
SENATE COMMITTEE ON EDUCATION

Senator Benjamin Allen, Chair

2017 - 2018 Regular

Bill No: AB 1435 **Hearing Date:** June 27, 2018
Author: Gonzalez Fletcher
Version: June 4, 2018
Urgency: No **Fiscal:** Yes
Consultant: Lynn Lorber

Subject: The College Athlete Protection Act.

SUMMARY

This bill establishes an appointed panel within the California Department of Education to create and distribute to every institution of higher education (IHE) with an intercollegiate athletic program best practices to minimize injuries, develop guidelines and mandates, perform compliance inspections, exercise subpoena power, investigate complaints, and issue penalties. This bill requires every IHE with an intercollegiate athletic program to pay an annual fee for the administration and activities of this panel.

BACKGROUND

Existing law:

Student Athlete Bill of Rights

- 1) Applies the requirements in # 2-8 only to a higher education institution receiving income of more than \$10 million annually through media rights (contracts with television networks), and requires the institution to rely exclusively on this revenue to cover the costs of these requirements. (Education Code § 67452)

Equivalent scholarship

- 2) Requires the postsecondary education institution, if a student athlete's athletic scholarship is not renewed due to incapacitating injury or illness resulting from participation in the athletic program, to provide an equivalent scholarship, that when combined with the previous athletic scholarship, provides the student with up to five academic years or until the student completes his academic degree, whichever comes first. A student's temporary leave of absence shall not count against the five-year limit. (EC § 67452)
- 3) Requires an athletic program with a six-year graduation success rate, disaggregated by each team, of less than 60 percent, to provide a student athlete in good standing who has exhausted their athletic scholarship with an equivalent scholarship for up to one year. (EC § 67452)

Financial and life skills workshop

- 4) Requires each athletic program to conduct a financial and life skills workshop, as specified, for all first-year and third-year student athletes. (EC § 67452)

Transfer

- 5) Requires an athletic program to respond within seven business days to a student athlete's written request to transfer. (EC § 67452)

Health insurance premiums and deductible

- 6) Stipulates that an athletic program, unless the student athlete declines, is responsible for paying the health insurance premiums of a student athlete whose household income does not exceed the level of Cal Grant A recipients, for insurance covering claims resulting from the student's participation in the athletic program. (EC § 67453)
- 7) Stipulates that an athletic program is responsible for paying the insurance deductible amount applicable to a student who suffers injury resulting from participation in the athletic program, and if the student requires ongoing medical treatment, the program is to provide, for at least two years after the student's graduation or separation from the institution, either necessary medical treatment or health insurance covering the injury and resulting deductibles. (EC § 67453)

Guidelines

- 8) Requires the athletic program to adopt and implement guidelines to prevent, assess and treat sports-related concussions and dehydration. (EC § 67453)

General provisions related to student athletes (separate from the Student Athlete Bill of Rights)

- 9) Requires California postsecondary educational institutions that offer athletic scholarships to provide specific information on its website, such as the National Collegiate Athletic Association (NCAA) policy on scholarship duration, the most recent cost of attendance, and the policy on athletically related medical expenses. (EC § 67365)
- 10) 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 institution of higher education (IHE) to participate in intercollegiate sporting activities. Some exceptions may be granted in accordance with NCAA rules. Existing law subjects a person who violates these rules to a civil penalty of up to \$10,000, or three times the amount given, offered or promised, whichever is greater. (EC § 67360)
- 11) Prohibits student athletes and members of their immediate family from soliciting or accepting money or other items of value as an inducement, encouragement or reward, subject to the same exceptions and penalty listed above. Existing law subjects a person who violates these rules to a civil penalty of up to \$1,000 or an amount equal to the amount accepted by the student athlete or family member, whichever is greater. (EC § 67361)

Background on athletic conferences

Student athletics are governed by many different sanctioning bodies with different rules. The major sanctioning organizations include the National Collegiate Athletic Association (NCAA), the National Association of Intercollegiate Athletics (NAIA), the National Junior College Athletic Association (NJCAA), the California Community College Athletic Association, the and 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.

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

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

According to the Pac-12 Conference's website, 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.

