THE DRAKE GROUP CALLS FOR CONGRESS TO ENACT COLLEGE ATHLETE PROTECTIONS: A LEGISLATIVE PROPOSAL

On September 8, 2020, The Drake Group proposed a College Athletes Rights and Protection Act (CARPA) to accomplish all of the promises made in the “College Athletes Bill of Rights” statement issued in August of 2020 by ten U.S. Senators: Cory Booker, Richard Blumenthal, Christopher Murphy, Kirsten Gillibrand, Ron Wyden, Mazie Hirono, Kamala Harris, Bernie Sanders, Chris Van Hollen and Brian Schatz.

Using the carrot of institutions continuing to receive funding under the Higher Education Act of 1965 ($130 billion annually in federal loans and grants in 2019), the proposed bill includes the following mandates:

- Granting full outside employment and NIL rights for enrolled college athletes overseen by an independent NIL Commission, rather than the NCAA;
- Establishing a private National College Athlete Medical Trust Fund with an independent Board of Directors charged with implementing a long-term athlete disability insurance program that addresses the latent medical cost impact of brain trauma or other athletics injuries that do not manifest before the end of enrolled athlete basic athletic injury insurance policy coverage;
- Allowing athletes and institutions to enter into licensing arrangements with third parties conditioned on proceeds being donated to the National College Athlete Medical Trust Fund and further funding the trust with assessments derived from gross annual media rights fees from national collegiate championships, conference championships, regular season and special events;
- Requiring national athletic governance associations to adopt and enforce consensus statements on standards of health care and coaches’ codes of conduct as membership obligations and to initiate investigations of athlete deaths by independent panels of medical experts;
- Guaranteeing athletic scholarships for five years or until graduation, whichever occurs first;
- Permitting college athletes to transfer to other institutions without athletic participation eligibility;
- Closing the loopholes in rules that limit the athletics-related time demands of coaches and creating limits on classes missed to ensure college athletes have the time to study and for adequate sleep;
- Requiring tenured faculty oversight and transparent reporting of college athlete educational outcomes;
• Providing a governance association athlete welfare advocate at no cost to the athlete to provide legal advice on the application of association rules and due process rights;
• Requiring that thirty percent of any national association’s independent governing board of directors be former athletes appointed by currently enrolled athletes;
• Prohibiting excessive employee compensation and construction of lavish athletes-only facilities; and
• Requiring annual reports to Congress electronically available to the general public.

Further, CARPA proposes that a Congressional Commission be established to complete a comprehensive two-year study of higher education integrity issues not addressed by the proposed bill – supporting H.R. 5528, a bipartisan bill filed in the House by Representatives Donna Shalala and Ross Spano.

The full text of the proposed legislation follows.
THE DRAKE GROUP CALLS FOR CONGRESS TO TAKE STRONG ACTION TO PROTECT COLLEGE ATHLETES – SEPTEMBER 8, 2020

PROPOSED BILL

COLLEGE ATHLETE RIGHTS AND PROTECTION ACT

To amend Sec. 487(a) of the Higher Education Act of 1965 to ensure that higher education institutions that receive federal funds provide students participating in intercollegiate athletic programs with sufficient health and medical protection and prevent their academic and financial exploitation. The unprecedented commercialization of these intercollegiate athletics programs threatens the academic success of college athletes and the integrity of higher education institutions, creates excessive institutional expenditures and burdensome student fees, and has resulted in inappropriate financial benefits to individuals conducting those programs.

The Act permits college athletes the ability immediately to monetize their own names, image and likeness (NIL) rights and engage in outside employment other than becoming a professional athlete and creates an independent non-profit NIL Commission to protect those rights. It also imposes immediately requirements to provide athletes better health, safety and wellness protections, improved educational benefits that lead to better graduation rates, greater freedom to attend institutions of their choice and a stronger position in the governance structure that controls the athletics experience. The Act further requires greater transparency and annual public reporting of college athlete time spent on athletics-related activities, compensation of athletics personnel, and detailed information on sources of revenues and expenditures.

The Act also establishes a Congressional Commission to review broader issues in intercollegiate athletics including (1) policies related to academic success; (2) restrictions to combat commercial excesses and to maintain a clear line of separation between collegiate and professional sports, (3) due process for persons and institutions accused of violating the rules of the NCAA, (4) impact of athletics on the academic mission and integrity of the higher education institution, and (5) other issues the Commission considers relevant.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

Sec.1. Short Title
This Act may be cited as the “College Athlete Rights and Protection Act.” or the “CARPA Act.”
Sec. 2 Findings

FINDINGS – Congress finds as follows:

(1) Under Title IV of the Higher Education Act of 1965 (20 U.S.C. 1070 et seq.) in fiscal year 2019, approximately $130.1 billion of Federal student support was available for higher education, including over $29 billion in Federal Pell Grants;

(2) Over 2,000 institutions of higher education voluntarily participate in athletic governance associations;

(3) The largest athletic governance association, the National Collegiate Athletic Association, includes over 1,100 institutions of higher education and more than 430,000 college athletes. This association generates over $1 billion annually and in 2017-18 it provided $609,000,000 in revenue sharing to its Division I member institutions of higher education;

(4) In 2018, intercollegiate athletic programs generated approximately $14 billion in revenue from ticket sales, radio and television receipts, alumni contributions, guarantees, royalties, and athletic governance association distributions;

(5) Athletic associations, athletic conferences, and their member institutions conduct collegiate athletic events in the 50 states and have a direct and substantial effect on interstate commerce;

(6) Most intercollegiate athletic programs are heavily subsidized by the institution of higher education that they represent, including support through institutional general funds derived from tuition dollars and mandatory student fees that benefit from Title IV Higher Education Act student loan and Pell Grants and athletics capital projects from tax-exempt bonds;

(7) Congress has supported numerous tax preferences enjoyed by college athletics and federal funding programs supporting the higher education institutions sponsoring athletic programs. These tax preferences and federal funding are defensible only if athletics programs fulfill their educational functions and do not result in excessive institutional expenditures, burdensome student fees, or inappropriate financial benefits to individuals conducting those programs;

