

Date of Hearing: April 4, 2018

ASSEMBLY COMMITTEE ON ARTS, ENTERTAINMENT, SPORTS, TOURISM, AND
INTERNET MEDIA

Kansen Chu, Chair

AB 2220 (Bonta) – As Amended April 2, 2018

SUBJECT: Student Athlete Bill of Rights.

SUMMARY: This bill would expand the Student Athlete Bill of Rights (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 further provide a private right of action, as specified, to college athletes who claim to have had any rights established under the SABR violated by an institution of higher education, including any of its personnel, as defined, and change references from "student athlete" to "college athlete."

Specifically, **this bill:**

- 1) Applies the following to an Institution of Higher Education (IHE), defined as any campus of the University of California or the California State University, or any private postsecondary educational institution or independent institution of higher education located in California, that provides athletic scholarships for student athletes.
- 2) Strikes the \$10 million dollar media rights revenue threshold for application of SABR, and requirement that SABR may only be funded from proceeds of media rights contracts.
- 3) Requires an IHE, if an athletic program does not renew an athletic scholarship of a college 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 six academic years as specified.
- 4) Requires an athletic program to provide an equivalent scholarship to a college 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.
- 5) Requires each athletic program to be responsible for paying the premiums of each of its college 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.
- 6) Requires an athletic program to be responsible for paying the insurance deductible for a claim of any college athlete who suffers an injury resulting from participation in the athletic program.
- 7) 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.

- 8) Provides a private right of action, as specified, for any college athlete who claims to have had any of his or her rights established under this chapter violated by an institution of higher education, including any of its personnel.
- 9) Defines, "personnel" to mean one or more representatives of an athletic program, including, but not necessarily limited to, an employee, coach, assistant, or affiliated health care professional.

EXISTING LAW:

- 1) Applies the following to an IHE that receives, as an average, at least \$10 million in annual income from media rights for intercollegiate athletics. (EC Section 67452)
- 2) 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. (EC Section 67452)
- 3) 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. (EC Section 67452)
- 4) 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. (EC Section 67453)
- 5) 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. (EC Section 67453)
- 6) 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. (EC Section 67453)

FISCAL EFFECT: Unknown. This bill is keyed fiscal by the Legislative Counsel.

COMMENTS:

- 1) *Author's statement of need for legislation:* According to the author, "Currently, most schools in California have the autonomy to determine whether to pay for an athlete's medical expenses. Additionally, college athletes who get injured during practice or a game are not protected from losing their athletic scholarship. AB 2220 will require institutions to pay the deductibles for college athletes who suffer sports-related injuries and for the cost of ongoing medical treatment for at least two years after a student has graduated or left the university. Further, AB 2220 will require schools provide an equivalent scholarship, if the student's athletic scholarship is not renewed due to an injury.

"It is important for us to remember that student-athletes are students first and athletes second. Regardless of their performance on the field or any injury they may incur, our academic institutions should stand by them and encourage them to complete their academic degrees."

The California Association for Health, Physical Education, Recreation and Dance support this measure, "because it requires schools that offer athletic scholarships to encourage those athletes who cannot fulfill their scholarship agreement, because of injury or other reasons, to complete their degree program."

- 2) *Opposition and concerns:* The opposition of the Association of Independent California Colleges and Universities (AICCU) is typical of that expressed by other Universities. They write the Committee with four major points of opposition. First, is that, as amended, "this bill would remove the word Student from Student Athlete Bill of Rights and replace it with College. First, and foremost, these are students. Students whom we strive to get to graduation in a timely manner, and who should always be thought of first as students, as that is their purpose – seeking to learn and grow in knowledge -- while they are on our campuses." In addition, they add, "there is a definition in code for Student Athlete, whereas there is no definition for the new proposed term. There is also significant case law around student athletes that would be disrupted by the changing terminology." This line of opposition is also shared by the University of Southern California and Stanford University.

The second point of concern is the new private right of action to student athletes for a violation of SABR. According to AICCU, "Creating a new private right of action creates additional potential cost burdens for our campuses, which are largely tuition dependent. There is nothing in law now that would prevent a student from taking action should they feel the campus treated them unfairly, nor do we understand there to be a large need for such action, we therefore do not understand the need for an additional and new private right of action."