ANALYSIS

This bill establishes, until January 1, 2023, the College Athlete Protection Program as a program in the California Department of Education (CDE) for the administration of the provisions of this bill, as follows:

Whistleblower protections, obstruction, and retaliation

- 1) Provides that individuals, including college athletes or other students, who report suspected violations of this bill to have whistleblower protection, and provides that personnel who retaliate against these individuals are subject to penalties, as provided in # 25-26.
- 2) Provides that personnel who knowingly provide false information or attempt to obstruct an investigation by the panel (see # 6) are subject to penalties, as provided in # 25-26.
- 3) Provides that personnel who reduce or cancel the athletic participation or eligibility of, impose a financial penalty on, or otherwise retaliate against a college athlete, institution, association, conference, or other personnel for complying with this bill are subject to penalties, as provided in # 25-26.

Creates new mandate to report abuse of college athletes

- 4) Requires personnel to be deemed mandated reporters, by January 1, 2020, who are required to report each instance of reasonably suspected violations of this bill to the panel.
- 5) Provides that personnel who fail to comply with mandated reporting requirements are subject to penalties, as provided in # 25-26.

Panel

- 6) Establishes an 11 member panel to administer the College Athlete Protection Program, and requires the member of the panel to be appointed as follows:
 - a) Three members appointed by the Governor.
 - b) Four members appointed by the Speaker of the Assembly.
 - c) Four members appointed by the Senate Rules Committee.
- 7) Requires the members of the panel to be part-time positions, and requires one member to be appointed by a majority vote of the members to serve as chairperson of the panel. This bill requires that all of the following areas of expertise be considered when appointing members, with no two members having

the same expertise:

- a) Sports medicine.
 - b) Traumatic brain injury in contact sports.
 - c) Athletic strength and conditioning training.
 - d) Athlete abuse.
 - e) College academic advising.
 - f) College athletics governance and reform.
 - g) Sports economics.
 - h) Athlete protection advocacy by a former college athlete (one male and one female).
- 8) Requires the California Department of Education (CDE) to hire and set compensation for a College Athlete Protection Program director. This bill requires the director to be a full-time position, and requires the CDE to hire additional staff to implement the requirements of this bill.
 - 9) Prohibits a panel member or program director from currently serving, or having served as personnel (for an athletic association, athletic conference, or specified positions in an institution of higher education) within the one year immediately preceding the appointment.
 - 10) Provides that each panel member and the program director are to serve a four-year term of office, with no term limits. This bill authorizes a panel member and the program director to be reappointed to his or her position, or a new position.
 - 11) Requires the diversity of California, including its gender diversity, to be considered when appointing panel members.

Duties of the panel

- 12) Gather input from relevant stakeholders to establish, and disseminate to every athletic association, athletic conference, and institution of higher education, both of the following:
 - a) Best practices to minimize injuries and ensure transparency of injury treatment options.
 - b) Up-to-date information about pivotal sports-related health risks.
- 13) Develop policy guidelines and mandates that, at a minimum, ensure that both of the following occurs:

- a) Medical records for all treatments of a college athlete by personnel in the course of the college athlete's participation in an athletic program be maintained for 10 years after the college athlete leaves the program and be timely provided to him or her upon request.
 - b) There is transparency on college athlete protections and the prevention of deceptive or fraudulent business practices that harm college athletes.
- 14) Conduct surveys of college athletes and personnel.
 - 15) Perform compliance inspections, as determined by the panel.
 - 16) Exercise subpoena power, if necessary, to obtain information necessary to carry out its duties.
 - 17) Hold quarterly meetings.
 - 18) Distribute an annual report, beginning January 1, 2021, to each institution of higher education, athletic conference, athletic association, and the Legislature regarding the state of college athlete protections.
 - 19) Determine which of its guidelines, materials, and other information may benefit high school athletes, high school sports programs, and the California Interscholastic Federation, and make them available and easily accessible to the public.
 - 20) Consider collaborative and cost-reduction efforts with other states, local governments, intercollegiate sports conferences, and associations to improve the treatment of intercollegiate athletes in other states.
 - 21) Create advisory boards, as needed, comprised of unpaid volunteer individuals and organizations with expertise relevant to the implementation of this bill, and specifically authorizes the University of California and California State University to have at least one representative (with expertise) serve on each advisory board that is established.
 - 22) Use fees with legislative approval from the College Athlete Protection Act Fund (see # 27-30) to execute its duties.
 - 23) Develop processes for it to receive, track, and investigate complaints regarding suspected violations of the provisions of this bill.
 - 24) Adopt regulations to implement the provisions of this bill.

