

117TH CONGRESS
1ST SESSION

S. 1929

To establish collective bargaining rights for college athletes, and for other purposes.

IN THE SENATE OF THE UNITED STATES

MAY 27, 2021

Mr. MURPHY (for himself and Mr. SANDERS) introduced the following bill; which was read twice and referred to the Committee on Health, Education, Labor, and Pensions

A BILL

To establish collective bargaining rights for college athletes, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “College Athlete Right
5 To Organize Act”.

6 **SEC. 2. FINDINGS.**

7 Congress finds the following:

8 (1) The National Labor Relations Act (29
9 U.S.C. 151 et seq.) seeks to remedy the inequality
10 of bargaining power between employees and employ-

1 ers primarily through establishing and protecting the
2 rights of employees to self-organize and designate
3 representatives of their own choosing for the purpose
4 of negotiating the terms and conditions of their em-
5 ployment or other mutual aid or protection.

6 (2) Labor organizations often originate to rem-
7 edy unfair and exploitative labor practices by em-
8 ployers through assisting employees in securing more
9 equitable terms and conditions of their employment,
10 including fair compensation and safe working condi-
11 tions, which individual employees would be unlikely
12 to negotiate successfully for on their own.

13 (3) Labor organizations serve unique and essen-
14 tial purposes for professional athletes competing in
15 sports leagues, where it is desirable to establish uni-
16 form rules and standards across multiple employers.
17 These rules and standards bear significant con-
18 sequences to the athletes in terms of compensation,
19 health and safety, and the ability or lack thereof for
20 athletes to choose their employer, among other
21 issues related to the athletes' well-being.

22 (4) The formation of labor organizations rep-
23 resenting athletes in professional sports leagues in
24 the United States has helped end exploitative prac-
25 tices by team owners and management, particularly

1 through establishing collective-bargaining agree-
 2 ments that have secured athletes a fair share of the
 3 revenues their talent and labor produces, as well as
 4 more equitable terms of their employment and pro-
 5 tections for their short- and long-term health.

6 (5) College athletes face exploitative and unfair
 7 labor practices by the National Collegiate Athletic
 8 Association (referred to in this section as the
 9 “NCAA”) and its member institutions, primarily
 10 through the denial of the basic economic and labor
 11 rights of such athletes, which the NCAA and its
 12 member institutions have justified by defining col-
 13 lege athletes as amateurs.

14 (6) The NCAA and its member institutions
 15 have denied college athletes a fair wage for their
 16 labor by colluding to cap compensation; they main-
 17 tain strict and exacting control over the terms and
 18 conditions of college athletes’ labor; and they exer-
 19 cise the ability to terminate an athlete’s eligibility to
 20 compete if the athlete violates these terms and con-
 21 ditions.

22 (7) College athletes exhibit the markers of em-
 23 ployment as established under the common law defi-
 24 nition of the term “employee”: They perform a valu-
 25 able service for their respective colleges under a con-

1 tract for hire in the form of grant-in-aid agreements;
2 these agreements assert significant control over how
3 athletes perform their work and the conditions under
4 which they work; and they receive compensation in
5 the form of grant-in-aid and stipends in exchange
6 for their athletic services.

7 (8) To establish more equitable terms and con-
8 ditions for college athletes' labor, college athletes
9 need representation of their own choosing to nego-
10 tiate collective-bargaining agreements with their re-
11 spective colleges and the athletic conferences that
12 help set rules and standards across an entire league.

13 (9) To organize effectively, college athletes
14 must be able to form collective bargaining units
15 across institutions of higher education that compete
16 against each other, including within athletic con-
17 ferences; and, accordingly, to establish effective col-
18 lective bargaining rights for college athletes under
19 this Act, the National Labor Relations Act must be
20 amended to cover both private and public institu-
21 tions of higher education to the extent that college
22 athletes attending such institutions fall within the
23 definition of "employee" under that Act, as amended
24 by this Act.

1 (10) The Constitution of the United States
 2 vests Congress with the power to regulate commerce
 3 between the States, and intercollegiate sports, which
 4 are maintained by athletic associations that host
 5 competitions between colleges across States, involves
 6 interstate commerce that generates annual revenue
 7 of more than \$15,000,000,000.

8 (11) Intercollegiate sports' significant engage-
 9 ment in interstate commerce justifies application of
 10 the National Labor Relations Act (29 U.S.C. 151 et
 11 seq.) to regulate the labor market within which pub-
 12 lic and private institutions of higher education com-
 13 pete and set rules pertaining to the wages and work-
 14 ing conditions of college athletes.

