

Department of Legislative Services
Maryland General Assembly
2021 Session

FISCAL AND POLICY NOTE
Third Reader - Revised

House Bill 125
Appropriations

(Delegate Lierman)

Education, Health, and Environmental Affairs

Public Institutions of Higher Education – Student Athletes (Jordan McNair Safe and Fair Play Act)

This bill establishes several requirements regarding college student athletes at public institutions of higher education. An athletic program must adopt and implement specified guidelines related to the health and safety of student athletes. By October 1, 2021, and each October 1 thereafter, the University System of Maryland (USM) Intercollegiate Athletics Workgroup, Morgan State University (MSU), and St. Mary’s College of Maryland (SMCM), must report on student athletes at each institution, including any student athlete policy changes related to the health and safety of student athletes. Beginning July 1, 2023, USM institutions, MSU, and athletic associations, including the National Collegiate Athletic Association (NCAA), must follow specified rules regarding student athlete compensation for the use of the student’s name, image, or likeness (NIL). **The bill generally takes effect July 1, 2021; however, the NIL provisions take effect July 1, 2023.**

Fiscal Summary

State Effect: Higher education expenditures at public four-year institutions may increase minimally due to health and safety guidelines and reporting requirements; however, any such expenditures are likely absorbable. Likewise, Baltimore City Community College can adopt and implement health and safety guidelines with existing resources. Beginning in FY 2024, higher education revenues (for USM and MSU) may significantly decrease due to NCAA (and conference) bylaws and rules being in conflict with the NIL requirements of the bill; however, if these bylaws and rules change before the effective date of the NIL provisions, which is possible, there may be minimal effect. As explained in more detail below, this impact cannot be reliably estimated at this time but will likely be known closer to the July 1, 2023 effective date of those provisions.

Local Effect: Affected local community colleges can adopt and implement health and safety guidelines with existing resources. Revenues are not affected.

Small Business Effect: None.

Analysis

Bill Summary: In general, the bill applies to public institutions of higher education that maintain an athletic program (including community colleges); however, the related reporting requirements only apply to USM, MSU, and SMCM. Further, the student athlete compensation and representation provisions apply to USM and MSU but not SMCM.

The General Assembly finds and declares that (1) meeting the educational needs of student athletes should be the priority for intercollegiate athletic programs in the State and (2) providing adequate health and safety protections for student athletes can help prevent serious injury and death.

Guidelines for Student Athlete Health

An intercollegiate athletic program at a public institution of higher education must adopt and implement (1) guidelines to prevent, assess, and treat serious sports-related conditions as specified; (2) exercise and supervision guidelines for any student athlete identified with a potentially life-threatening health condition, including those conditions specified; and (3) return-to-play protocols for athletes who experience injury during practice and play.

Student Athletes and their Name, Image, or Likeness – Compensation, Intercollegiate Athletics, Contracts

Beginning July 1, 2023 (fiscal 2024), specified rules regarding a student athlete's NIL must be followed by the constituent institutions of USM and MSU as well as athletic associations such that a student athlete may receive compensation from use of his or her NIL, but a prospective student cannot receive such compensation from USM or MSU. An athletic association, conference, or any other group or organization with authority over intercollegiate athletics, including NCAA, is prohibited from preventing student athletes from receiving compensation, as specified. Student athlete contracts regarding compensation for the student athlete's NIL must meet specified conditions, including disclosing the contract to USM or MSU, as appropriate. Student athletes are not granted the right to make commercial use of names, trademarks, logos, or other intellectual property owned or controlled by USM or MSU.

Current Law: Student athletes have no explicit rights in statute beyond those granted to all students. Institutions of higher education have no explicit responsibilities regarding student athletes.

Sports Agent Responsibility and Trust Act

The federal Sports Agent Responsibility and Trust Act (SPARTA) seeks to protect student athletes by prohibiting sports agents from signing athletes to an agency contract by:

- providing false or misleading information, or making false or misleading promises or representations;
- providing anything of value, such as gifts, cash, or a loan to the student athlete or anyone associated with the athlete;
- failing to disclose in writing to the student athlete that he or she may lose NCAA eligibility after signing an agency contract; or
- pre-dating or post-dating contracts.

SPARTA makes certain activities of sports agents come within the regulations of the Federal Trade Commission (FTC) and considers sports agents who entice student athletes with misrepresentations and gifts to enter into agency contracts in violation of FTC's regulations regarding the Federal Trade Commission Act (FTCA). FTCA was passed by the U.S. Congress to protect businesses and consumers from unfair competition and unfair or deceptive acts in the conduct of business. If a business engages in deceptive practices aimed at the average consumer, it may be in violation of FTCA regulations.

Three duties of sports agents under SPARTA are:

- a duty to be truthful;
- a duty of disclosure; and
- a duty to refrain from "buying" an athlete.

There are two ways to enforce the duties created by SPARTA:

- state action taken by the state's attorney general on behalf of the residents of that attorney general's state; or
- federal action taken by FTC.