Submission of complaints to the Department of Justice

- 25) Requires all reports of suspected violations to be made to the Department of Justice before the panel begins its initial operations, and to the College Athlete Protection Program director once the panel begins its initial operations.

Penalties imposed by the panel

- 26) Requires an institution of higher education (IHE) or its personnel, or both, who commit a violation of this bill to be subject to penalties established by regulations adopted by the panel, in addition to any other remedy or penalty authorized under existing law. This bill authorizes penalties to include any, or any combination, including all of the following:
 - a) Civil penalties.
 - b) Temporary or permanent prohibition from employment at institutions of higher education.
 - c) Other penalties imposed by the panel.
- 27) Requires the panel to consider all of the following factors when establishing penalties:
 - a) The number and duration of violations.
 - b) Whether the violation was the result of an intentional or negligent action.
 - c) The nature and extent of harm caused by the violation.

Fees paid by IHEs to support the work of the panel

- 28) Establishes the College Athlete Protection Act Fund in the State Treasury, and requires fees received pursuant to this bill to be deposited in the fund and appropriated by the Legislature to the panel.
- 29) Requires IHEs with athletic programs that were members of the National Collegiate Athletic Association (NCAA) in 2016 to pay annual fees, in an amount determined by the panel, to cover the reasonable regulatory costs.
- 30) Caps the annual aggregate total fees from exceeding \$4 million, yet authorizes the panel to increase the aggregate total to account for inflation. This bill provides that the fees are to be deposited into the College Athlete Protection Act Fund.
- 31) Requires the panel to base the annual fees on the number of full-time employee coaches reported in the most recently published United States Department of Education's Equity in Athletics Disclosure report. This bill requires the panel to establish the annual fee pursuant to all of the following requirements and authorizes the panel to adjust these fees, without exceeding the aggregate maximum allowed:
 - a) Athletic programs with 1 to 6.99 full-time employee coaches are each to annually pay up to \$2,500.

- b) Athletic programs with 7 to 14.99 full-time employee coaches are each to pay up to \$5,000.
- c) Athletic programs with 15 to 29.99 full-time employee coaches are each to annually pay up to \$12,000.
- d) Athletic programs with 30 to 44.99 full-time employee coaches are each to annually pay up to \$60,000.
- e) Athletic programs with 45 to 59.99 full-time employee coaches are each to annually pay up to \$80,000.
- f) Athletic programs with 60 or more full-time employee coaches are each to annually pay up to \$600,000.
- g) Two-year institutions of higher education (IHEs) with at least one full-time employee coach are each to annually pay up to \$1,000.

Requirements for IHEs, athletic conferences, and associations

- 32) Requires each IHE, athletic conference, and athletic association, by January 1, 2020, to comply with all of the following:
 - a) Inform its personnel of their responsibilities and college athlete protections.
 - b) Inform college athletes of their rights and protections, including all guidelines and mandates adopted by the panel, and inform them of their right to report suspected violations to a mandated reporter, the Department of Justice, or the panel once it begins its initial operations.
 - c) Designate at least one employee to oversee compliance with this bill and to serve as a point of contact for the panel.
- 33) Requires each IHE, athletic conference, and athletic association to annually inform its personnel and college athletes before the start of each academic year.

Miscellaneous

- 34) Sunsets the provisions of this bill on January 1, 2023.
- 35) Includes the following definitions:
 - a) "Athletic association" as an association of athletic conferences or IHEs.
 - b) "Athletic conference" as an entity comprised of IHEs that is a member of an athletic association.

- c) “Athletic program” as an intercollegiate athletic program at an institution of higher education (IHE), and excludes club and intramural programs.
 - d) “College athlete” as a college or university student who participates in an athletic program.
 - e) “Institution of higher education” as a campus of the University of California, the California State University, a four-year private university or independent IHE located in California, or a public or private two-year college located in California that maintains an athletic program.
 - f) “NCAA” as the National Collegiate Athletic Association.
 - g) “Panel” as the panel established by this bill.
 - h) “Personnel” as one or more representatives of an athletic association, an athletic conference, or IHE, including an athletic program employee, coach, assistant, or affiliated healthcare professional.
- 36) Includes a severability clause: 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.
- 37) States legislative findings and declarations relative to maximizing safety, transparency, and a quality education for intercollegiate athletes.