(8) The highest paid public employee in 40 of 50 states is a head coach of an intercollegiate team. Over 150 college head basketball and football coaches annually make $1 million or more excluding bonuses. Some claim that the college coaches’ compensation is driven by the high salaries earned by NFL and NBA coaches. While compensation for head coaches in the NFL and NBA is very similar to that at the top 32 college programs, the average NFL team generated $460 million in 2019, while the average revenue generated by the top 32 teams in college football was under $90 million. Given the
greater than five-fold revenue disparity, the head coaches at the two levels, in a normal marketplace would not receive comparable compensation. The pro-to-college revenue disparity in basketball is approximately nine-fold;

(9) Congress recognizes that the market for coaches and athletic directors is sustained by several artificial factors: (a) no compensation is paid to the athletes, (b) intercollegiate sports benefit from substantial tax privileges, government subsidies, mandatory student fees, and other university support, (c) no shareholders demand dividend distributions or higher profits to bolster stock prices at the end of every quarter, and (d) coaches’ salaries are negotiated by athletic directors whose own worths rises with the salaries of their employees. Such an economic construct is inappropriate for tax exempt institutions of higher education;

(10) Many intercollegiate athletic programs have built lavish locker rooms, practice facilities, competition facilities, and other facilities to entice talented high school athletes to attend their institutions of higher education, even though access to such facilities are restricted from use by non-athlete students;

(11) Serious questions have arisen regarding whether institutions of higher education with highly commercialized athletic programs follow academic standards in admitting college athletes and have adequate faculty oversight to ensure that they are provided with a quality education; and

(12) Athletic associations have been unable to enact the reforms necessary to control commercial excesses in part because representatives of top revenue producing athletic programs have threatened departure from such associations if desired legislative rules, preferential decision-making structures, or revenue distribution policies are not adopted. The result has been an increased consolidation of riches among a small number of elite athletics programs, increased institutional and student fee subsidization for the vast majority of athletics programs, and a continued decline in academic values.

Sec. 3 Definitions

For purposes of this Act—

(1) “academic progress rate” has the meaning given to it by the NCAA Division I Manual, published annually by the National Collegiate Athletic Association (“NCAA”); 

(2) “Association” means a national non-profit collegiate athletics governance association that has at least 50 member institutions located in at least 25 states that conducts athletic competition among its members, sets playing rules for that competition, regulates the eligibility of players and institutions to participate, and annually determines a national champion in one or more
sports in one or more competitive divisions or subdivisions either by
conducting a national championship it wholly owns or recognizing a
collegiate national championship conducted by a United States national
sport governing body (NGB);
(3) “championship season” means from the beginning of team practice through
the end of the national championship in the athlete’s sport;
(4) “collegiate athletic events” means intercollegiate athletic contests during
the regular playing season and pre- or post-playing season intercollegiate
athletic contests between teams sponsored by Association member
institutions and played under rules promulgated by the Association;
(5) “antitrust laws” has the meaning given to it in (a) the Sherman Act (15
U.S.C. 1), (b) the Clayton Act (15 U.S.C. 12), (c) the Federal Trade
Commission Act (15 U.S.C. 41) (including unfair methods of competition
and unfair and deceptive acts) and (d) all state unfair competition acts;
(6) “CARA” or “Countable Athletics-Related Activity” means all
commitments arranged, directed or supervised by the institution’s coaches
or administrative staff members, including fundraising, promotional or
community service activities, with the exception of treatment of athletic
injuries, medical testing, academic study halls or tutoring sessions under the
supervision of the provost or any academic units [not the athletic
department], community service activities required of all undergraduate
students and not arranged by the athletic department, game-day meals,
which, if provided for home events, shall use on-campus facilities, athlete
rules compliance and life skills education meetings, and travel to and from
competitive events.
(7) “championship season” means from the first day of team practice through
the last day of the national championship in the college sport in which the
college athlete participates;
(8) “coaches” means individuals who:
(A) are employed, full time or part time, by Association member
institutions to instruct, manage, and prepare for competition
institutionally sponsored athletic teams; or
(B) are graduate students who receive educational financial assistance
from the institutions they attend in return for assisting in coaching
athletic teams sponsored by those institutions; or
(C) are volunteers who assist in coaching institutionally sponsored athletic
teams for the purpose of acquiring experience in coaching;
(9) “college athlete” means any college student who participates in an
intercollegiate athletic program of an institution of higher education, and
includes athletes in any intercollegiate sport regardless of scholarship status;
(10) “consensus medical statement” means a public statement on a particular aspect of medical knowledge at the time the statement is made that a representative group of experts agree to be evidence-based and state-of-the-art (state-of-the-science) knowledge;

(11) “discovery mechanisms” means interrogatories, depositions, production of documents and other physical evidence, requests for admission and any other discovery method as defined by the Federal Rules of Civil Procedure or the Rules of the Federal Trade Commission;

(12) “direct governmental support” means funds received from state and local governmental agencies that are designated for athletics;

(13) “direct institutional support” means financial transfers directly from the institutional general fund to athletics;

(14) “Federal Graduation Rate” means the percentage of first-time full-time freshmen students who enter an institution in the fall of a given year and leave with a degree within six years as required to be reported by the "Student Right-to-Know and Campus Security Act" (P.L. 101-542) adopted by Congress in 1990. The rate includes comparisons between college athletes and the undergraduate student body;

(15) “fair market value” or “FMV” means the price at which a transaction would occur between a willing buyer and a willing seller, with no undue influence from outside forces and with neither party being under any compulsion to buy or to sell and both having reasonable knowledge of relevant facts;

(16) “generated revenues” means only those gross revenues earned by activities of the athletics programs including ticket sales, radio and television receipts, alumni contributions, guarantees, royalties, national or conference governance organization distributions, and other revenue sources that are not dependent upon institutional entities outside the athletics department;

(17) “graduation success rate” has the meaning given to it by the NCAA Division I Manual, published annually by the NCAA, plus two factors not considered in the Federal Graduation Rate: (a) college athletes’ transfers from an institution before graduating and are in good academic standing and (b) when college athletes’ transfers to an institution and earn a degree;

(18) “independent director” means (a) an individual who has not held a position as a president, member of a governing board, faculty member, athletic director, and/or other paid employee of a higher education institution or non-profit athletic association or conference or been an enrolled college athlete during the two years preceding commencement of or at any time during his or her term or position as a director and (b) is charged with the exercise of governance responsibilities in the educational interest of
all college athletes rather than the interest of any member institution,
conference, or competitive division or subdivision;

(19) “indirect institutional support” means payment of utilities, maintenance,
support staff salaries, etc. by the institution on behalf of athletics;

