

Date of Hearing: April 17, 2018

ASSEMBLY COMMITTEE ON HIGHER EDUCATION

Jose Medina, Chair

AB 2747 (Holden) – As Amended April 9, 2018

[Note: This bill is double referred to the Assembly Committee on Judiciary and will be heard by that Committee as it relates to issues under its jurisdiction.]

SUBJECT: Student Athletes Bill of Rights: student athlete liaisons: collegiate athlete mandated reporters

SUMMARY: Authorizes college athletes to self-organize, as specified. Requires campuses to establish a process by which the complaints of student athletes may be reported and investigated, as specified. Prohibits a student athlete from being penalized for receiving gifts or income, as specified. Establishes and defines collegiate mandated reporters, as specified. Specifically, **this bill:**

- 1) Adds to the Student Athlete Bill of Rights (SABR) provisions declaring that college athletes have the right to self-organization and requires institutions of higher education (IHE), as defined, to provide student athletes with designated information.
- 2) Requires IHEs to establish a process by which the complaints of student athletes about violations of the National Collegiate Athletic Association (NCAA) Bill of Rights and SABR enacted under this part or other pertinent state statutes, and institutional policies may be reported and investigated.
- 3) Requires IHEs to appoint student athlete liaisons with duties and responsibilities that would include being available to all student athletes of the institution and to record and investigate the complaints of student athletes, as specified.
- 4) Specifies that student athletes have the right to enforce a provision SABR in the superior court through a civil action for injunctive relief or money damages, or both. The bill would require the court to award court costs and reasonable reimbursement for attorneys' fees to a student athlete who is the prevailing party in such an action.
- 5) Prohibits a student athlete, IHE, or athletic conference, as defined, from being required to agree to adjudication, in another state, of a claim or controversy that arises in California.
- 6) Prohibits a student athlete from being penalized for receiving any gift or income that can be demonstrated to be generally available to the students of the IHE who are not athletes or for being accused of a noncriminal violation in which the investigation or adjudication has not been completed, as specified.
- 7) Authorizes IHEs to establish a degree completion fund with contributions earmarked for student athletes participating in one or more intercollegiate teams to collect income or financial gifts given to student athletes pursuant to specified requirements.

- 8) Authorizes the Civil Rights Enforcement Section of the State Department of Justice to have specified powers and responsibilities for the investigation of complaints, and the prosecution of violations, of the SABR.
- 9) Authorizes the Civil Rights Enforcement Section of the State Department of Justice to impose specified fines to be deposited in the SABR Enforcement Fund, which this bill will create in the State Treasury. The moneys deposited in the fund would be available, upon appropriation by the Legislature, for enforcement of the SABR
- 10) Specifies that administrative proceedings related to enforcement provisions of this bill would be conducted by the Office of Administrative Hearings in compliance with the Administrative Procedure Act.
- 11) Specifies that provisions of this bill will become operative only if the head of the Civil Rights Enforcement Section of the Department of Justice certifies, in writing, to the Secretary of State that a national athletic association has enacted changes in its bylaws so that institutions of higher education in this state will not be penalized by that athletic association for compliance with the SABR.
- 12) Defines “collegiate athlete mandated reporters” to be:
 - a) Athletic coaches, as defined to include assistant coaches or graduate assistants involved in coaching, employees of collegiate athletic programs, and medical professionals providing care to students on behalf of a collegiate athletic program at public and private educational institutions; and,
 - b) Employees of an intercollegiate athletic conference or intercollegiate multiconference association or athletic association.
- 13) Requires collegiate athlete mandated reporters to make an initial report by telephone and a follow up report in writing if he or she has knowledge of, or observes, a college athlete who the collegiate athlete mandated reporter knows or reasonably suspects has been a victim of abuse or neglect. This provision would apply to both minor and adult college athletes.