STAFF COMMENTS

- 1) ***Need for the bill.*** According to the author, “Currently, college athletes are subject to serious health and safety risks and other player abuse due to a lack of thorough best practice guidelines and enforcement. While the Student Athlete Bill of rights established a number of guidelines to prevent, assess, and treat sports-related injuries it failed to address player abuse and a wide array of sports-related medical issues. Importantly, current law does not include a mechanism to prevent or receive reports of violations, monitor compliance, or enact remedies for sports-related health and safety and academic issues. Furthermore, athletic conferences and athletic associations do not enforce best practices for protecting comprehensive health and safety. Despite various policies adopted by the NCAA over the years, the NCAA currently claims to lack a mechanism to enforce concussion legislation among its member colleges.”
- 2) ***Applicability.*** This bill applies to all public and private four-year or two-year IHEs located in California that maintain an athletic program.
- 3) ***Panel.*** This bill establishes an appointed panel within the California Department of Education to create and distribute to every IHE with an intercollegiate athletic program best practices to minimize injuries, develop guidelines and mandates, perform compliance inspections, exercise subpoena power, investigate complaints, and issue penalties.

Where should the panel be housed?

The California Department of Education (CDE) has no authority to regulate or monitor any aspect of intercollegiate athletics. The CDE is not an appropriate entity to house the panel established by this bill. *Should the panel be housed within the Executive Branch? Should the Governor appoint the College Athlete Protection Program director?*

Expertise of the panel members

This bill requires that several specified areas of expertise be considered when appointing members to the panel, and provides that no two members are to have the same expertise. However, this bill does not actually require the members of the panel to have any of the specified expertise. *Should this bill specifically require each member of the panel to hold expertise in one of the specified areas, with no two members having the same area of expertise?*

This bill does not provide for personnel of any institution of higher education (IHE) to be included as a member of the panel. *Should the 11 member panel membership include at least a minimal representation from IHEs? It is sufficient to allow representatives of IHEs to participate in each advisory board that the panel may establish?*

Appeal process

This bill does not provide for an appeal process. *If the panel were housed within the Executive Branch, could this issue be resolved?*

Penalties

This bill authorizes the panel to impose penalties upon IHEs or its personnel, including civil penalties, temporary or permanent prohibition from employment at IHEs, or other penalties as determined by the panel. *Is it appropriate for an appointed panel of individuals who may not be trained in adjudicating complaints of violations of law and impose potentially serious penalties? If the panel were housed within the Executive Branch, could this issue be resolved?*

The panel is specifically authorized to temporarily or permanently prohibit an individual from employment at an IHE. Many athletic personnel, such as coaches, are faculty or have a contract with the employing IHE. *It is unclear how an appointed panel can have authority over employment decisions of IHEs. Instead, should the panel be authorized to recommend to the employing IHE that the individual be temporarily or permanently prohibited from being employed?*

Advisory boards

This bill provides that one of the panel's duties is to create advisory boards, and specifically authorizes the University of California and California State University to have at least one representative (with expertise) serve on each advisory board that is established. *While this bill does not prohibit the inclusion of other IHEs,*

should this bill specifically authorize other institutions of higher education (IHEs), such as private IHEs and California Community Colleges, to be represented on each advisory board?

