

118TH CONGRESS
1ST SESSION

H. R. 5491

To establish due process requirements for the investigation of intercollegiate athletics, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

SEPTEMBER 14, 2023

Mr. KUSTOFF (for himself, Mr. HARDER of California, and Mr. OWENS) introduced the following bill; which was referred to the Committee on Education and the Workforce

A BILL

To establish due process requirements for the investigation of intercollegiate athletics, 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 “NCAA Accountability
5 Act of 2023”.

6 **SEC. 2. DUE PROCESS REQUIREMENTS.**

7 (a) IN GENERAL.—Each covered athletic association
8 shall establish and administer due process requirements
9 for the investigation of any member institution, student
10 athlete enrolled in such member institution, or other indi-

1 vidual for any alleged infraction of the covered athletic as-
2 sociation's bylaws or failure to meet the conditions and
3 obligations of membership if the matter cannot be resolved
4 without a formal investigation, consistent with the fol-
5 lowing:

6 (1) If the covered athletic association or any
7 governing body subordinate to the covered athletic
8 association, initiates an investigation whether formal
9 or informal into a member institution, the covered
10 athletic association shall provide written notice to
11 the member institution detailing the nature of the
12 inquiry by not later than 60 days after the covered
13 athletic association receives information indicating
14 that a bylaw violation may have occurred, and that
15 the covered athletic association has determined that
16 an investigation is warranted. The notice shall in-
17 clude, to the extent such information is available, the
18 following:

19 (A) Each program under investigation.

20 (B) All persons under investigation.

21 (C) The specific alleged violations under
22 investigation including any sources relief on by
23 the covered athletics association, whether verbal
24 or written.

1 (D) Each date or time period an alleged
2 violation may have occurred.

3 (E) The rights and resources available to
4 the accused party or parties.

5 (2) The notice under paragraph (1)(C) shall be
6 limited to possible violations occurring not earlier
7 than 2 years before the date the notice is provided
8 to the member institution. The covered athletic asso-
9 ciation shall thereafter promptly notify the member
10 institution of any other relevant information discov-
11 ered in the course of the investigation.

12 (3) Prior to commencing any enforcement pro-
13 ceeding, the covered athletic association shall provide
14 the member institution with a notice of allegations
15 not later than 8 months after the notice of inquiry
16 is received under paragraph (1), which shall include
17 the following:

18 (A) Details about each allegation.

19 (B) The potential penalties for each allega-
20 tion.

21 (C) The information including any sup-
22 porting evidence relief on to form the basis of
23 the allegations” between “information and fac-
24 tors the covered athletic association considered
25 in its determination to file charges.

1 (D) The rights and resources available to
2 the member institution and involved individuals.

3 (4) Not earlier than 60 days after the notice of
4 allegations is received, there shall be a hearing be-
5 fore the covered athletic association's infractions
6 committee or body with authorization to hear cases
7 and prescribe punishments to member institutions
8 which shall conform to the following requirements:

9 (A) The hearing shall commence not later
10 than 1 year after the notice is provided under
11 paragraph (1).

12 (B) No information from confidential
13 sources may be offered into evidence or form
14 the basis for any decision.

15 (5) In the event that there is any dispute re-
16 garding the covered athletic association's punish-
17 ment of a member institution, the member institu-
18 tion may compel entry into arbitration conducted in
19 accordance with the standard commercial arbitration
20 rules of an established major national provider of ar-
21 bitration and mediation services based in the United
22 States, which will provide an independent review and
23 binding decision. The arbitration shall be conducted
24 by a three-person panel. The covered athletic asso-
25 ciation and member institution shall each appoint

1 one arbitrator of their respective choosing. The third
2 arbitrator shall be appointed in agreement by the
3 two arbitrators appointed by each party.

4 (6) The covered athletic association shall con-
5 duct its enforcement proceedings and investigations
6 in a fair and consistent manner, and the penalties
7 issued against member institutions for bylaw infrac-
8 tions shall be equitable with respect to severity of
9 the infraction and the member institution's history
10 of infractions.

11 (7) The covered athletic association shall not
12 disclose information relating to an ongoing investiga-
13 tion into a member institution until formal charges
14 are filed in the notice of allegations submitted under
15 paragraph (3). The member institution shall have
16 discretionary authority to disclose any information
17 relating to an ongoing investigation, and no informa-
18 tion relating to an ongoing investigation shall be
19 subject to any disclosure requirement under State
20 law.

21 (b) REPORT.—A covered athletic association shall
22 submit an annual report to the Attorney General summa-
23 rizing its enforcement proceedings, investigations, and
24 issuance of punishments to member organizations under
25 this Act over the preceding year. A covered athletic asso-

1 ciation shall submit an annual report to each State Attor-
 2 ney General (and the Attorney General for the District
 3 of Columbia) summarizing its enforcement proceedings,
 4 investigations, and issuance of punishments to member in-
 5 stitutions headquartered in the State. Section 552 of title
 6 5, United States Code, and any similar provision of State
 7 law does not apply to such report.