EXISTING LAW:

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

- 3) Finds and declares that College students are more vulnerable to rape than any other age group, and that Colleges should provide special sexual assault seminars for all athletic coaches and administrators and members of athletic teams. (EDC Section 67390)
- 4) Applies the following to an IHE that receives, as an average, at least \$10 million in annual income from media rights for intercollegiate athletics.
 - a) Requires an IHE, if an athletic program does not renew an athletic scholarship of a student athlete who suffers an incapacitating injury or illness resulting from participating in the athletic program and is determined to be medically ineligible, to provide an equivalent scholarship for up to five academic years as specified. (EDC Section 67452)
 - b) Requires an athletic program to provide an equivalent scholarship to a student athlete who was on an athletic scholarship and is in good standing but has exhausted his or her athletic eligibility, for up to one year. (EDC Section 67452)
 - c) Requires each athletic program to be responsible for paying the premiums of each of its student athletes whose household has an income and asset level at or below the level for Cal Grant A recipients for insurance covering claims resulting from their participation in the athletic program. (EDC Section 67453)
 - d) Requires an athletic program to be responsible for paying the insurance deductible for a claim of any student athlete who suffers an injury resulting from participation in the athletic program. (EDC Section 67453)
 - e) Requires an athletic program, if a student suffers an injury resulting from participation in the athletic program that requires ongoing medical treatment, to provide for at least two years following the student's graduation or separation from the IHE either the necessary medical treatment or health insurance that covers the injury and resulting deductibles. (EDC Section 67453)
- 5) Establishes the Child Abuse and Neglect Reporting Act and states that the intent and purpose of the Act is to protect children from abuse and neglect. (Penal Code Section 11164.)
- 6) Specifies the occupations that are mandated reporters, including but not limited to teachers, athletic coaches, employees of a child day care facilities, peace officers, firefighters, doctors, emergency medical technicians, licensed family therapists, animal control officers, and clergy. Additionally, provides that employers of mandated employees are strongly encouraged to provide training in the duties in child abuse and neglect identification and training in child abuse and neglect reporting. Whether or not employers provide their employees with training in child abuse and neglect identification and reporting, the employers shall provide their employees who are mandated reporters a statement of their duty to report. (Penal Code Section 11165.7.)

FISCAL EFFECT: Unknown.

COMMENTS: *Need for the bill.* According to the author, "The bill addresses long standing issues concerning the treatment of student athletes. Student athletes are faced with tremendous challenges as they balance a demanding practice and game schedule with fulltime course work.

These athletes are also expected to maintain a strict code of conduct dictated by more than just their coach or school, but by the NCAA. Even as these high expectations are maintained, the performance of athletes earns recognition or funding for the school, but athletes' needs are not always paid attention to. For example, there are reports of physical abuse, most notably at Michigan State, where students were uncomfortable speaking about the violations or did not have the violation adequately addressed. Many athletes are also prohibited from having jobs so they have limited resources to cover their everyday needs. For many athletes at Division one schools, a violation of NCAA bylaws means they not only lose their place on the team, but they lose their scholarship and access to an education. The current college athletics system creates a world where students assume all of the risk—physically, emotionally, financially, and academically—but colleges and the NCAA receive almost all the reward.”

The author also notes that, “Current law consists of the Student Athletes Bill of Rights which is a good foundation for how we should treat athletes, however, colleges are limited regarding their own student athletes policies because they are required to follow NCAA bylaws in order to participate in tournaments. There is no law to address the NCAA bylaws, but it is the bylaws that need to change to allow schools the flexibility to accommodate the needs of their college athletes. This bill will authorize the attorney general to prosecute and fine the NCAA, as an entity that does business in California, for not allowing schools to follow the provisions in this bill or any other California law.”

The National College Players Association (NCPA) writes that, “Athlete abuse incidents have made national headlines in recent years, but the NCAA will not act to address athlete abuse. The NCAA asks colleges to “self-police” which too often leads to cover-ups and continued player abuse. The NCAA denies California’s college athletes basic due process rights and creates an environment that athletes accused of breaking NCAA rules are guilty until proven innocent.”

“The NCAA also prohibits colleges from using a portion of their windfall revenue for a degree completion fund outlined in AB 2747. The state of California should not allow this. California college athlete graduation rates rank among the worse in the nation. 81 of California’s college teams across 29 Division I and Division II colleges have graduation rates below 60%, with an average graduation rate of 45%. African American male athletes suffer the lowest graduation rates in each sport.”

