

117TH CONGRESS
1ST SESSION

H. R. 2841

To prohibit a covered athletic association and institution of higher education from prohibiting a student athlete from participating in intercollegiate athletics because such student athlete enters into an endorsement contract, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

APRIL 26, 2021

Mr. GONZALEZ of Ohio (for himself, Mr. CLEAVER, Mr. RODNEY DAVIS of Illinois, Mr. GOTTHEIMER, Mr. STIVERS, Mr. ALLRED, Mr. HUDSON, and Ms. DAVIDS of Kansas) introduced the following bill; which was referred to the Committee on Energy and Commerce, and in addition to the Committee on Education and Labor, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To prohibit a covered athletic association and institution of higher education from prohibiting a student athlete from participating in intercollegiate athletics because such student athlete enters into an endorsement contract, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Student Athlete Level
5 Playing Field Act”.

1 **SEC. 2. CONTRACTS RELATING TO STUDENT ATHLETES**
2 **AND COLLEGE AND UNIVERSITY ATHLETIC**
3 **PROGRAMS.**

4 (a) PROHIBITION.—Subject to the exceptions in sub-
5 section (b), a covered athletic organization or institution
6 of higher education may not prohibit a student athlete
7 from participating in intercollegiate athletics because such
8 student athlete enters into an agency contract or an en-
9 dorsement contract or otherwise receives consideration for
10 such student athlete’s name, image, or likeness.

11 (b) EXCEPTIONS FOR ENDORSEMENT CONTRACTS.—
12 A covered athletic organization or institution of higher
13 education may prohibit a student athlete from entering
14 into an endorsement contract with the following categories
15 of brands, companies, or types of contracts:

16 (1) A tobacco company or brand, including any
17 vaping device or e-cigarette or related product.

18 (2) Any alcohol company or brand.

19 (3) Any seller or dispensary of a controlled sub-
20 stance, including marijuana.

21 (4) Any adult entertainment business.

22 (5) Any casino or entity whose primary busi-
23 ness is sponsoring or promotion of gambling activi-
24 ties.

25 (c) PERMISSIBLE PROHIBITIONS.—A student athlete
26 may be prohibited by the institution of higher education

1 of the student athlete from wearing any item of clothing
2 or gear with the insignia of any entity during any athletic
3 competition or athletic-related university-sponsored event.

4 (d) RESULTANT PROHIBITIONS ON INSTITUTIONS OF
5 HIGHER EDUCATION FROM ENTERING INTO CERTAIN
6 SPONSORSHIP AND ENDORSEMENT CONTRACTS.—

7 (1) FROM PROHIBITIONS ON ATHLETES.—If a
8 covered athletic organization or institution of higher
9 education prohibits a student athlete from entering
10 into an endorsement contract pursuant to subsection
11 (b), such covered athletic organization or institution
12 of higher education may not enter into or continue
13 in any sponsorship or endorsement contract for itself
14 with the same category or categories of brands, com-
15 panies, or types of contracts described in paragraphs
16 (1) through (5) of such subsection.

17 (2) FROM PROHIBITIONS BY A COVERED ATH-
18 LETIC ORGANIZATION.—If a covered athletic organi-
19 zation prohibits a student athlete from entering into
20 a contract pursuant to subsection (b), any institu-
21 tion of higher education that is a part of that cov-
22 ered athletic organization may not enter into any
23 sponsorship or endorsement contract for itself with
24 the same category or categories of brands, compa-

1 nies, or types of contracts described in paragraphs
2 (1) through (5) of such subsection.

3 **SEC. 3. ENFORCEMENT.**

4 (a) UNFAIR OR DECEPTIVE ACTS OR PRACTICES.—

5 A violation of section 2 shall be treated as an unfair and
6 deceptive act or practice in violation of a regulation under
7 section 18(a)(1)(B) of the Federal Trade Commission Act
8 (15 U.S.C. 57a(a)(1)(B)) regarding unfair or deceptive
9 acts or practices.

