
SENATE COMMITTEE ON EDUCATION

Senator Connie Leyva, Chair

2019 - 2020 Regular

Bill No:	SB 206	Hearing Date:	April 3, 2019
Author:	Skinner		
Version:	March 25, 2019		
Urgency:	No	Fiscal:	Yes
Consultant:	Chanel Matney		

Subject: Collegiate athletics: Fair Pay to Play Act.

SUMMARY

This bill allows college student athletes to earn compensation for the use of their own name, image, or likeness. This bill allows college student athletes to obtain legal representation, such as that provided by a sports agent, in relation to their college athletics. This bill allows colleges and universities to provide student athletes with stipends or other compensation, in addition to and separate from scholarships that cover the total cost of attendance.

BACKGROUND

Existing law:

- 1) Enacts the Student Athlete Bill of Rights, which requires intercollegiate athletics at 4-year institutions of higher education that receive, on average, \$10 million or more in annual revenue derived from media rights, to comply with the prescribed requirements related to student athletes' rights. These requirements include provisions concerning when intercollegiate athletic programs are required to renew scholarships, cover health insurance costs, and cover medical treatment expenses for student athletes who have experienced a sports-related injury. (Education Code § 67450)
- 2) Prohibits any person from giving, offering, promising or attempting to give money or other item of value to a student athlete or member of the athlete's immediate family to induce, encourage or reward a student athlete's application, enrollment or attendance at a public or private institution of higher education to participate in intercollegiate sporting activities. (EC § 67360)
- 3) Prohibits any person from giving, offering, promising, or attempting to give any money or other things of value to any particular student athlete or member of the immediate family of the student athlete for either of the following purposes:
 - a) To induce, encourage, or reward the student athlete's application, enrollment, or attendance, at a public or private institution of postsecondary education in order to have the athlete participate in intercollegiate sporting events, contests, exhibitions, or programs at that institution.

- b) To induce, encourage, or reward the student athlete's participation in an intercollegiate sporting event, contest, exhibition, or program.

These provisions do not apply to student athletes who receive any money or other thing of value from a higher education institution offered in accordance with the official written policy of that institution, which is in compliance with the bylaws of the National Collegiate Athletic Association (NCAA). (EC § 67360)

- 4) Defines "student athlete" as an individual who attends an elementary, junior high, high school, or postsecondary educational institution, and who participates in any interscholastic athletic program in California, including an individual who receives scholarship funds for his or her athletic participation and an individual who does not receive scholarship funds for his or her athletic participation. (EC § 67360 et seq)

ANALYSIS

This bill:

- 1) Prohibits any entity with authority over intercollegiate athletics from preventing a student athlete from receiving compensation for the use of their own name, image, or likeness.
- 2) Prohibits any entity with authority over intercollegiate athletics from preventing a student athlete from receiving a stipend or other compensation in relation to their athletic performance.
- 3) Prohibits any entity with authority over intercollegiate athletics from preventing a student athlete from obtaining legal representation in relation to their college athletics.

STAFF COMMENTS

- 1) ***Need for the bill.*** According to the author, "A report by Inside Higher Education revealed, over eighty percent of full scholarship athletes live at or below the federal poverty level. Under current restrictions, schools may only offer the total cost of attendance in a scholarship. For many student athletes, the total cost of attendance isn't enough to provide for themselves or their families. Student athletes with families and children, as well as those that come from low socioeconomic backgrounds feel this burden the heaviest."

"For many athletes, college is the only time that they may earn from their sports. The NCAA reveals less than 1 percent of women's college basketball players will make it to the WNBA and less than 2 percent of men's college basketball, football, and soccer will ever play professionally. Currently, students are restricted from hiring an advisor to make career altering decisions and assessing their value. With proper representation many athletes could have a realistic idea if professional sports is a possibility."

“In addition, many collegiate athletes are participating without a guaranteed scholarship. Scholarships may be revoked for poor performance in their respective sport or failure to participate in “voluntary” workouts. University studies have found that athletes are spending from 32 to 44 hours a week for their respective sports. This time commitment makes it practically impossible for athletes to provide for themselves or families.”