(20) “member institutions” means postsecondary educational institutions
belonging to the Association;

(21) “Named Entities” means Associations, member institutions, conferences, 
and approved third-party-owned preseason and postseason collegiate athletic 
events;

(22) “net generated revenue” means total generated revenues less athletics
operating expenses;

(23) “NIL” means name, image and likeness. These rights may be used in 
connection with, but not limited to, athlete’s signatures/autographs, social
media accounts, advertising, marketing, promotion or sale of products and
services, appearances, employment, etc.;

(24) “professional athlete” means one who (a) receives compensation to play a
sport that exceeds actual and necessary expenses to participate in practice or
competition, (b) receives, directly or indirectly, a salary, reimbursement of
expenses, or any other form of financial assistance from a professional
sports organization as payment for sport participation, (c) competes on any
professional athletics team; competes in an athletic competition or
exhibition for pay or receives remuneration in excess of actual and
necessary expenses to participate in such activity – excluding compensation
received as a member of a country’s national team participating in Olympic
or International Federation world championships;

(25) “representative of an institution’s athletic interests” has the meaning
given to it by the NCAA Division I Manual, published annually by the
NCAA;

(26) “total compensation” means salary or bonus payments from all institutional
sources and private or public foundations dedicated to the support of such
institutions plus the benefit payments made on behalf of the employee
(excluding any employee contribution) including (a) retirement contribution,
regardless of the plan’s vesting provision; (b) medical insurance; (c)
disability income protection; (d) tuition for faculty and staff dependents
(both waivers and remissions are included); (e) dental insurance; (f) social
security contribution (FICA); (g) unemployment insurance; (h) life
insurance; (i) workers’ compensation premiums; and (j) other benefits with
cash alternatives (typically including moving expenses, housing, use of
automobiles, cafeteria plans, or cash options); and
Sec. 4. Higher Education Act of 1965 Program Participation Agreement
Amendment

Sec. 487(a) of the Higher Education Act of 1965 (20 U.S.C. 1094(a)), which
establishes conditions that higher education institutions must meet to be eligible
for federal financial aid, is amended by adding at the end the following new
section 30:

(30) In the case of a two-year or four-year institutions of higher education that
operates an intercollegiate athletic program, the institution and the
Association or conference of which it is a member must comply with all of
the following minimum athlete rights and protection standards which shall
be applicable to all Association member institutions unless otherwise
specified.

A. College Athlete Freedom to Obtain Outside Employment

Unrelated to Athletic Ability or Reputation. Individual college
athletes shall have the same rights as non-athlete students
independently to engage in non-school employment unrelated to
athletic ability or reputation and not involving the use of the athlete’s
NIL except that Associations and conferences may adopt any of the
following requirements and impose athletics eligibility penalties for
violation of such requirements:

1. college athletes’ compensation received shall be for work actually
   performed and at fair market value;
2. college athletes attest that neither the institution nor an institutional
   representative was involved in obtaining such employment with
   the exception of institutionally conducted off-season sports camps;
   and/or
3. college athletes not miss classes or examinations due to such
   outside employment.

B. College Athlete Rights to Earn Outside Compensation Related to
Athletic Ability, Reputation or Use of NIL. Individual college
athletes shall be permitted to obtain employment and accept
remuneration for work actually performed and at fair market value for
employment related to athletic ability, reputation or the commercial
use of their own names, likenesses or images in advertisements,
appearances, speaking engagements, on social media accounts, for
endorsement of commercial products or for other commercial purposes
at any time during the year subject to compliance with NIL
Commission standards and the following conditions:

1. Independent NIL Commission and Eligibility Center. An
   independent 501 (c) (3) non-profit organization shall be established
   for the purpose of setting standards, reviewing agreements for
   compliance with such standards, and resolving disputes related to
   the application of such standards.

   a. Composition. The NIL Commission shall consist of nine
      members, each of whom shall serve a five-year term. Three
      members shall be economists with experience and expertise in
      identifying fair market value and shall be appointed by the
      North American Association for Sports Economics. Initially,
      one shall be appointed for a term of five years, one for a term
      of four years and one for a term of three years. Three members
      shall have experience and expertise in employment and sports
      law and shall be appointed by the Sports Lawyers Association.
      Initially, one shall be appointed for a term of five years, one for
      a term of four years and one for a term of three years. Three
      other members shall have experience and expertise in
      intercollegiate athletics management or higher education
      administration and shall be appointed by the American Council
      on Education. Initially, one shall be appointed for a term of
      five years, one for a term of four years and one for a term of
      three years. The term “independent” shall mean at least two
      years removed from employment by any Named Entity, or the
      appointing organization, and a promise not to be employed by
      such entities for five years following service on the
      Commission.

   b. Functions. The NIL Commission shall perform the following
      functions:
1. Timely review college athlete NIL agreements to
determine if they meet the requirements of this Act and
standards established by the NIL Commission;

2. Resolve challenges of the FMV standard;
   i. Athletic directors of member institutions have the
      exclusive right to submit challenges to any NIL
      agreement’s FMV.
   ii. The Commission may independently decide to
       examine any NIL agreement for compliance with its
       FMV standard.
   iii. Generally, the Commission will question any income
       arrangement that exceeds, by over ten percent,
       previously approved NIL agreements for similar work
       or, in those cases in which there is insufficient
       comparable market data, the Commission may assess
       the value of the contract to the third-party licensor.
   iv. In all cases, the burden of proof for justification of
       FMV rests with the third-party licensor.

3. Set standards related to athlete engagement in
   inappropriate activity or contracts with third parties that
   do not meet certain character and integrity standards;

4. Resolve disagreements between the athlete and the
   athlete’s member institution with regard to their
   respective rights and resolve compliance challenges.