10 (b) POWERS OF THE FTC.—The Federal Trade

11 Commission shall enforce this section in the same manner,
12 by the same means, and with the same jurisdiction, pow-
13 ers, and duties as though all applicable terms and provi-
14 sions of the Federal Trade Commission Act (15 U.S.C.
15 41 et seq.) were incorporated into and made part of this
16 Act. Any person that violates this section shall be subject
17 to the penalties and entitled to the privileges and immuni-
18 ties provided in the Federal Trade Commission Act (15
19 U.S.C. 41 et seq.). Nothing in this Act shall be construed
20 to limit the authority of the Federal Trade Commission
21 under any other provision of law.

22 **SEC. 4. COVERED ATHLETIC ORGANIZATION COMMISSION.**

23 (a) ESTABLISHMENT.—There is established the Cov-
24 ered Athletic Organization Commission (in this section re-

1 ferred to as the “Commission”), whose purpose shall be
2 to—

3 (1) make recommendations to Congress and to
4 each covered athletic organization about the imple-
5 mentation of name, image, and likeness rules;

6 (2) recommend to each covered athletic organi-
7 zation such a process to certify or recognize
8 credentialed athlete agents;

9 (3) make recommendations for the establish-
10 ment of an independent dispute resolution process,
11 for any dispute arising between a student athlete
12 and a covered athletic organization or institution of
13 higher education; and

14 (4) make recommendations for additional cat-
15 egories of endorsement contracts that are excepted
16 under section 2(b).

17 (b) MEMBERSHIP.—The Commission shall consist of
18 13 members appointed in accordance with subsection (c)
19 from among or in accordance with the following:

20 (1) Institutions of higher education, including
21 athletic directors and coaches.

22 (2) At least two individuals who are current or
23 former student athletes who advocate for the inter-
24 est of student athletes.

1 (3) Administrators of covered athletic organiza-
2 tions.

3 (4) Professionals with expertise in sports mar-
4 keting, contracting, and public relations.

5 (5) Individuals—

6 (A) with expertise in corporate governance;
7 and

8 (B) who are not associated with any cov-
9 ered athletic association or institution of higher
10 education.

11 (c) APPOINTMENT.—

12 (1) IN GENERAL.—Not later than 60 days after
13 the date of enactment of this Act, members of the
14 Commission shall be appointed as follows:

15 (A) Three members appointed by the
16 Speaker of the House of Representatives.

17 (B) Three members appointed by the mi-
18 nority leader of the House of Representatives.

19 (C) Three members appointed by the ma-
20 jority leader of the Senate.

21 (D) Three members appointed by the mi-
22 nority leader of the Senate.

23 (E) One member, who shall be the chair of
24 the Commission, selected by the members ap-
25 pointed under subparagraphs (A) through (D)

1 not later than 60 days after the appointment of
2 such members, and agreed upon by no fewer
3 than eight of such members. If eight such mem-
4 bers are unable to agree on an appointment
5 under this subparagraph within such 60 day pe-
6 riod, the Speaker of the House of Representa-
7 tives shall make the appointment under this
8 subparagraph.

9 (2) DIVERSITY.—To the extent practicable, the
10 Speaker and leaders making appointments under
11 paragraph (1) shall coordinate their appointments to
12 ensure that the Commission reflect diversity in gen-
13 der, race, sport with which they are associated, as
14 applicable, and shall prioritize the appointment of
15 members unaffiliated with divisions or conferences of
16 applicable covered athletic organizations.

17 (d) MEETINGS AND QUORUM.—Meetings of the Com-
18 mission shall be held at the call of the chair appointed
19 under subsection (c)(1)(E). A meeting may only be held
20 where there is a quorum of at least 7 members, including
21 not fewer than two members who are current or former
22 student athletes who advocate for the interest of student
23 athletes.