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

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

The major sanctioning organizations include the NCAA, the National Association of Intercollegiate Athletics (NAIA), the National Junior College Athletic Association (NJCAA), the

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

National Collegiate Athletic Association and Pac-12 Conference rules. According to the NCAA's Web site, "NCAA full scholarships cover tuition and fees, room, board and course-related books. Most student-athletes who receive athletic scholarships receive an amount covering a portion of these costs. Division I schools may provide student-athletes with multiyear scholarships. Additionally, Division I schools may pay for student-athletes to finish their bachelor's or master's degrees after they finish playing NCAA sports.

If a school plans to reduce or not renew a student-athlete's aid, the school must notify the student-athlete in writing by July 1 and provide an opportunity to appeal. In most cases, coaches decide who receives a scholarship, the scholarship amount and whether it will be renewed." "NCAA bylaws require that member institutions verify student-athletes have insurance coverage for athletically related injuries, with limits up to the deductible of the NCAA Catastrophic Injury Insurance Program (currently \$90,000), before they can practice or play. Members are permitted to provide that coverage, but they are not required to do so. Coverage can be provided through the school, a parent/guardian policy or a policy student-athletes have on their own. If coverage by some source is not in place, the student-athlete cannot practice or play.

The NCAA provides all student-athletes at all active member institutions coverage under the catastrophic program. This program provides \$20 million in lifetime benefits to student-athletes who become totally disabled while practicing or playing. These benefits include medical expenses as well as disability benefits. An injured student-athlete is eligible to receive medical benefits after the policy deductible (currently \$90,000) is met."

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

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

Student of color and racial bias. A 2016 study titled "Black Male Student-Athletes and Racial Inequities in NCAA Division I College Sports: 2016 Edition" was published by the University of Pennsylvania Center for the Study of Race & Equity in Education. The author noted that "...the purpose of this report is to make transparent racial inequities in the Atlantic Coast Conference (ACC), Big Ten Conference, Big 12 Conference, Pac 12 Conference, and the Southeastern Conference (SEC)." This study found that during the 2014-15 academic school year, Black men were 2.5% of undergraduate students, but 56.3% of football teams and 60.8% of men's basketball teams. The study also found that Across four cohorts, 53.6% of Black male student-

athletes graduated within six years, compared to 68.5% of student-athletes overall, 58.4% of Black undergraduate men overall, and 75.4% of undergraduate students overall.

A study published in 2017 attempted to assess racial resentment by focusing NCAA pay-to-play policies because, according to the authors, it is a policy issue that involves no federal action and no government redistribution of resources. Titled “Prejudice or Principled Conservatism? Racial Resentment and White Opinion toward Paying College Athletes” and published in *Political Research Quarterly*, the study analyzed responses to public opinion survey questions from the 2014 Cooperative Congressional Election Study (CCES) and Amazon’s Mechanical Turk.

The responses came from 1,000 survey recipients - 674 of them self-identifying as white - to three questions used by political scientists to measure racial resentment among whites and concluded that:

- 1) Whites were more likely than blacks to oppose college athlete pay-for-play.
- 2) Harboring negative racial views about blacks was the single strongest predictor of white opposition to paying athletes—more important than age, education level, political affiliation, sports fandom, or even if respondents had played college sports themselves.
- 3) The more negatively white respondents felt about blacks, the more they opposed pay-for-play.
- 4) Racially resentful whites who were primed to think about African-American athletes before answering questions were more likely to oppose paying athletes than racially resentful whites who were primed to think about white athletes.

Opposition and concerns. Opposition to this bill comes from both public and private institutions, and represents athletic programs ranging from Pac-12 schools to small NAIA-affiliated institutions. They collectively wrote to the Committee expressing seven major points of opposition.