15 **SEC. 3. COLLECTIVE BARGAINING RIGHTS OF COLLEGE**
 16 **ATHLETES.**

17 (a) DEFINITIONS.—Section 2 of the National Labor
 18 Relations Act (29 U.S.C. 152) is amended—

19 (1) in paragraph (2), by adding at the end the
 20 following: “Notwithstanding the previous sentence,
 21 the term ‘employer’ includes a public institution of
 22 higher education with respect to the employment of
 23 college athlete employees of the institution.”;

24 (2) in paragraph (3), by adding at the end the
 25 following: “Any individual who participates in an

1 intercollegiate sport for an institution of higher edu-
2 cation, and is a student enrolled in the institution of
3 higher education, shall be considered an employee of
4 the institution of higher education if—

5 “(A) the individual receives any form of direct
6 compensation, including grant-in-aid, from the insti-
7 tution of higher education; and

8 “(B) any terms or conditions of such compensa-
9 tion require participation in an intercollegiate
10 sport.”; and

11 (3) by adding at the end the following:

12 “(15) The term ‘grant-in-aid’ means a scholarship,
13 grant, or other form of financial assistance that is pro-
14 vided by an institution of higher education to an individual
15 for the individual’s undergraduate or graduate course of
16 study.

17 “(16) The term ‘institution of higher education’ has
18 the meaning given the term in section 102 of the Higher
19 Education Act of 1965 (20 U.S.C. 1002).

20 “(17) The term ‘intercollegiate athletic conference’—

21 “(A) means any conference, or other group or
22 organization, of institutions of higher education
23 that—

1 “(i) exercises authority over intercollegiate
 2 sports at such institutions of higher education;
 3 and

4 “(ii) is engaged in commerce or an indus-
 5 try or activity affecting commerce; and

6 “(B) notwithstanding subparagraph (A), does
 7 not include the National Collegiate Athletic Associa-
 8 tion.

9 “(18) The term ‘college athlete employee’ means an
 10 individual described in the second sentence of paragraph
 11 (3).”.

12 (b) MULTIEMPLOYER BARGAINING UNIT.—Section
 13 9(b) of the National Labor Relations Act (29 U.S.C.
 14 159(b)) is amended by striking the period at the end and
 15 inserting the following: “: *Provided*, That, for the purpose
 16 of establishing an appropriate bargaining unit for college
 17 athlete employees at institutions of higher education in an
 18 intercollegiate athletic conference, the Board shall recog-
 19 nize multiple institutions of higher education within an
 20 intercollegiate athletic conference as a multiemployer bar-
 21 gaining unit, but only if consented to by the employee rep-
 22 resentatives for the intercollegiate sports bargaining units
 23 at the institutions of higher education that will be included
 24 in the multiemployer bargaining unit.”.

1 (c) JURISDICTION RELATED TO INTERCOLLEGIATE
 2 SPORTS.—Section 14(c)(1) of the National Labor Rela-
 3 tions Act (29 U.S.C. 164(c)(1)) is amended by striking
 4 “*Provided*,” and inserting the following: “*Provided*, That
 5 the Board shall exercise jurisdiction over institutions of
 6 higher education and college athlete employees of such in-
 7 stitutions in relation to all collective bargaining matters
 8 under this Act pertaining to such employees, including any
 9 representation matter, such as recognizing or establishing
 10 a bargaining unit for such employees and any labor dis-
 11 pute involving such institutions and employees: *Provided*
 12 *further*,”.

13 (d) PROHIBITION ON WAIVER.—An individual may
 14 not enter into any agreement (including a grant-in-aid
 15 agreement, as defined in section 3(15) of the National
 16 Labor Relations Act (29 U.S.C. 152(15)) or legal settle-
 17 ment that waives or permits noncompliance with this Act
 18 or the amendments made by this Act.

19 **SEC. 4. TREATMENT OF DIRECT COMPENSATION FOR TAX**
 20 **PURPOSES AND ELIGIBILITY FOR FEDERAL**
 21 **FINANCIAL ASSISTANCE.**

22 Nothing in this Act, or an amendment made by this
 23 Act, shall—

24 (1) cause any type of direct compensation de-
 25 scribed in section 2(3) of the National Labor Rela-

1 tions Act (29 U.S.C. 152(3)) that was not previously
2 treated as income for which a tax may be imposed
3 under the Internal Revenue Code of 1986 to become
4 a type of direct compensation for which such a tax
5 may be imposed;

6 (2) cause any individual to be treated as an em-
7 ployee, or cause any amounts received by an indi-
8 vidual to be treated as wages, for purposes of any
9 provision in the Internal Revenue Code of 1986 re-
10 relating to employment taxes or the withholding of
11 taxes by an employer if such individual or amounts
12 would not otherwise be so treated;

13 (3) affect the treatment of qualified scholar-
14 ships under section 117 of the Internal Revenue
15 Code of 1986; or

16 (4) otherwise affect the treatment of any direct
17 compensation described in such section 2(3) in de-
18 termining income, including gross income or ad-
19 justed gross income, for purposes of—

20 (A) the Internal Revenue Code of 1986, in-
21 cluding any reporting requirements under such
22 Code; or

23 (B) determining eligibility for any form of
24 Federal financial assistance, including assist-
25 ance under subpart 1 of part A of title IV of

1 the Higher Education Act of 1965 (20 U.S.C.
2 1070a et seq.).

3 **SEC. 5. SEVERABILITY.**

4 If any provision of this Act, an amendment made by
5 this Act, or the application of such provision or amend-
6 ment to any person or circumstance is held to be unconsti-
7 tutional, the remainder of this Act and the amendments
8 made by this Act, and the application of the provision or
9 amendment to any other person or circumstance, shall not
10 be affected.

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