5. Determine on the basis of two years of data initially and
   as needed following that period, whether any additional
   marketplace compensation standards or time restrictions
   are advisable;

6. Set standards for the registration and certification of
   agents and resolve complaints related to the conduct of
   agents, attorneys or third-party employers, and, if
necessary, to withhold approval of an agent, attorney or third-party employers for future college athlete NIL agreements;

7. Set standards for agent and attorney compensation with regard to hourly rates or percentage commissions;

8. Resolve athletes’ or Named Entities’ disagreements with NIL Commission decisions not to approve athletes’ NIL agreements based on failure to meet NIL Commission standards;

9. Set standards prohibiting institutions from assisting, directly or indirectly, athletes in their efforts to monetize their individual NILs (e.g., production of videos, creative development of brands, etc.) other than educating college athletes about NIL Commission standards and, generally, brand promotion;

10. Only the NIL Commission or the Federal Trade Commission has the right to void or require a revision to an athlete NIL contract;

11. Develop educational and instructional materials, forms and applications for processing of NIL agreements;

12. Refer complaints about inappropriate involvement by representatives of the institution per Sec. 4. (30). A. 2. of this Act to the Federal Trade Commission which has subpoena power and other discovery mechanisms to further investigate the scope of the complaint;

13. Maintain a publicly accessible and searchable database of all athletes’ NIL agreements;

14. Establish a de minimis amount or other standards for athletes’ NIL agreements that do not have to be submitted to the NIL Commission or formalized in a contract;
15. Approve any Association eligibility rules related to college athlete outside employment and NIL monetization prior to their consideration for adoption;

16. Develop policies and procedures for all NIL agreements, including an Association, conference, institution, and college athlete agreement fee system that will permit the Commission to be self-supporting; and

17. Require any disputes concerning the NIL Commission’s decisions be resolved by the Federal Trade Commission.

2. **Limited Antitrust Exemption and State Law Preemption.**

   Associations may adopt athletics eligibility rules consistent with NIL Commission standards and enforce penalties for violation of such rules including rules which require that college athletes attest that neither the institution nor an institutional representative was involved in obtaining the athlete’s employment or the opportunity for the monetization of the athlete’s NIL and/or the college athlete does not miss classes or examinations due to such outside employment. The NIL Commission with respect to its functions listed above in Sec. 4. (30) B.1.b. and the Association to the extent its eligibility requirements and enforcement penalties conform to the requirements herein and enforces any of the NIL Commission’s decisions shall be exempt from the antitrust laws. Further, any state laws that conflict with the requirements herein with respect to NIL agreements of college athletes shall be explicitly preempted by this law.

3. **Additional Requirements.** Named Entities are not permitted to restrict college athlete NIL compensation or otherwise control athlete outside compensation other than the collegiate athletics ineligibility of professional athletes consistent with the Sec. 3. (23) definition and the Sec. 4. (30) A and B provisions of this Act.

4. **Prohibited Use of Entity Intellectual Property.** The college athlete may not use or identify the marks, logos and other intellectual property of Named Entities in connection with the monetization of the athlete’s NIL, other than in connection with
fair use of materials that contain such marks, logos and intellectual
property that cannot be monetized.

a. Third Party Licensing Grouping Named Entities with their
Currently Enrolled College Athletes. A third-party licensor
may enter into an agreement with a currently enrolled
individual athlete or group of enrolled athletes and a separate
agreement or joint agreement with a Named Entity for the use
of their respective NILs without violating this prohibition or
the provisions of Sec. 4. (30) B. 5 of this Act that limit the
rights of Named Entities to use athlete NILs, conditioned on
the Named Entities and college athletes contributing their
respective licensing proceeds into the National College Athlete
Medical Trust Fund (see Sec. 4. (30) C. 2. of this Act). Such
agreements may be subject to additional standards established
by the NIL Commission.

5. Limitation of Institution, Conference and Association Rights to
Use Athlete NILs.

a. Limited Rights to Use Athlete NILs. Named Entities may
use the rights to the names, images and likenesses of any
current college athlete participating in collegiate athletic events
and retain revenues derived from such use to benefit the
collegiate athletic program, institutional academic programs or
for other purposes as specified in this Act. With such uses
limited as follows:

i. Permitted Uses. Named Entities may use athlete NILs for
(a) audio or videocast or otherwise recorded for live or
delayed electronic distribution or photographed for print or
digital publication during the championship season to
promote the respective team’s athletic events of that
season, (b) advertising or promoting championship season
athletic events in which the athlete participates, (c)
publication and sale of event programs sold in conjunction
with or during the course of championship season athletic
events in which the athlete participates, and (d) perpetual
print and electronic publication rights for the athlete’s
historical performance and participation statistics and
photographs of prior champions or championship teams in
athletic-event programs or on its public internet site. The
institution may also engage in commercial exploitation of
the exclusive right to provide official team athletics apparel
or equipment to its athletics’ teams and to put the name of
the athlete on official team uniforms. However, if the
institution or any Named Entity licenses its own NIL to a
third party to sell its branded products, it cannot grant the
use the athlete’s NIL to such third parties except under the
provisions of Sec. 4. B. 4. a. of this Act. The athlete may
be required to wear official institution apparel
throughout the academic year for official team practices,
exhibitions, non-championship season contests, and
appearances at official university events in which all
attending players must wear such apparel.

(1) Revenues to Institution. The Named Entities may
retain the revenues from such sales for uses that benefit
college athletes, collegiate athletic programs,
institutional academic programs, or other purposes as
specified in this Act.

(2) No Revenues to Athletes. Named Entities shall not
pay athletes for such permitted uses.

ii. No Conflict Between Named Entity and Athlete NIL
Use. During the period of permissible Named Entities’ free
use of an individual athlete’s NIL, the athlete shall not
enter into a third-party NIL agreement that conflicts with
the institution’s third-party sponsorship of its allowable
activities. However, if a Named Entity agreement grants
sponsor exclusive rights to provide team practice and
competition shoes and apparel in that athlete’s sport, the
athlete shall not be precluded from entering into an
agreement with that same or any competing sponsor for
wearing apparel or shoes in non-school activities unrelated
to the athlete’s sport during the championship season and is
under no restrictions outside the championship season other
than as specified Sec. 4. B. 5. a. i. above. The NIL
Commission shall develop specific guidelines regarding such separation of rights.

iii. **Prohibited Use of Enrolled Athlete NILs.** Named Entities may not sell the rights to use the NIL of any enrolled college athlete for any other commercial purpose related to athletic participation during the athlete’s collegiate eligibility (e.g., video games, names on apparel, or use on other merchandise or commercial products) except to benefit the National College Athlete Medical Trust Fund as provided in Sec. 4. B. 4. a. of this Act.

b. **Submission Requirements.** All NIL agreements above a de minimis amount (to be established by the Commission) must be formalized in a written contract, be submitted to the athletes’ institution and be responded to within five business days, and be submitted to the NIL Commission for review within five business days, and be promptly posted by the NIL Commission in a publicly available and searchable data base.

i. Any disagreement between the athlete and the athlete’s member institution with regard to their respective rights should be immediately submitted to the NIL Commission for resolution.

ii. The NIL Commission will not review any agreement submitted by a college athlete who is academically ineligible for intercollegiate athletics participation.

c. **Athlete Group Licensing.** College athletes can join with each other to negotiate and enter into group licensing contracts with each other or with outside third parties (but not Named Entities and not as prohibited in this section and subject to the provisions hereto). These NIL contracts must be submitted to the NIL Commission and will be held to the same standards as individual athletes’ contracts.