- 1) *Self-organization.* Stanford University writes that, “The proposed legislation provides student-athletes with the right to self-organization. The term “self-organization” is not defined in the bill, but language is modeled after code provisions that give employees the right to unionize... Several years ago, an effort was made by football student-athletes at Northwestern to self-organize and the National Labor Relations Board (NLRB) ultimately declined jurisdiction thereby defeating the effort. Since then, student-athletes have sought employment status in furtherance of their effort to receive federal minimum wage rights, and the case was ultimately dismissed by the court. Students who attend college and participate in athletics as a co-curricular activity are no more employees than students who participate in other co-curricular programs like theater or the arts.”

The University of Southern California (USC) also notes that, “The NCAA has adopted a number of rule changes in recent years, including granting the Power Five conferences (the ACC, Big 10, Big 12, SEC, and Pac-12) substantial autonomy to pass rules that would allow them to give athletes more resources, including additional financial aid. The NCAA has also significantly loosened meal restrictions and several conferences have guaranteed four-year scholarships.” (Pac-12 rules are summarized above)

- 2) *Appointment of a Student-Athlete Liaison.* The California State University (CSU) notes that, “While we appreciate the author’s concerns, CSU campuses already have multiple protections and safeguards in place for student athletes, including the designation of a Faculty Athletic Representative (FAR) on each campus. The individual in this position is typically a faculty member who reports directly to the President of each campus on issues related to academics of the student athlete, but who is also empowered to investigate any rule violations that may occur on campus.”
- 3) *Eligibility.* The Association of Independent Colleges and Universities (AICCU) notes that, “The bill also prohibits a student athlete who is accused of a rule violation, other than a criminal charge, from being deprived of eligibility for competition until the investigation has been completed. It is important to note, that this would mean that a student athlete who was under investigation for, among other things, sexual assault or harassment, would have to be allowed to take the field during investigations by a Title IX office, since there are usually no criminal proceedings until after a Title IX office has done an investigation.”

Stanford University also writes that, “This provision is in conflict with federal regulations that require us to follow certain procedures when any of our students, including student-athletes, are accused of a Title IX offense. In certain circumstances a university may be required by Title IX to take action against a student in the absence of a criminal charge. Under this bill, in such a case, a university would face the choice of complying with federal law to protect a Title IX victim or comply with state law and protect a student-athlete. Moreover, because the bill only protects student-athletes, in the above scenario a student-athlete would receive treatment more favorable than a non-student-athlete.”

- 4) *Civil action for injunctive relief.* The University of California (UC) writes that, “This right could have detrimental consequences to UC athletic programs as it will inevitably increase the volume of litigation, which is costly to defend even in meritless cases. In addition, because any of the provisions of the act could provide a basis for a lawsuit, it increases the likelihood of threatened lawsuits as a negotiating tactic to garner a settlement. Increased costs due to litigation and settlements could negatively affect UC campuses’ willingness or ability to offer scholarships to students. Additionally, there is nothing in current California law that would prevent students from taking action if they feel they were treated unfairly and it is not the experience of UC campuses that there is need for such action.”
- 5) *Degree completion fund.* Stanford University notes that, “The bill permits a degree completion fund; however, this section is extremely confusing, and the purpose of the fund is unclear. It appears that the purpose of the fund is to create a mechanism to appropriate money to student-athletes outside of the scholarship process. This provision, like a number of other provisions of the bill would put California’s athletic programs in conflict with NCAA rules and could make our student athletes ineligible for intercollegiate competition.”
- 6) *Mandated reporters.* AICCU notes that, “The bill would change the current mandatory reporting language. Currently, the mandatory reporting law is aimed at preventing the sexual or physical abuse, statutory rape, or sexual exploitation of a child under 18. This law was applied to California’s institutions of higher education as a result of the crimes that occurred at Penn State. This bill would alter the section of law directed at protecting minors by including adult student athletes, which is not the intent of this code section. Furthermore, the

language actually changes the commonly accepted mandated reporter language from “knows or reasonably should have known” to “knows or suspects,” this could have serious unintended consequences.”