“Restrictive rules paired with time commitment and poverty have a negative impact on academic performance. Studies show more than half of California’s National Collegiate Athletic Association (NCAA) Division 1 and Division 2 colleges have one or more teams with graduation rates below 60 percent. Approximately 40 percent of NCAA Division 1 and Division 2 athletes say they do not have enough time to keep up with academics during the season, and many say athletics prevent them from taking classes.

“SB 206 allows college athletes to hire an agent and make money off their own name, image, likeness or athletic reputation. Athletes will now have a financial avenue to provide for their families without facing loss of their athletic scholarship.”

The author may wish to consider if the statistics and findings enumerated in the intent language of the bill reflects the most accurate, relevant, and updated data related to student-athlete academic performance and financial standings.

- 2) **How is this bill incompatible with NCAA bylaws?** The NCAA adopted bylaws that regulate recruiting, scholarship levels, timing and methods of communication between institutions of higher education and student athletes.

Athletes receiving a partial athletic scholarship or no athletic scholarship are subject to the same pay prohibitions as those that receive full athletic scholarships.

Financial Aid

Currently, NCAA bylaws impose a number of restrictions on student athlete financial aid. Any student-athlete who receives financial aid other than that permitted by the Association shall not be eligible for intercollegiate athletics.

Such payment is not allowed because it would be compensation based upon athletic skill, a preferential benefit not available to the general student population. As it stands, NCAA rules forbid a student-athlete from receiving preferential benefits or treatment because of the athlete’s reputation, skill or potential to be a professional athlete.

Specifically prohibited financial aid, benefits and arrangements include, but are not limited to, the following:

- a) An employment arrangement for a prospective student-athlete's relatives;
- b) Gift of clothing or equipment;

- c) Co-signing of loans;
- d) Providing loans to a prospective student-athlete's relatives or friends;
- e) Cash or like items;
- f) Any tangible items, including merchandise;
- g) Free or reduced-cost services, rentals or purchases of any type;
- h) Free or reduced-cost housing;
- i) Use of an institution's athletics equipment (e.g., for a high school all-star game);
- j) Sponsorship of or arrangement for an awards banquet for high school, preparatory school or two-year-college athletes by an institution, representatives of its athletics interests or its alumni groups or booster clubs; and
- k) Expenses for academic services (e.g., tutoring, test preparation) to assist in the completion of initial-eligibility or transfer-eligibility requirements or improvement of the prospective student-athlete's academic profile in conjunction with a waiver request.

Cost of Attendance

An institution shall not award financial aid to a student-athlete that exceeds the cost of attendance that normally is incurred by students enrolled in a comparable program at that institution. The "cost of attendance" is an amount calculated by an institutional financial aid office, using federal regulations, that includes the total cost of tuition and fees, room and board, books and supplies, transportation, and other expenses related to attendance at the institution. A student-athlete shall not be eligible to participate in intercollegiate athletics if he or she receives financial aid that exceeds the value of the cost of attendance as defined in this Bylaw.

Agents

National Collegiate Athletic Association (NCAA) rules forbid student-athletes to agree, orally or in writing, to be represented by an agent or organization in the marketing of his or her athletic ability or reputation until after the completion of the last intercollegiate contest, including postseason games. The NCAA prohibition includes an agreement that is not effective until after the last game.

NCAA rules forbid a student-athlete or his/her representative from negotiating or signing a playing contract in any sport in which the athlete intends to compete, or to market the name or image of the athlete.