C. **Health, Safety and Wellness Standards and Comprehensive Coverage of Health Care Costs Related to Athletic Injuries.** It is the responsibility of Associations to use their rule-making and enforcement powers and institutions to use their oversight over program delivery to
protect the health and well-being of participating athletes. College
athletes shall receive and their respective Associations institutions shall
enforce health, safety and wellness protections specified as follows:

1. **Coverage of Athletic Injury Costs.** For any injury directly resulting
from participation in the institution’s athletic program and at no cost to
college athletes or their parents and at the expense of their institutions
and the Association, including the cost of insurance deductibles and
co-pays, except that this requirement is not applicable to any
preexisting medical condition that predates the college athlete’s
participation in the institution’s athletic program:

   a. full medical care extending at least two years following either
      graduation or separation from the institution or until the athlete
      qualifies for catastrophic injury program coverage;

   b. benefits of a catastrophic insurance program, including the use of a
gap claims fund, that shall be annually reviewed by an independent
committee and adjusted based on the needs of athletes then
covered by such program; and

   c. benefits of a long-term disability insurance program and/or trust
fund to provide medical care required beyond the period specified
in Sec. C.1.i above

2. **National College Athlete Medical Trust Fund (Trust).** A National
Athlete Medical Trust Fund shall be established for the purpose of
assisting former college athletes with medical expenses related to long
term disability or coverage of medical expenses related to college
athletic injuries that exceed the scope of coverage specified in Sec. 4.
(30). C. 1. of this Act, such grants to be determined by the policies
established by the Trust Board of Directors.

   a. **Purpose of the Trust.** Within two years following the adoption of
this Act, the Trust shall investigate the cost and benefits associated
with and implement a long-term athlete disability insurance
program that addresses the latent medical cost impact of brain
trauma or other athletics injuries that do not manifest before the
end of basic athletic injury insurance policy coverage.
b. **Private Trust.** Such private trust shall be formed by and
administered by an independent Board of Directors that shall
initially be formed as follows:

i. The Board shall consist of nine members, each of whom shall
serve a five-year term. Five members shall be medical experts
appointed by the American Medical Association (AMA).
Initially, one shall be appointed for a term of five years, one for
a term of four years and one for a term of three years.

ii. Four members shall have expertise in financial affairs and
investments and shall be appointed by the National Association
of College and University Business Officers (NACUBO).
Initially, one shall be appointed for a term of five years, one for
a term of four years and one for a term of three years.

iii. The term “independent” shall mean at least two years removed
from employment by any Named Entity, or the appointing
organization, and a promise not to be employed by such entities
for five years following service on the Board.

c. **Funding of the Trust.**
The Board of Directors shall set an annual budget based on
estimated need that shall not exceed revenues collected from the
following sources:

i. **Third Party Licensing Grouping Named Entities with their
   Currently Enrolled College Athletes.** Any Named Entity and
currently enrolled college athlete entering into a group
licensing agreement jointly or separately under the conditions
specified in Sec. 4. (30). B. 4. a. shall each contribute one
hundred percent of their respective licensing revenues into the
Trust.

ii. **National Championship Media Rights Fees.** The
Association and any of its conferences that conduct a national
championship for a competitive division or subdivision for
which a national championship is not offered by the
Association shall contribute up to twenty-five percent of all
gross annual media rights fees derived from such national
championships into the Trust as determined by the Board of Directors after funding from “i” above is taken into account.

iii. **Conference Championship Media Rights Fees.** Any Association member conference that conducts conference championship for its member institutions shall contribute up to twenty-five percent of all gross annual media rights fees derived from such conference championships into the Trust as determined by the Board of Directors after funding from “i” above is taken into account.

iv. **Regular Season Contest Media Rights Fees.** Each conference that enters into a media rights agreement for its member institutions for regular season contests or events other than the conference championship shall contribute up to fifteen percent of all gross annual media rights fees derived from such events into the Trust as determined by the Board of Directors after funding from “i” above is taken into account. Each member institution that enters into a media rights agreement for one or more of its regular season contests that are not included in a conference regular season media rights agreement shall each contribute up to fifteen percent of their respective gross annual media rights fees into the Trust as determined by the Board of Directors after funding from “i” above is taken into account.

v. **Approved Third-Party-Owned Preseason and Postseason Collegiate Athletic Events.** Each third-party-owned preseason and postseason collegiate athletic event approved by the Association shall contribute up to fifteen percent of gross annual media rights fees derived from that event into the Trust as determined by the Board of Directors after funding from “i” above is taken into account.

vi. **Notice to Named Entities of Contribution Increase.** If the Board of Directors determines it is necessary to increase contributions to provide athletes with the benefits of such a program, Named Entities shall be given at least two years notice of such increase.
3. **Prevention Education and Baseline Assessments.** College athletes predisposed to injury risk due to the nature of their sports participation, must receive institutionally financed prevention education and baseline and/or monitoring assessments (e.g., Covid-19 assessments, neurological baseline assessments related to concussion, presence of sickle cell trait, review of susceptibility to dehydration, etc.) as recommended by the American College of Sports Medicine, the U.S. Centers for Disease Control and Prevention, or other national Associations of specialist physicians.

4. **Exercise and Supervision Guidelines for At-Risk Athletes.** College athletes identified as having potentially life-threatening health conditions, must receive institutionally provided exercise and supervision guidelines.

5. **Licensed Physician Determination of Return to Play.** College athletes must receive scientifically based return-to-play decisions following injury and other medical decisions affecting the college athlete’s safe participation must rest with a licensed physician designated by the institution.

6. **Compliance with Consensus Statements on Standards of Care.** Operation of institution athletic programs must be consistent with sports medicine “consensus statements on standards of care” as recommended by the College Athletic Trainers Society, the American College of Sports Medicine and other recognized medical societies. Such consensus statements must be regularly reviewed, adopted and enforced by Associations as conditions of membership.

