paralympic Committee
University of California
University of Southern California
USA Swimming
USA Track & Field
USA Water Polo

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