

Department of Legislative Services  
Maryland General Assembly  
2021 Session

FISCAL AND POLICY NOTE  
First Reader

House Bill 125  
Appropriations

(Delegate Lierman)

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

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This bill establishes a number of requirements regarding college student athletes at public four-year institutions of higher education. In general, the bill establishes (1) a requirement for five-year scholarships for student athletes, as specified; (2) a requirement for financial and life skills workshops; (3) that student athletes must be granted the same rights as other students, as specified, and a requirement for a notice detailing student athletes' rights; (4) requirements related to student athletes transferring institutions; (5) requirements related to health care for student athletes; (6) requirements for the adoption and implementation of specified guidelines related to health and the prevention of sexual misconduct against student athletes; (7) prohibitions against institutions retaliating against student athletes, as specified; and (8) requirements related to federal Title IX. University System of Maryland (USM) institutions, Morgan State University (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). Professional representation of student athletes, and specified student athlete contracts, must meet specified standards. **The bill takes effect July 1, 2021.**

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Fiscal Summary

**State Effect:** Higher education expenditures at public four-year institutions increase significantly, primarily due to the scholarship and health care requirements. Higher education revenues may also significantly decrease due to NCAA (and conference) bylaws and rules being in conflict with the requirements of the bill.

**Local Effect:** None.

**Small Business Effect:** None.

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## Analysis

**Bill Summary:** In general, the bill applies to public four-year institutions that maintain an athletic program. The student athlete compensation and professional representation provisions apply to USM and MSU.

### *Five-year Scholarships*

A public four-year institution of higher education and an athletic program must provide a student athlete with scholarships for academics, athletics, or both, for five years or until the student athlete completes an undergraduate degree, whichever occurs first. An institution and an athletic program may choose to extend the scholarships as specified. The athletic program must renew the scholarship of a student athlete who suffers an incapacitating injury or illness under specified conditions. A temporary leave of absence may not count against the mandatory five-year scholarship eligibility period.

For athletic programs with a six-year graduation rate of 60% or less, specified student athletes who have exhausted their athletic eligibility must be provided an equivalent scholarship for up to one year or until the student completes an undergraduate degree (whichever occurs first).

If an athletic program does not renew a student athlete's athletic scholarship for cause, the decision may be appealed to the institution or the specified athletic association in which the institution is a member.

### *Financial and Life Skills Workshops*

Each athletic program must conduct a financial and life skills workshop for all first- and third-year student athletes at the beginning of the academic year. The workshop must include specified information and may not include any marketing, advertising, referral, or solicitation by providers of commercial products or services.

### *Student Athlete Rights*

A public four-year institution of higher education must grant student athletes the same rights as other students with regard to any matters related to adverse or disciplinary actions, including actions related to financial aid.

### *Transfer of Students*

An athletic program may not restrict, limit, or otherwise interfere with a student athlete's ability to transfer to another institution and must follow specified procedural requirements related to transfer.

### *Health Care for Student Athletes*

Unless a student athlete declines the payment of premiums, an athletic program must pay the health insurance premiums for participating student athletes who qualify for the federal Pell Grant. An athletic program must pay the insurance deductible, copay, and coinsurance amounts applicable to a claim of any student athlete who suffers an injury or a condition resulting from participation in the athletic program.

If a student athlete suffers an injury resulting from participation in an athletic program that requires ongoing medical treatment, the athletic program must provide – for at least two years following the student athlete's graduation or separation from the institution of higher education – either the necessary medical treatment or health insurance that covers the injury and the resulting deductible, copay, and coinsurance amounts.

### *Guidelines for Student Athlete Health and Prevention of Sexual Misconduct Against Student Athletes*

An athletic program 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 specified; (3) return-to-play protocols for athletes who experience injury during practice and play; and (4) guidelines to prevent sexual misconduct against student athletes, including those specified.

### *Title IX – Institutions and Athletic Directors*

Each institution of higher education subject to Title IX of the federal Education Amendments of 1972 (Title IX) must designate an employee as Title IX coordinator. The designee must be provided appropriate training and make the designee's and contact information publicly available and known to student athletes.

By August 1 each year, athletic programs must provide publicly available evaluations of compliance with Title IX.

An athletic director who is in violation of Title IX for three years or longer must be suspended from intercollegiate athletics in the State for three years.