24 (e) REPORT.—Not later than one, two, and three
25 years, respectively, after the Commission shall be con-

1 stituted, it shall submit to the Committee on Energy and
2 Commerce of the House of Representatives and the Com-
3 mittee on Commerce, Science, and Transportation of the
4 Senate annual reports that include the recommendations
5 in paragraphs (1) through (4) of subsection (a). The Com-
6 mission shall also make such reports available to the pub-
7 lic.

8 (f) SUNSET.—The Commission shall terminate 60
9 days after submitting the final report required under sub-
10 section (e).

11 **SEC. 5. INSTITUTIONS OF HIGHER EDUCATION AND STU-**
12 **DENT ATHLETES WHO ENTER INTO EN-**
13 **DORSEMENT CONTRACTS.**

14 Section 487(a) of the Higher Education Act of 1965
15 (20 U.S.C. 1094(a)) is amended by adding at the end the
16 following:

17 “(30) In the case of an institution that has a
18 student attending the institution who is an athlete
19 and has entered into an endorsement contract (as
20 defined under section 2 of the Sports Agent Respon-
21 sibility and Trust Act (15 U.S.C. 7801)) or an agen-
22 cy contract (as defined in section 9 of the Student
23 Athlete Level Playing Field Act), such institution
24 will not—

1 “(A) prohibit such student from entering
2 into such an endorsement contract or an agency
3 contract, including through a rule, standard, or
4 policy that affects the eligibility of such student
5 to receive athletically related student aid (as de-
6 fined in section 485(e) of the Higher Education
7 Act of 1965 (20 U.S.C. 1092(e))); or

8 “(B) compensate such student for the
9 name, image, or likeness of such student.”.

10 **SEC. 6. PROHIBITING UNFAIR AND DECEPTIVE PRACTICES**
11 **AGAINST STUDENT ATHLETES.**

12 (a) PROHIBITING UNFAIR AND DECEPTIVE PRAC-
13 TICES BY BOOSTERS.—The Sports Agent Responsibility
14 and Trust Act (15 U.S.C. 7801 et seq.) is amended—

15 (1) in section 2—

16 (A) by redesignating paragraphs (4)
17 through (9) as paragraphs (5) through (10), re-
18 spectively; and

19 (B) by inserting after paragraph (3) the
20 following new paragraph:

21 “(4) BOOSTER.—The term ‘booster’ means an
22 individual (other than an individual who is related to
23 a student athlete) or an organization, including a
24 sponsor of an institution’s athletic program, that
25 provides substantial financial assistance or services

1 to the athletic program of an institution of higher
 2 education or that promotes a team or athletic pro-
 3 gram of an institution of higher education for such
 4 individual's or organization's own substantial finan-
 5 cial interest.”;

6 (2) by inserting after section 3 the following
 7 new section:

8 **“SEC. 3A. REGULATION OF UNFAIR AND DECEPTIVE ACTS**
 9 **AND PRACTICES IN CONNECTION WITH CON-**
 10 **TACT BETWEEN A BOOSTER AND A STUDENT**
 11 **ATHLETE.**

12 “It is unlawful for a booster to directly or indirectly
 13 provide or offer to provide any funds or thing of value
 14 as an inducement for a student athlete to enroll or remain
 15 at a specific institution or group of institutions.”; and

16 (3) in section 5(a)(1), by inserting “or by the
 17 engagement of any booster in a practice that violates
 18 section 3A” after “section 3”.

19 (b) **ELIGIBILITY TO COMPETE AS A STUDENT ATH-**
 20 **LETE AFTER ENTERING INTO AN AGENCY CONTRACT.—**

21 Section 3(b)(3) of the Sports Agent Responsibility and
 22 Trust Act (15 U.S.C. 7802(b)(3)) is amended in the
 23 quoted part by inserting after “boldface type stating:” the
 24 following: “‘Notice to Student Athlete: If you agree orally
 25 or in writing to be represented by an agent now or in the

1 future, both you and the agent by whom you are agreeing
2 to be represented must notify the athletic director of the
3 educational institution at which you are enrolled, or other
4 individual responsible for athletic programs at such edu-
5 cational institution, that you have entered into an agency
6 contract. Such notification must be within 72 hours after
7 entering into this contract or before the next athletic event
8 in which you are eligible to participate, whichever occurs
9 first.’”.