- 7) *Confusion with terms, definitions, and implementation.* Opposition noted numerous concerns regarding sections SB 2747 that lacked clarity or definitions. For example, AICCU notes that, “we are not clear on what NCAA Bill of Rights the bill makes reference to, as the NCAA does not have a Bill of Rights.” USC also notes that, “the term “College athlete” is similarly vague. As drafted, and when taken in conjunction with the provisions of AB 2220, the scope of [SABR] would cover thousands of additional “club” and “intramural” students at university campuses – thus dramatically increasing the costs associated with the act.”

Committee comments and recommendations. Staff notes that language pertaining to mandated reporting falls under the purview of the Assembly Committee on Judiciary, to which this bill is double referred.

Committee staff recommends, and the author has approved, removing Sections 1, 2, 4, and 5 from the bill.

Committee staff recommends, and the author has approved, making substantial changes to the optional degree completion fund provided for in Section 3 of the bill. As currently drafted, national athletic associations would to change their bylaws before the fund could be implemented. Upon graduation, athletes would be able to receive full distribution of any remaining funds within 60 days of receiving his or her undergraduate degree. Committee staff understands the degree completion fund was inspired by an existing program that allows for Olympic medalists to keep their winnings (currently \$25,000 for gold medals, \$15,000 for silver medals and \$10,000 for bronze medals), and an NCAA Degree Completion Award Program for both Division I and Division II athletes.

Staff notes that Olympic athletes, under rare circumstances, would be able to participate in two Olympic Games while maintaining athletic eligibility. Staff also notes that the NCAA Degree Completion Fund only pays for tuition, fees, and an allowance for textbooks and expenses.

As amended, Section 3 of the bill will read: **An institution of higher learning may establish a degree completion fund.**

In order to meet policy committee deadlines, the amendments described above will be processed by the Assembly Committee on Judiciary.

Moving forward, the author may wish to consider working with stakeholders to identify ways that a degree completion fund will best serve student-athletes as they move towards their goal of degree completion.

Prior legislation. AB 2220 (Bonta), which will be heard by this Committee today, would expand SABR from four universities to all intercollegiate athletic programs that provide athletic scholarships, as defined, and would remove the limitation in existing law for funding of SABR provisions to media rights revenues derived from the university athletic department. It would rename SABR as the College Student Athlete Bill of Rights (CSABR). It would further provide a private right of action, as specified, to college athletes who claim to have had any rights

established under the CSABR violated by an institution of higher education, including any of its personnel, as defined, and change references from "student athlete" to "college student athlete." Currently pending before the Assembly Committee on Higher Education.

AB 1435 (Gonzales-Fletcher), of 2017, would establish the College Athlete Protection Act under the administration of the College Athlete Protection Commission, which would be established by the bill, for the protection of college or university athletes participating in intercollegiate athletic programs offered by institutions of higher education located in California. Currently pending before the Senate Committee on Business and Professions.

AB 735 (Ridley-Thomas), Chapter 220, Statutes of 2016, removed the sunset form the SABR.

SB 1525 (Padilla), Chapter 625, Statutes of 2012, created the original SABR discussed as "Existing Law" above.

AB 1743 (Campos), Chapter 16, Statutes of 2012, clarified that the online scholarship disclosures required of a California postsecondary educational institution only apply to institutions that offer athletic scholarships to "student athletes."

AB 2079 (Torlakson-Davis), Chapter 592, Statutes of 2010 provided that all California postsecondary educational institutions that offer athletic scholarships are required to provide specified scholarship information on their websites.

AB 95 (Torlakson), of 2008-09, would have required athletic recruiters to provide student athletes with specified information relating to the college athletic program within one week of initiating personal contact with the student athlete for purposes of athletic recruiting. Status: Filed with the Chief Clerk pursuant to Joint Rule 56. Died pursuant to Art. IV, Sec.10(c) of the Constitution.

SB 193 (Murray), of 2002-03, would have prohibited California institutions of higher education from participating in any organizations that regulates student athletic scholarships, including the NCAA. Status: Held in the Assembly Higher Education Committee.

REGISTERED SUPPORT / OPPOSITION:

Support

National College Players Association (Sponsor)

Opposition

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

Analysis Prepared by: Kevin J. Powers / HIGHER ED. / (916) 319-3960