*Rights of Student Athletes – Title IX and Jeanne Cleary Act*

An institution of higher education must prepare a notice detailing the following rights of student athletes: (1) rights under Title IX; and (2) rights to report in accordance with the federal Jeanne Cleary Disclosure of Campus Security Policy and Campus Crime Statistics Act. The notice must identify the contact information through which a student athlete may file a complaint for a violation of any of the rights identified in the notice, including those specified.

Each institution must post the notice in a conspicuous location in an athletic department. At the beginning of each academic year, an institution must provide to each student athlete copies of specified documents.

*Retaliation Against Student Athletes Prohibited*

An institution may not intentionally retaliate, as specified, against a student athlete for specified actions related to the violation of rights of student athletes. However, the bill may not be construed to restrict the authority of an institution to impose interim measures or, after a finding of responsibility, permanent consequences on a student athlete who has been accused of sexual harassment or violence.

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

Beginning July 1, 2021, 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 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.

*Professional Representation and Agents*

A professional representative obtained by a student athlete (at a USM institution or MSU) must be licensed under the Maryland Uniform Athlete Agents Act or admitted to the Maryland Bar to practice law. Further, an agent who represents student athletes must

comply with the federal Sports Agent Responsibility and Trust Act (SPARTA) while representing them.

**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.

### *Title IX*

Title IX of the Education Amendments of 1972 prohibits discrimination on the basis of sex in any federally funded education program or activity. The principal objective of Title IX is to avoid the use of federal money to support sex discrimination in education programs and to provide individual citizens effective protection against those practices. As entities that provide education and receive federal funds, institutions of higher education must follow Title IX requirements. Some key issue areas in which federal fund recipients have Title IX obligations are recruitment, admissions, and counseling; financial assistance; athletics; sex-based harassment; treatment of pregnant and parenting students; discipline; single-sex education; and employment. The U.S. Department of Education's (ED) Office for Civil Rights enforces Title IX for recipients that receive funds from ED.

### *Title IX Coordinator*

Under Title IX, each recipient must designate at least one employee to coordinate its efforts to comply with and carry out its responsibilities, including any investigation of any complaint communicated to such recipient alleging its noncompliance or alleging any actions that would be prohibited. The recipient must notify all its students and employees of the name, office address, and telephone number of the employee or employees appointed. Further, a recipient must adopt and publish grievance procedures providing for prompt and equitable resolution of student and employee complaints alleging any action that would be prohibited.

### *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 four-year institutions increase significantly, primarily due to the scholarship and health care requirements. Higher education revenues also likely decrease significantly, due to NCAA (and conference) bylaws and rules being in conflict with the requirements of the bill. Other provisions, including implementing the health and sexual misconduct guidelines, also likely increase expenditures. As explained below, none of these effects can be reliably estimated.

### *Scholarships*

Higher education expenditures increase and revenues decrease to provide scholarships to student athletes as specified in the bill. Institutions receive NCAA revenue for athletic scholarships, which are assumed to decrease due to the likely conflicts between the bill and NCAA bylaws (discussed further below). The amount of the scholarships required is not specified; thus, the magnitude of the impact on higher education revenues and expenditures cannot be reliably estimated. However, any impact likely is in the millions of dollars.

### *Health Care and Health and Sexual Misconduct Guidelines*

Higher education expenditures increase significantly to pay health insurance premiums for a participating student athlete who qualifies for the federal Pell Grant and pay the required

health costs for a student athlete who is injured or suffers from a condition resulting from participation in the athletic program. Higher education expenditures also increase to implement the required health and sexual misconduct guidelines. Costs for the health care programs and implementing the guidelines cannot be reliably estimated; however, expenditures are likely in the millions of dollars.

### *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 and transfer rules. Therefore, it is likely that these provisions and potentially other provisions of the bill, such as the transfer provision, will be in opposition to NCAA bylaws and conference rules when the bill goes into effect on July 1, 2021. Thus, 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 will 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. Further, students' rights requirements in the bill may be in conflict with NCAA bylaws. However, these impacts cannot be accurately determined.

### *Other Potential Impacts*

Institutions of higher education can likely provide the required financial and life skills courses using existing resources. The Title IX requirements in the bill generally mirror current federal requirements; thus, institutions of higher education can likely meet these

requirements using existing resources. Finally, USM and MSU staff can likely review student athlete contracts using existing resources.

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### **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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