USC builds upon this concern with their reading of the language that would allow any athlete on a college campus to assert rights under the SABR, including clubs and even intramurals. "Given the continued academic and graduation improvements since the passage of the Student Athlete Bill of Rights in 2012, the large number of non-athletic department entities and individuals at USC that are charged with monitoring and overseeing the health, welfare and rights of student-athletes, and the significant resources that USC already commits to athletics, it is unclear why AB 2220 expands the scope of those to be covered under the legislation (e.g., club sports) and includes a provision authorizing a private right of action for a violation of the Act. USC believes the bill will only increase the number of lawsuits filed in civil court and redirect university resources that our institution could instead use toward services for its current intercollegiate student-athletes."

The third point of opposition is the extension of time allotted, from 5 to 6 years, of equivalent scholarship funds for an injured athlete unable to complete his or her athletic scholarship. This change is of concern to all segments who wrote the committee. As AICCU states, "This bill would extend the equivalent scholarship provision for an injured student from 5 to 6 years. For students who are on a partial scholarship and who are Cal Grant eligible, their Cal Grant eligibility is only 4-years. Our campuses have a high 4-year graduation rate for our

students, and Cal Grant students graduate at a higher rate than their peers. We work hard to encourage all of our students, including student athletes, to graduate in as timely a manner as possible so that they maximize the use of grant monies. In addition, students on partial scholarships may not have the financial means to finish a year 5 or 6, and this will further stress limited financial aid funds."

Finally, AICCU also is concerned about their schools' ability to generate funds to comply with the bill, and additional requirement for their campuses which compete in the NAIA. "While this bill makes reference to the National Collegiate Athletic Association (NCAA) rules, and all 4 campuses who currently fall under the SABR play in the NCAA, it is important to note, there are California private (and a few public) universities who provide athletic scholarships for their student athletes to play in the National Association of Intercollegiate Athletics (NAIA). While the rules are often the same or similar, we question applying the NCAA rules to campuses, which for any variety of reasons, chose to play in the NAIA. NAIA campuses tend to be much smaller than NCAA campuses, their budgets tend to be smaller, and there are fewer sales of sports paraphernalia and other revenue than those belonging to the NCAA." The impact of this increase to revenue generating sports (generally football and men's basketball) will be felt by women's sports, as well as non-revenue generating men's sports. The potential increased costs associated with expanding the scope of SABR, will very likely result in fewer athletic programs. If campuses have to reduce offerings, they will be forced to eliminate commensurate women and men's sports in order to remain Title IX compliant."

3) *Background:*

a) *Student Athlete Bill of Rights:*

California's student athlete bill of rights only applies to 4 universities. 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. Based on annual revenues from media rights, the Student Athlete Bill of Rights currently only applies to four institutions of higher education: the University of California (UC) at Berkeley and Los Angeles, Stanford University, and the University of Southern California (USC).

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 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, 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.

- b) *National Collegiate Athletic Association and Pac-12 Conference rules.* According to the National Collegiate Athletic Association's (NCAA) 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 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."

- c) 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:
- i) Athletic scholarships are guaranteed for four years for student-athletes in all sports.
 - ii) Student-athletes who leave school before graduating can use the remainder of their educational expenses later to earn their degrees.
 - iii) 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.
 - iv) Student-athletes who transfer between Pac-12 institutions are able to receive athletic scholarships immediately.
 - v) Student-athletes are represented in the Conference governance structure.
- 4) *Recent amendments: This measure was recently amended and major changes are summarized as follows:*
- a) *Strike "media rights" as the sole source of funding permitted under the SABR.* Amendments remove the requirement that an institution of higher education to which this section applies shall rely exclusively on revenue derived from media rights for intercollegiate athletics to defray any costs accrued under this section. According to the author, this change was made to, "give universities who do not have large media rights

revenue the ability to use alternative methods such as fundraising to pay for any of the provisions of the bill."

- b) *Recast private right of action.* The language providing a private right of action for an aggrieved college student athlete under the SABR was rewritten by the Assembly Committee on Judiciary, who provided the author and this Committee with a request to include their amended language into the bill in lieu of hearing.