Regulations

This bill requires the panel to adopt regulations to implement the provisions of this bill. *Is it appropriate for an appointed panel to adopt regulations? If this panel remains housed within the California Department of Education (CDE), it would be more appropriate for the panel to propose regulations to the CDE, the CDE recommend regulations to the State Board of Education (SBE), and the adopt SBE adopt regulations. If the panel were housed within the Executive Branch, could this issue be resolved?*

- 4) ***Fee on IHEs.*** This bill establishes the College Athlete Protection Act Fund within the State Treasury, requires IHEs to pay a fee to be deposited in the Fund, and requires the funds to be appropriated by the Legislature to the panel. This bill requires the panel to set the fees to each IHE based on the number of full-time employee coaches. *Should the fees also be based on the amount of funds generated by media rights, to ensure that IHEs with several coaches but low athletically-related revenues do not pay fees beyond their ability? Rather than imposing a fee, should ticket sales for athletics events be taxed?*
- 5) ***Mandated reporters.*** This bill requires IHE personnel to be deemed mandated reporters who are required to report each instance of reasonably suspected violations of this bill to the panel. *Is it appropriate to extend mandated reporter laws to adults, and only to college athletes? It is appropriate to require IHE personnel, under threat of penalties including termination, to report any violation of this bill, which ranges from cancelling an athletes eligibility or scholarship to failing to inform its personnel of their responsibilities?*
- 6) ***California Community Colleges (CCCs).*** This bill applies to CCCs as well as to large universities with high-caliber athletic programs. According to the CCCs, community colleges do not offer athletic scholarships, their athletic programs serve as a student success (engagement and persistence) tool, and have operating costs that are well below what some large universities pay to participate in a football tournament, for example. *While community colleges serve student athletes that deserve protection, is it appropriate to apply the provisions of this bill to the California Community Colleges?*
- 7) ***Affects athletics conferences and associations.*** This bill imposes requirements on athletic conferences and associations, such as designating at least one employee to oversee compliance with this bill and to serve as a point of contact for the panel. *It is unclear how one state's laws can impose requirements on multi-state athletic conferences and associations.*
- 8) ***Technical amendments.*** The provisions of this bill should be placed in the Education Code next to the Student Athlete Bill of Rights.

The definition of and references to "college athlete" should be changed to

“college student athlete.”

It should be clarified that maintenance of medical records is to comply with the federal Health Insurance Portability and Accountability Act and the federal Family Education Rights and Privacy Act.

The reference to hours per week in time commitments, in Legislative findings and declarations, should be to 20 hours, rather than to 40 hours.

- 9) ***Fiscal impact.*** According to the Assembly Appropriations Committee, this bill imposes the following costs (*staff notes that this bill has been significantly amended since this fiscal analysis was completed*):
- a) Based on expenditures of boards and commissions that perform similar functions, annual costs in the range of \$2 million, up to the \$4 million limit seem reasonable. (*This bill no longer establishes a commission, but rather establishes a panel within the California Department of Education.*)
 - b) There is unknown potential penalty revenue, depending on violations.
 - c) To the extent the Commission (*now a panel*) is successful at ensuring greater health and safety precautions are adopted and implemented for approximately 58,000 athletes annually, the Commission's activities could potentially prevent injury and associated short- and long-term health care and societal costs, an unknown amount of which would be borne by the state.
- 10) ***Related legislation.*** AB 2220 (Bonta, 2018) extends portions of the existing Student Athlete Bill of Rights to apply to additional institutions of higher education (IHE) that provide athletic scholarships for college student athletes; provides an additional year of eligibility for an equivalent scholarship (for students who have been injured); and, requires IHEs to designate one person to receive complaints, and requires IHEs to investigate and provide a remedy within 60 days. AB 2220 is scheduled to be heard by this Committee on June 27.

AB 2747 (Holden, 2018) requires all campuses of the University of California, California State University, or any four-year private university located in California that maintain an intercollegiate athletic program to prepare, provide and post a notice with specified rights afforded to student athletes, prohibits these institutions of higher education from retaliating against a student athlete for making a complaint in good faith, and authorizes the establishment of a degree completion fund. AB 2747 was passed by this Committee on June 20, and is pending in the Assembly Appropriations Committee.

SUPPORT

National College Players Association (sponsor)
Consumer Attorneys of California

OPPOSITION

Allan Hancock Joint Community College District
Association of Independent California Colleges and Universities
Azusa Pacific University
Biola University
California Baptist University
California Community College Athletic Association
California State University
College of the Canyons
Community College League of California
Dominican University of California
Fresno Pacific University
Los Rios Community College District
Loyola Marymount University
Pepperdine University
Point Loma Nazarene University
Santa Clara University
Simpson University
Stanford University
University of California
University of San Diego
University of Southern California
University of the Pacific
William Jessup University

-- END --