Maryland Uniform Athlete Agents Act

An individual must be licensed under the Maryland Uniform Athlete Agents Act to act as an athlete agent in the State. A person who wishes to be licensed as an athlete agent must

submit an application, a \$25 application fee, and a \$1,000 licensing fee to the Maryland Department of Labor. Generally, an agency contract entered into by an unlicensed athlete agent is void, and any consideration received by the athlete agent must be returned. An athlete agent may not communicate with a student athlete, directly or indirectly, with the intention of recruiting or soliciting the student athlete to enter into an agency contract, without being licensed.

The contract between an athlete agent and a student athlete must contain specified information relating to payment and services and a conspicuous warning to the student athlete regarding eligibility and notification responsibilities if an agency contract is signed. The student has a statutory right to cancel a contract within 14 days of the contract being signed without penalty.

Prohibited acts for athlete agents include:

- giving false or misleading statements;
- furnishing anything of value to the student athlete before the student athlete enters into the agency contract;
- furnishing anything of value to any individual other than the student athlete or another licensed athlete agent;
- initiating contact with a student athlete unless licensed as an athlete agent;
- refusing inspection of, or failing to retain, required records;
- pre-dating or post-dating a contract;
- failing to notify the student athlete of potential ineligibility as a student athlete upon signing an agency contract; and
- receiving compensation from or splitting fees with a professional sports league, sports franchise, a representative or employee of a professional sports league or sports franchise, or an employee of an educational institution in the State.

A person who violates the Act is guilty of a misdemeanor and subject to a fine of up to \$10,000 or imprisonment for up to one year, or both. The Secretary of Labor may also assess a civil penalty of up to \$25,000 for a violation of the Act.

State Fiscal Effect: Higher education expenditures at public institutions may increase minimally due to health and safety guidelines and, for the four-year institutions, reporting requirements; however, any such expenditures are likely absorbable. Beginning in fiscal 2024, higher education revenues for USM and MSU may significantly decrease due to NCAA (and conference) bylaws and rules being in conflict with the NIL requirements of the bill; however, if these bylaws and rules change before the effective date of the NIL provisions, which is possible, there may minimal effect. As explained in more detail

below, this impact cannot be reliably estimated at this time, but will likely be known closer to the July 1, 2023 effective date of the NIL provisions.

Health and Safety Guidelines and Reports

Higher education expenditures increase to implement the required health and safety guidelines. Costs for implementing the guidelines cannot be reliably estimated. In addition, the USM Intercollegiate Athletics Workgroup, MSU, and SMCM must report annually as specified. However, it is assumed that any such costs are minimal and absorbable.

National Collegiate Athletic Association and Name, Image, and Likeness

In August 2014, a U.S. District Judge ruled that NCAA cannot prevent athletes from selling their NIL rights. In 2015 the U.S. Court of Appeals for the Ninth Circuit found certain NCAA amateurism rules violated federal antitrust law. In December 2020, the U.S. Supreme Court agreed to decide whether the NCAA had violated federal antitrust laws by restricting what Division I college athletes could be paid. The Supreme Court is anticipated to hear arguments in the case in spring 2021, with a decision expected by July.

The NCAA board was scheduled to vote on new rules regarding the use of a student athlete's NIL on January 11, 2021. The new rules were anticipated to have an effective date no later than the start of the 2021-2022 academic year. However, the vote was postponed, after the U.S. Department of Justice (DOJ) sent a letter dated January 8, 2021, to NCAA warning that the proposed rules could potentially violate federal antitrust rules. The letter reportedly also condemned NCAA's student athlete transfer rules, which had also been up for a vote on changes. The pathway for NCAA to move forward with changes to NIL and transfer rules is currently unclear.

Due to the ongoing lawsuit in the U.S. Supreme Court and warnings from DOJ, it is unclear when, if, or how NCAA will proceed with changes to NIL rules. Thus, it is currently unclear if the bill's NIL provisions will be in opposition to NCAA bylaws and conference rules when the NIL provisions of the bill go into effect on July 1, 2023 (fiscal 2024).

If the NIL rules remain in effect it is likely that institutions may need to withdraw from NCAA or conferences, which will result in a significant loss of revenue and potential fines, which would increase expenditures due to current contracts with these organizations. Likewise, current marketing contracts may need to be rewritten due to the bill if NCAA bylaws or rules are less strict than the bill, which may decrease revenues or increase expenditures.

However, there are more than two years for the NIL bylaws and rules to change before the bill's NIL provisions go into effect on July 1, 2023, which given national interest in the

issue, is possible and maybe even probable. There are at least two other states with laws with similar provisions that are scheduled to go into effect before July 1, 2023. Specifically, Florida's student athlete NIL law is scheduled to take effect on July 1, 2021. California's student athlete NIL law is scheduled to go into effect on January 1, 2023. These laws will indicate how the NCAA reacts to the NIL and may induce NCAA to change their rules. In addition, on February 4, 2021, federal legislation was introduced to create an unrestricted market for college athlete endorsement deals.

To the extent that the bill's provisions are not in conflict with any new rules, the bill will have a minimal fiscal impact on USM and MSU.

Additional Information

Prior Introductions: None.

Designated Cross File: SB 439 (Senators Ready and West) - Education, Health, and Environmental Affairs.

Information Source(s): University System of Maryland; Morgan State University; *New York Times*; *USA Today*; National Collegiate Athletic Association; Department of Legislative Services

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