8 **SEC. 3. LIMITATION.**

9 The privileges of membership of any member institu-
 10 tion in the covered athletic association may not be im-
 11 paired as a consequence of any rights granted under this
 12 Act. Additionally, nothing herein shall be deemed to grant
 13 to the covered athletic association or any member institu-
 14 tion any rights against a person or individual which it does
 15 not otherwise have.

16 **SEC. 4. ENFORCEMENT.**

17 (a) PROCEDURES.—The Attorney General shall es-
 18 tablish procedures—

19 (1) for individuals and entities to file written,
 20 signed complaints respecting potential violations of
 21 this Act by a covered athletic association or any per-
 22 son acting as an agent thereof;

23 (2) for the investigation of those complaints
 24 which have probable validity;

1 (3) for the investigation of such other violations
2 of this Act as the Attorney General determines to be
3 appropriate; and

4 (4) for the evaluation of a covered athletic asso-
5 ciation's annual report to determine compliance with
6 this Act.

7 (b) INVESTIGATIONS AND HEARINGS.—In conducting
8 investigations and hearings pursuant to this section, the
9 following shall apply:

10 (1) Any hearing so requested shall be conducted
11 before an administrative law judge of the Depart-
12 ment of Justice determined by the Attorney General.
13 The hearing shall be conducted in accordance with
14 the requirements of section 554 of title 5, United
15 States Code. The hearing shall be held at the near-
16 est practicable place to the place where the person
17 or covered athletic association resides or of the place
18 where the alleged violation occurred. If no hearing is
19 so requested, the Attorney General's imposition of
20 the order shall constitute a final and unappealable
21 order.

22 (2) Officers and employees of the Department
23 of Justice (including the administrative law judges
24 referred to in paragraph (1)) shall have reasonable

1 access to examine evidence of any person or covered
2 athletic association being investigated.

3 (3) If the administrative law judge determines,
4 upon the preponderance of the evidence received,
5 that a person or covered athletic association named
6 in the complaint has violated the statute, the admin-
7 istrative law judge shall state his or her findings of
8 fact and issue and cause to be served on such person
9 or covered athletic association an order as follows:

10 (A) The administrative law judge shall
11 order the person or covered athletic association
12 to cease and desist from such violations and to
13 pay a civil penalty in an amount of not less
14 than \$10,000 and not more than \$15,000,000.

15 (B) In determining the amount of the pen-
16 alty, due consideration shall be given to the
17 good faith of the covered athletic association or
18 person, the seriousness of the violation, and the
19 history of previous violations.

20 (C) The administrative law judge may
21 order the permanent removal of any member of
22 the covered athletic association's governing
23 body in the case of a violation, with due consid-
24 eration for the good faith of the covered athletic

1 association or person, the seriousness of the vio-
2 lation, and the history of previous violations.

3 (4) The Attorney General may, not earlier than
4 30 days after providing notice thereof to the person
5 or covered athletic association, commence a hearing
6 before an administrative law judge of the Depart-
7 ment of Justice for any alleged violation of this Act
8 by that person or covered athletic association. The
9 administrative law judge may impose a civil penalty
10 for any violation determined to have occurred.

11 (5) Administrative law judges may, if necessary,
12 compel by subpoena the attendance of witnesses and
13 the production of evidence at any designated place
14 or hearing case of contumacy or refusal to obey a
15 subpoena lawfully issued under this paragraph and
16 upon application of the Attorney General, an appro-
17 priate district court of the United States may issue
18 an order requiring compliance with such subpoena
19 and any failure to obey such order may be punished
20 by such court as a contempt thereof.

21 (6) The decision and order of an administrative
22 law judge shall become the final agency decision and
23 order of the Attorney General unless, within 30 days
24 after the administrative law judge issues such order,
25 the Attorney General modifies or vacates the deci-

1 sion and order, in which case the decision and order
2 of the Attorney General shall become a final order
3 under this subsection.

4 (7) A person or covered athletic association ad-
5 versely affected by a final order under this section
6 may, within 45 days after the date the final order
7 is issued, file a petition in the Court of Appeals for
8 the appropriate circuit for review of the order.

9 **SEC. 5. DEFINITIONS.**

10 In this Act:

11 (1) COVERED ATHLETIC ASSOCIATION.—The
12 term “covered athletic association” means an inter-
13 state athletic association, conference, or other orga-
14 nization with authority over intercollegiate athletics
15 or that administers intercollegiate athletics, with at
16 least 900 member institutions.

17 (2) MEMBER INSTITUTION.—The term “mem-
18 ber institution” means an institution of higher edu-
19 cation that maintains at least one intercollegiate
20 athletic program that is a member of a covered ath-
21 letic association.

22 (3) INSTITUTION OF HIGHER EDUCATION.—The
23 term “institution of higher education” has the
24 meaning given the term in section 101(a) of the
25 Higher Education Act of 1965 (20 U.S.C. 1001(a)).

1 **SEC. 6. EFFECTIVE DATE.**

2 A covered athletic association shall carry out the re-
3 quirements of this Act by not later than 1 year after the
4 date of enactment of this Act.

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