7. **Independent Investigation of Athlete Deaths.** In the case of catastrophic injury or death to any athlete at any member institution, the Association shall conduct an independent investigation by a three-person panel of experts not affiliated with the involved institution appointed by the College Athletic Trainers Society and the American College of Sports Medicine. At least two members of the panel shall be medical doctors. The panel shall produce a public expert report and recommendations that the institution must implement.

8. **Code of Conduct Requirement.** The Association shall adopt and enforce a Code of Conduct applicable to all coaches, staff and college
athletes which shall be as stringent as the SafeSport Code promulgated by the U.S. Center for Safe Sport which protects Olympic and non-school athletes from sexual, physical, emotional, verbal and other forms of abuse. Such Code shall provide for submission of complaints directly to the Association, include all athletic department coaches, staff members and adult volunteers as mandatory reporters, prohibit retaliation against athlete victims and whistleblowers and shall include penalties up to and including the ineligibility of athletes or banning the employment of athletic department staff members found in violation of the Code.

9. Participation in National Athletic Injury Surveillance Program. The Association shall require all member institutions to participate in a national athletic injury surveillance program.

10. Periodic Review of Member Institution Athlete Protection Program. The Association shall require a periodic external peer review of member institutions’ athlete-protection policies and procedures, Injury Surveillance Program records, Code of Conduct violations, athlete physical and mental-health-education programs.

D. Improved Educational Outcomes. Association and institutional rules and Association enforcement shall require member institutions to provide college athletes with the following educational protections:

1. Athletics Grant-in-Aid Terms. Athletics grants-in-aid to first year students shall be awarded by four-year institutions of higher education for a period of no less than five years or until graduation, whichever occurs first, and by two-year institutions of higher education for a period of no less than three years or until graduation, whichever occurs first. Transfer and non-first year awards shall be similarly pegged to the graduation standard.

2. Athletics Grant-in-Aid Conditions. Athletics grants-in-aid may be conditioned on the athlete’s continued voluntary participation in athletics and meeting academic eligibility standards required for athletics eligibility but cannot be withdrawn for reasons of physical injury, physical condition, unsatisfactory athletic performance, or improper pressure to withdraw from the team. The dollar amount or term for such aid may be reduced in the case of serious athlete misconduct as determined by the processes used by member
institutions’ regular student disciplinary authority that has jurisdiction over all students.

3. **Limiting Athletics Time Demands.** Association and institutions shall require that countable athletically related activity (CARA) be limited to 20 hours per week with no more than four hours per day during any week in which classes are in session and include at least one day off which shall not include travel to and from athletic events. The following additional restrictions shall apply:

   a. Recognizing the varying length of athletic competitions, an athletic competition shall count as three hours against the 20-hours-per-week limit, regardless of the actual length of the contest. One day shall count as one competition during participation in tournaments which may not be conducted on Monday through Thursday while classes are in session.

   b. Athletes shall not be required to report for a competition any earlier than two hours before the scheduled starting time for the event and media and other traditional activities occurring at the conclusion of the event shall not exceed one hour following the end of the event.

   c. The practice of requiring players to stay in hotels prior to home games shall be prohibited.

   d. CARA, other than for the conclusion of competitions shall be prohibited during an eight-hour period between 9 p.m. and 6 a.m.

   e. Competition shall not be permitted during final examinations.

   f. No more than one competition per week shall be scheduled on Mondays through Thursdays.

   g. A 10-hour per week CARA limit and a prohibition against participation in competition travel shall apply to any athlete who is academically ineligible to compete.

   h. A committee of tenured faculty appointed by the faculty senate (or highest faculty governance body) of the institution shall be responsible for approving the competition schedules for athletic
teams. No team schedule shall be approved if it results in a team
or individual athlete missing more than the equivalent of ten full
class days, excluding dates reserved for the possibility of post-
season competition.

i. On the first day of classes, athletes should be required to present
their travel schedules to the faculty member teaching each course
in which they are enrolled. If the faculty member believes that
classes missed are too excessive for the athlete to succeed in the
course, the faculty member should recommend that the student
drop the class and reschedule it to a non-competition semester.
Alternatively, the faculty member and student can agree to a lower
acceptable number of classes to be missed or make other mutually
satisfactory adjustments.

4. **Athlete Right to Transfer.** Athletes may transfer to another
institution without athletic participation ineligibility or other penalty at
least once during that college athlete’s undergraduate enrollment and
conditioned on that college athlete meeting all academic and athletic
participation eligibility requirements at the current member institution
at the time of transfer. Any additional transfers without loss of
eligibility must be approved by the Association;

5. **Jurisdiction Over Academic Counseling and Support Programs.**
Academic counseling and academic support services for college
athletes shall be under the direct supervision and budgetary control of
the member institution’s academic authority, administered externally
to the athletics department and shall be consistent with counseling and
support services available to all students.

6. **Tenured Faculty Committee on Academic Oversight.** Each
Association member institution must have a tenured-faculty-only
Committee on Academic Oversight.

   a. The Committee shall review the academic progress and
qualifications of athletes and, when possible, compare such data to
non-athletes, including average SAT and ACT scores by sport,
Federal Graduation Rates by sport, graduation success rates by
sport, independent studies taken by sport, a list of professors
offering the independent studies and their average grade assigned,
admissions profiles, athletes’ progress toward a degree, trends in
selected majors by sport, average grade distributions of faculty by major, incomplete grades by sport, grade changes by professors, and the name of each athlete’s faculty advisor.

b. The Committee shall report to the faculty Senate annually to make recommendations for improvements in educational outcomes with the goals that athletes (i) enroll in majors and classes of their choosing, (ii) graduate at the same rate as non-athletes and (iii) not be steered to particular classes or majors in order to remain eligible for athletic participation or to artificially increase their graduation rates.

7. Athlete Welfare Advocate. The Association shall hire and provide salary, benefits and administrative expenses for and member institutions shall provide all athletes with contact information for, an Athlete Welfare Advocate(s) who shall provide independent legal advice to college athletes at no cost regarding the application of Association rules and due process rights.