5) *Committee requested amendments would recast recent changes:*

- a) Change references from "college athlete" to "college student athlete."

AB 2220 was recently amended in part to change the references in the bill from "student athletes" to "college athletes." The author states that this change is needed because the SABR, "only applies to college athletes, not students who participate at the high school and middle school level. This change is to better reflect the applicability of the bill."

However, use of the term "Student Athlete" is not exclusive to K-12, and is in fact a long standing term of art used by the NCAA and others to distinguish those athletes who participate in institution sanctioned intercollegiate athletics, as opposed to professional athletes who attend college, or students in intermural or club sports on campus. In speaking with representative of the various higher education segments, it was agreed that the term "college student athlete" would not conflict with existing laws or regulations, and would provide the distinction from high school student athletes the author wishes to clarify.

- b) Page 3, line 8 strike the reference to "six" and insert "*five.*" Strike lines 10 & 11 and insert: "*A student athlete shall be granted one additional year beyond the five years upon showing of cause for need. Additional years may be provided at the discretion of the institution of higher education.*"

According to the author, the proposed change from 5 to 6 years was made because, "only about 38.7% of CA students at public 4-year universities complete their degree in 4 years, this number rises to 59.2% in 6 years. The graduation rates for private colleges are 61.3% in 4 years and 73.9% in 6 years. Expanding the number of years to six will help ensure that students are able to complete their educational degree on a timeline that more accurately reflects the completion rate for students in California."

While the segments of higher education impacted by this bill acknowledge that a "4-year degree" often takes longer than 4 years to achieve, they questioned the need for this change, given there are no known incidents of students being denied an extension of time upon request as is allowed under existing SABR, and the potential expense of a blanket extension of time. In addition, they claim that they are working toward returning to a four year degree completion model. The author and segments agreed that a one year extension would be granted to a student upon a showing of need, such as injury, illness, lack of space in impacted programs, or university schedule conflicts with a student's major course requirements, e.g. they don't offer needed classes.

- c) Page 2, Section 67450 (c), strike "40" and insert "20" to read: (c) Student athletes generate large revenues for many athletic programs, spend approximately 20 hours per

week participating in their respective sports, and suffer current and historically low graduation rates.

This is a technical change suggested by the Committee and reflects current NCAA policy which restricts student athletes to 20 hours per week for team activities during their season and limits them to 8 hours in the off season. (NCAA Bylaw 17)

5) *Prior and Related legislation:*

- a) AB 2747 (Holden), would add to the SABR provisions by: declaring that college athletes have the right to self-organization and requiring institutions of higher education, as defined, to provide student athletes with designated information; require institutions of higher education to establish a process by which the complaints of student athletes about violations of the NCAA Bill of Rights, the SABR, and institutional policies may be reported and investigated; require institutions of higher education 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; that student athletes have the right to enforce a provision of this SABR in the superior court through a civil action for injunctive relief or money damages, or both; and 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. The bill would prohibit a student athlete, institution of higher education, or athletic conference, as defined, from being required to agree to adjudication, in another state, of a claim or controversy that arises in California. Finally, the bill would authorize 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. Currently pending before the Assembly Committee on Higher Education.

The bill would also prohibit 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 institution of higher education who are not athletes or for being accused of a noncriminal violation the investigation or adjudication of which has not been completed, as specified.

- b) AB 1435 (Gonzales-Fletcher), 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.
- c) AB 735 (Ridley-Thomas), Chapter 220, Statutes of 2016, removed the sunset from the SABR.
- d) SB 1525 (Padilla), Chapter 625, Statutes of 2012, created the original SABR discussed as "Existing Law" above.
- e) 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."

- f) 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.
 - g) 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.
 - h) 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.
- 6) *Double referral*: Should this measure pass out of this committee it will be re-referred to the Committee on Higher Education.

REGISTERED SUPPORT / OPPOSITION:

Support

National College Players Association
California Association for Health, Physical Education, Recreation and Dance

Opposition

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

Analysis Prepared by: Dana Mitchell / A.,E.,S.,T., & I.M. / (916) 319-3450