- 3) **Consequences of non-compliance with National Collegiate Athletic Association (NCAA) bylaws.** Violations of NCAA bylaws impact the eligibility of student-athletes, and the teams for which they play, for participation in NCAA competition. Violations may result in harsh penalties on the student, the team and the university. Penalties may include financial sanctions, repayment of monies received from NCAA championship competition, forfeiture of contests, and expulsion from the association.
- 4) **Applies to community colleges** By state law, community colleges cannot offer athletic scholarships to their athletes. This law is in place to make sure community colleges spend their financial resources on academic priorities while supporting more equitable competition across the system. Since community colleges are barred from offering athletic scholarships, this bill would allow community college student athletes to independently earn revenue on the basis of their name, image, and likeness in order to support themselves.
- 5) **Relevant litigation.** O'Bannon v. NCAA is an antitrust class action lawsuit against the NCAA, in which the plaintiffs' challenged the NCAA's use of the images of its former student athletes for commercial purposes. The suit argued that former student athletes are entitled to financial compensation for the NCAA's use of their image. The NCAA maintained that providing such compensation would be a violation of its rules and bylaws. In 2014, an original ruling was made in favor of O'Bannon, holding that the NCAA's bylaws are a violation of antitrust law. However, in 2015, the Ninth Circuit Court of Appeals reversed the District Court's ruling.

In *Alston v. NCAA*, the plaintiffs challenged the legality of the NCAA and its' member institutions practice of capping grants-in-aid at the cost-of-attendance based on federal antitrust laws. Contrarily, the defendants contended that the rules were necessary because they served several procompetitive purposes permissible under federal antitrust laws.

The ruling was found in favor of the plaintiffs. The court acknowledged the disparity between what student-athletes receive in comparison to what coaches, the NCAA, and other college sports administration officials receive. The judge ruled that the NCAA can no longer "limit compensation benefits related to education," while allowing the NCAA to retain a substantial amount of discretion over student-athlete compensation that is unrelated to education. The ruling also mandated that the NCAA allow conferences to create their own rules and policies for scholarship, and allow student athletes to receive a scholarship valued at greater than the total cost of attendance. Although the NCAA did not provide a clear definition of amateurism during their defense, the court reasoned that the distinction between amateurism and professionalism in athletics lies in the fact that college athletes do not receive uncapped compensations in relation to playing sports.

- 6) **Amendments.** Staff recommends amendments to do the following:
 - a) Require that stipends and compensation provided by institutions of higher education to student athletes in excess of the total cost of attendance are

based on demonstrated needs or expenses for academic services. Demonstrated needs include, but are not limited to food, childcare, and academic development. Expenses for academic services include, but are not limited to, test preparation and tutoring.

- b) Prohibit individuals or entities coordinating with or acting on behalf of, intercollegiate athletics or any entity with authority over intercollegiate athletics, from providing prospective student athletes with direct or indirect gifts or compensation in relation to their name, image, and likeness, or athletic reputation.
- c) Require that the legal representation of student athletes, including but not limited to sports agents, is licensed by the state. This relationship must be in compliance with the Sports Agent Responsibility and Trust Act.

Related and prior legislation.

HR 1804 (Walker, 2019) The Student Athlete Equity Act is a bipartisan federal bill to amend the definition of a qualified amateur sports organization in the tax code to remove the restriction on student-athletes using or being compensated for use of their name, image and likeness – forcing the National Collegiate Athletic Association to change its current model. This bill is awaiting referral to a committee.

SB 1525 (Padilla, Chapter 625, 2012) enacts a Student Athlete Bill of rights, and places specified requirements on collegiate athletic programs commencing with the 2013-14 academic year and ending on January 1, 2021. This bill applies its requirements only to institutions of higher education receiving income of more than \$10 million annually through income rights and requires the institution to rely exclusively on this revenue to cover the costs of these requirements. This bill requires these institutions to provide the student athlete with a life and financial workshop that provides an overview of financial aid, debt management, and a budget for full-and partial-scholarship athletes. Finally, the bill requires each program to adopt and implement guidelines that prevent, assess, and treat sports-related concussions and dehydration.

AB 735 (Ridley Thomas, 2016) eliminated the January 1, 2021 sunset on the Student Athlete Bill of Rights.

SUPPORT

The Association of African Americans in Fire Service
 The American Federation of Labor and Congress of Industrial Organizations
 American Federation of State, County, and Municipal Employees
 The International Union, United Automobile, Aerospace Agricultural Implement Workers of America (UAW)
 National College Players Association (Sponsor)
 OSKR (Sponsor)
 United Steelworkers
 University of California Student Association

OPPOSITION

California State University
Stanford University
University of California
University of Southern California

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