E. Independent Board of Directors and College Athlete Voice in Governance

1. Composition of Independent Board of Directors. The Association shall be governed by a board of “independent directors” that conforms to the definition in this Act (“Board”). Directors shall reflect all athletics program stakeholders (presidents, trustees, athletic directors, tenured faculty, and college athletes). Individuals appointed under this paragraph shall be coordinated to ensure diversity.

a. Thirty percent of the Board shall be former college presidents appointed by the American Council on Education having served at member institutions representing all membership divisions and subdivisions within each division.

b. Ten percent of the Board shall be former athletic directors or conference commissioners equally representing all competitive divisions appointed by the National Association of Collegiate Directors of Athletics.

c. Thirty percent of the Board shall be former tenured faculty appointed by the American Association of University Professors,
having been employed at member institutions representing all membership divisions (and subdivisions within each division).

d. Thirty percent of the Board shall be former college athletes appointed by a nominating committee consisting of the former chairs of the student athlete advisory or similar committees equally representing membership divisions if such membership substructures exist.

2. **Terms and Qualifications.** Each director shall serve a four-year term and be eligible for appointment to no more than one additional term. Staggered terms shall ensure that no more than 25% of the Board turns over in any one year. Except for college athlete and tenured faculty appointments, each Director shall have previously served for no less than two years in a leadership position directly related to the oversight of intercollegiate athletics or, in lieu of such leadership experience, have demonstrated expert knowledge of intercollegiate athletics. Each college athlete appointed Director shall have completed four years of eligibility, earned a baccalaureate degree, and completed his or her eligibility within no less than 10 years at the time of appointment.

3. **Duties of the Board.** The Board members shall exercise a fiduciary duty to act in good faith and in the interests of the Association to enhance the educational opportunities for and protect the health and well-being of college athletes and to make intercollegiate athletic programs compatible with the educational missions of higher education. Specifically, the Board shall:

a. **Internal Operations.** Control the internal operation of the Association including the hiring, firing, evaluation, and compensation of the chief executive officer, approval and oversight of the Association’s budget, and shall take other actions customary for a board of directors of a non-profit organization;

b. **Contracts.** Exercise the authority to review proposed contracts and require modifications to existing contracts to ensure compliance with this Act;

c. **Use of Revenues.** Determine the use of Association income from its championships or other commercial activities consistent with
the athlete health and educational protections mandated by this Act
conditioned on the requirement that the distribution of revenues
shall not be conditioned on the competitive success of member
institutions participating in its championships;

d. **Certification Program.** Ensure that each member institution’s
athletics program shall undergo an Association certification at least
once every ten years, which certification process shall consist of
peer review, external to the member institution as administered and
funded by the Association, of a campus-wide self-evaluation
conducted by various campus committees assembled for that
purpose. The assessment shall include governance and
commitment to Association rules compliance, academic integrity,
gender/ diversity issues and college athlete health and well-being.
A majority of the members of these committees shall be faculty
members, and the evaluation process shall be based on standards
established by the Association’s Board of Directors consistent with
the purposes of the Association, its stated principles, and the
requirements of this Act.

e. **Control of Excessive Employee Compensation.** To better
balance the extent to which athletics earned revenues are used to
support education and health benefits provided to college athletes
and control excessive salaries and benefits to coaches and other
athletics staff inappropriate for tax-exempt educational institutions,
the Association and its member institutions shall receive a limited
antitrust exemption that permits the following.

i. Head coach and athletic director annual compensation from all
institutional sources, including foundations or other legal
entities established to support the institution or companies
engaged in commercial relations with the institution, may not
exceed three times the compensation of full professors at
doctoral institutions being paid at the 95th percentile based on
the annual American Association of University Professors
Report on the Economic Status of the Profession adjusted to 12
months.

ii. The Association’s Board of Directors shall establish similar
lower limits for full-time and part-time assistant coaches, and
for associate and assistant athletic directors that shall be
correlated with lower academic ranks (associate professor,
assistant professor, and instructor).

iii. Full-time athletics personnel may not annually earn outside
income derived from their athletics positions (e.g., motivational
speaking, writing books, summer camps, endorsements, or
consulting) in excess of 20% of their annual compensation
from all institutional sources or $100,000 whichever is greater.

iv. Employment agreements executed prior to September 1, 2020
shall be exempt from this provision.

f. Gender Equity. Compliance with the athletics regulations of Title
IX of the Education Amendments of 1972 shall be a condition of
membership. Any member institution found by the Association
certification process, the Office for Civil Rights of the Department
of Education, or a court of law not to be in compliance shall have
one year to remedy inequities during which time the athletic
program shall not be eligible for Association post-season
championships. If the member institution is not in compliance after
two years, its Association membership shall be revoked.

g. Sole Decision-Making Authority - Act as the sole decision-
making authority, with the advice of its own expert committees or
the Association’s membership divisions, to set the following
standards:
  i. athlete health and educational protections consistent with the
requirements of this Act;
  ii. prohibitions on the construction and exclusive use of “athletics
only” practice, competition, conditioning, academic support,
housing, dining and other facilities which controls shall be
required by this Act;
  iii. membership requirements consistent with the requirements of
this Act;
  iv. establish sport expenditure caps, limits on number of coaches
and other personnel, limits on numbers of athletic scholarships
by sport, facility spending, or other rules that limit athletic
program expenditures with such restrictions also exempt from
antitrust laws;
  v. establish limits on numbers of contests, length of competitive
seasons, hours per week of athletics-related activities and other
scheduling constraints that enable college athletes to devote
sufficient time to their academic responsibilities with such
restrictions also exempt from antitrust laws;
v. establish conditions for member institution participation in pre-
or post-season collegiate athletic events conducted by third
parties with such restrictions also exempt from antitrust laws;
vii. establish rules of conduct to be included in contractual
agreements or appointments between a coach and a member
institution;
viii. determine the criteria for membership in each membership
division;
ix. establish a rules enforcement system.

h. Veto Power – The Association may veto the action of any
membership division or subdivision that has undesirable financial,
college athlete health or educational outcome implications. Such
membership divisions or subdivisions shall operate on the basis of
one vote per member institution in deliberative assembly to adopt
legislation governing its programs that is consistent with the
requirements of this Act and restricted to subjects other than those
over which the Board of Directors has sole authority.