10 (c) REPORT ON CLAIMS FILED PURSUANT TO THE
11 SPORTS AGENT RESPONSIBILITY AND TRUST ACT.—The
12 Sports Agent Responsibility and Trust Act (15 U.S.C.
13 7801 et seq.) is further amended by inserting after section
14 6 the following new section:

15 **“SEC. 6A. REPORT TO CONGRESS.**

16 “Not later than 6 months after the date of enactment
17 of this section, and annually thereafter, the Commission
18 shall submit to the Committee on Energy and Commerce
19 of the House of Representatives and the Committee on
20 Commerce, Science, and Transportation of the Senate a
21 report summarizing any investigation or enforcement ac-
22 tion brought by the Commission pursuant to this Act, in-
23 cluding the number of complaints filed with the Commis-
24 sion pursuant to this Act.”.

1 **SEC. 7. STATE PREEMPTION.**

2 No State may enforce a State law or regulation with
3 respect to permitting or abridging the ability of a student
4 athlete attending an institution of higher education to
5 enter into an endorsement contract or agency contract
6 pursuant to this Act or by an amendment made by this
7 Act.

8 **SEC. 8. RULES OF CONSTRUCTION.**

9 (a) **TAX PROVISIONS.**—Nothing in this Act or the
10 amendments made by this Act shall affect the treatment
11 of qualified scholarships under section 117 of the Internal
12 Revenue Code of 1986.

13 (b) **NONDISCRIMINATION OF STUDENT ATHLETES.**—
14 Nothing in this Act or the amendments made by this Act
15 may be construed to affect the rights of student athletes
16 or affect any program funded under title IX of the Edu-
17 cation Amendments of 1972 (20 U.S.C. 1681 et seq.).

18 (c) **ANTITRUST LAWS.**—Nothing in this Act or the
19 amendments made by this Act shall provide a cause of
20 action pursuant to the Sherman Act (15 U.S.C. 1 et seq.).

21 (d) **STUDENT ATHLETE NOT CONSIDERED AN EM-**
22 **PLOYEE.**—Nothing in this Act or the amendments made
23 by this Act shall affect the employment status of a student
24 athlete who enters into an endorsement contract with re-
25 spect to a covered athletic organization or institution of
26 higher education.

1 **SEC. 9. SENSE OF CONGRESS.**

2 It is the sense of Congress that—

3 (1) institutions of higher education and covered
4 athletic organizations should develop a course or
5 program to assist student athletes with under-
6 standing financial literacy with respect to entering
7 into an endorsement contract; and

8 (2) the Federal Trade Commission should in-
9 vestigate each claim filed pursuant to the Sports
10 Agent Responsibility and Trust Act (15 U.S.C. 7801
11 et seq.).

12 **SEC. 10. DEFINITIONS.**

13 In this Act—

14 (1) the term “agency contract” means an oral
15 or written agreement in which a student athlete au-
16 thORIZES a person to negotiate or solicit an endorse-
17 ment contract on behalf of the student athlete;

18 (2) the terms “athlete agent” and “student ath-
19 lete” shall have the same meaning given such terms
20 in section 2 of the Sports Agent Responsibility and
21 Trust Act (15 U.S.C. 7801);

22 (3) the term “covered athletic organization”
23 means an athletic association, conference, or other
24 organization with authority over intercollegiate ath-
25 letics or that administers intercollegiate athletics;

1 (4) the term “endorsement contract” has the
2 meaning given such term in section 2 of the Sports
3 Agent Responsibility and Trust Act (15 U.S.C.
4 7801); and

5 (5) the term “institution of higher education”
6 has the same meaning as that term under section
7 101 of the Higher Education Act (20 U.S.C. 1001).

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