F. Accountability and Public Reporting

1. Annual Report to Congress – Not later than two years after the
date of enactment of this Act and annually thereafter, the
Association’s member institutions shall provide to the
Association via an Association online reporting system and the
Board of Directors shall report to Congress the following data,
which shall be electronically available to the general public:

a. certification status of each member institution per Sec. 4
(30). E. 3. d.;
b. complete reporting on the number of countable hours of
athletics related activity in each intercollegiate sport to
include:
   i. mandatory sport practices and conditioning
      workouts
   ii. “voluntary” workouts
   iii. team meetings
   iv. film study
v. game travel
vi. time at competitions from arrival to departure from the competition site
vii. public appearances including donor events and campus rallies
viii. community service;
c. audited financial data of each member institution’s athletic program to include:
i. student fee revenues
ii. direct institutional support
iii. indirect institutional support
iv. direct governmental support
v. net generated revenues
vi. net sport operating expenses
vii. total salaries, wages and benefits
viii. percentage of operating budget devoted to coaching and administrative salaries
ix. salaries and benefits paid to the top five employees
x. capital construction and other debt service paid by athletics department, institution and state for all athletically-related facilities and for past operating deficits, the latter including imputed debt service
xi. total outstanding athletics-related debt
xii. media rights fee revenues
xiii. National Athlete Medical Trust Fund transfer and expenditures per Sec. 4. (30). C. 2;
d. graduation success rate for all athletes overall and disaggregated by sport, race/ethnicity, athletic scholarship/non-scholarship and gender for each member institution including those athletes who left the member institution ineligible;
e. federal graduation rate for all students overall, all athletes overall and athletes disaggregated by sport, race/ethnicity athletic scholarship/non-scholarship, and gender at each member institution;
f. number of students overall and athletes overall admitted via a waiver of normal academic admission standards and numbers of athletes disaggregated by sport, race/ethnicity athletic scholarship/non-scholarship, and gender at each member institution’
g. at member institutions using eligibility rules tracking “non-
qualifiers” and “academic redshirts”, the number of
recruited “non-qualifiers” and number of “academic
redshirts” required to complete one year in residency and
numbers of each disaggregated by sport, race/ethnicity
athletic scholarship/non-scholarship, and gender at each
member institution for each member institution;

h. member institutions ineligible for Association
championships due to (a) deficiencies in academic
performance, (b) non-compliance with Title IX and (c)
disciplinary or other reasons;

i. audited financial data for the Association that shall
separately show funds expended for direct support of
college athlete benefits (e.g., college athlete assistance
programs, athletics injury insurance or medical subsidies,
catastrophic insurance, Academic Trust Fund, etc.) and
aggregated amount distributed to member institutions by
purpose;

j. amount of direct distribution of Association funds to each
member institution; and

k. Amount of direct distribution of conference funds to each
member institution.

2. Mandatory Student Athletic Fees. The member institution
shall disclose on the fee bills provided to all students, that
portion of any mandatory activity fee that is allocated to
intercollegiate athletics and shall not use revenues derived from
such fees to support the athletics program without the vote and
consent of the student government at least once every four years.

G. Implementation of Act. The requirements of this Act shall be met
within 30 days after the date of its enactment unless otherwise
indicated. Any Association that conforms with Sec. 4. (30). of this
Act shall, not later than 180 days after the date of the enactment of this
Act, submit a report to the Congress that identifies the actions the
Association has taken to date to implement the procedures required by
the Act.
Sec. 5. Intercollegiate Athletics Commission to be Established for Further Review of Issues

A. Issues to be Examined. Recognizing that the College Athlete Rights and Protection Act does not address all of the concerns regarding the conduct and integrity of college athletic programs, Congress shall establish an independent commission to study additional issues of concern related to intercollegiate sports. These issues shall include, among others as determined by the Commission, the following:

1. Whether gender neutral methods are used to determine the award, renewal and withdrawal of summer school financial assistance for college athletes and whether the outcomes of those methods favor male or female athletes;

2. The extent to which institutional academic admissions requirements are waived to admit students recruited to participate in athletics and the academic success of such students;

3. The extent to which initial and continuing academic standards contribute to positive educational outcomes of college athletes;

4. The extent to which non-athlete student tuition and required fees are used to support intercollegiate athletics programs and the proportion of such revenues derived from federally supported student loan or Pell Grant programs;

5. The percent of athletic participation opportunities for students with disabilities compared to enrollment of non-student athletes with disabilities at institutions of higher education and the percent of total athletic scholarship funds provided to student-athletes with disabilities;

6. Policies held by intercollegiate athletic programs that encourage diverse leadership of such programs;

7. Policies of member institutions related to disbursement of education-based grants (not considered athletics-related financial aid) to their former college athletes who are no longer eligible to participate, have not graduated and are seeking to return to complete their undergraduate degrees or pursue other training at an accredited educational institution.

8. The extent to which Associations are engaged in promulgating rules of sport which reduce contact, brain trauma and other athletics injuries;
9. The impact of the Internal Revenue Code of 1986 and other tax policies on the budgets of intercollegiate athletic programs;

10. Whether Association rules, investigation, and adjudication policies provide sufficient due process to college athletes, employees and institutions and are adjudicated by unbiased parties;

11. Whether Association rules, investigation, and adjudication policies related to academic fraud are sufficient to deter violations related to athletics eligibility;

B. Membership. The Commission shall be composed of 17 members appointed as follows:

1. Four members appointed by the Speaker of the House of Representatives, including—
   a. one Member of the House of Representatives; and
   b. three individuals who are not Members of Congress.

2. Four members appointed by the Minority Leader of the House of Representatives, including—
   a. one Member of the House of Representatives; and
   b. three individuals who are not Members of Congress.

3. Four members appointed by the Majority Leader of the Senate, including—
   a. one Member of the Senate; and
   b. three individuals who are not Members of Congress.

4. Four members appointed by the Minority Leader of the Senate, including—
   a. one Member of the Senate; and
   b. three individuals who are not Members of Congress.

5. One member appointed by the Secretary of Education.

C. Qualifications

1. In General. Individuals appointed under paragraph 1 shall be specially qualified to serve on the Commission by virtue of their education or
experience on issues related to intercollegiate athletic programs, higher education, and civil rights.

2. Coordination to Ensure Diversity. Individuals appointed under paragraph 1 shall be coordinated to ensure diversity.

D. Chair of the Commission. —The Chair of the Commission shall be elected by a majority of the members of the Commission.

E. Authorization of Appropriations. There is authorized to be appropriated for each of fiscal years 2021-22 $2,000,000 to fund the work of the Commission.