

118TH CONGRESS
1ST SESSION

S. _____

To establish name, image, and likeness rights for college athletes at institutions of higher education, and for other purposes.

IN THE SENATE OF THE UNITED STATES

Mr. MURPHY introduced the following bill; which was read twice and referred to the Committee on _____

A BILL

To establish name, image, and likeness rights for college athletes at institutions of higher education, 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 Eco-
5 nomic Freedom Act”.

6 **SEC. 2. DEFINITIONS.**

7 In this Act:

8 (1) **ATHLETE AGENT.**—The term “athlete
9 agent” has the meaning given the term in section 2

1 of the Sports Agent Responsibility and Trust Act
2 (15 U.S.C. 7801).

3 (2) COLLECTIVE REPRESENTATIVE.—The term
4 “collective representative”—

5 (A) means an individual or organization
6 that represents a group of college athletes or
7 prospective college athletes to negotiate con-
8 tracts for the use of the names, images, or
9 likenesses of such athletes or group of athletes;
10 and

11 (B) includes—

12 (i) legal representatives;

13 (ii) athlete agents; and

14 (iii) players’ associations.

15 (3) COLLEGE ATHLETE.—The term “college
16 athlete” means an individual who participates in or
17 is eligible to participate in an intercollegiate sport
18 for an institution of higher education.

19 (4) COMPENSATION.—The term “compensa-
20 tion” means any payment, remuneration, or benefit
21 provided to a college athlete or prospective college
22 athlete in exchange for the use of the name, image,
23 or likeness of the college athlete or prospective col-
24 lege athlete.

1 (5) GRANT-IN-AID.—The term “grant-in-aid”
2 means a scholarship, grant, or other form of finan-
3 cial assistance that is provided by an institution of
4 higher education to a college athlete for the college
5 athlete’s undergraduate or graduate course of study.

6 (6) IMAGE.—The term “image”, with respect to
7 a college athlete or prospective college athlete, means
8 any photograph, video, or computer-generated rep-
9 resentation that reasonably identifies the college ath-
10 lete or prospective college athlete.

11 (7) INSTITUTION OF HIGHER EDUCATION.—The
12 term “institution of higher education” has the
13 meaning given the term in section 101 of the Higher
14 Education Act of 1965 (20 U.S.C. 1001 et seq.).

15 (8) INSTITUTIONAL NAME, IMAGE, AND LIKE-
16 NESS COLLECTIVE.—The term “institutional name,
17 image, and likeness collective” means any entity
18 that—

19 (A)(i) is subject to the Federal Trade
20 Commission Act (15 U.S.C. 41 et seq.); or

21 (ii) is an organization not organized to
22 carry on business for its own profit or the profit
23 of its members; and

1 (B) supports the athletic interests of an in-
2 stitution of higher education or a limited group
3 of institutions of higher education by—

4 (i) accepting contributions for the
5 purpose of entering into or funding name,
6 image, or likeness agreements with college
7 athletes or prospective college athletes; or

8 (ii) arranging for college athletes to
9 be paid by third parties for the commercial
10 use of their names, images, or likenesses.

11 (9) INTERCOLLEGIATE ATHLETIC ASSOCIA-
12 TION.—The term “intercollegiate athletic associa-
13 tion” means any association, conference, or other
14 group or organization that—

15 (A) exercises authority over intercollegiate
16 athletics and the recruitment of college athletes
17 or prospective college athletes; and

18 (B) is engaged in interstate commerce or
19 in any industry or activity affecting interstate
20 commerce.

21 (10) INTERNATIONAL COLLEGE ATHLETE.—
22 The term “international college athlete” means an
23 alien (as defined in section 101(a) of the Immigra-
24 tion and Nationality Act (8 U.S.C. 1101(a))) law-
25 fully present in the United States in the status of

1 a nonimmigrant described in subparagraph (F)(ii) of
2 section 101(a)(15) of the Immigration and Nation-
3 ality Act (8 U.S.C. 1101(a)(15)) who participates in
4 or is eligible to participate in an intercollegiate sport
5 for an institution of higher education.

6 (11) LIKENESS.—The term “likeness”, with re-
7 spect to a college athlete or prospective college ath-
8 lete, means the uniquely identifiable voice, catch
9 phrase, or any other mark that when used in a con-
10 text that reasonably identifies the college athlete or
11 prospective college athlete.

12 (12) NAME.—The term “name”, with respect to
13 a college athlete or prospective college athlete, means
14 the first or last name, or a nickname, of the college
15 athlete or prospective college athlete when used in a
16 context that reasonably identifies the college athlete
17 or prospective college athlete.

18 (13) PROSPECTIVE COLLEGE ATHLETE.—The
19 term “prospective college athlete” means an indi-
20 vidual who—

21 (A) has not enrolled at an institution of
22 higher education; and

23 (B) may be recruited by an institution of
24 higher education.

1 (14) THIRD PARTY.—The term “third party”
2 means an individual or entity other than an institu-
3 tion of higher education or an intercollegiate athletic
4 association.

5 **SEC. 3. ATHLETE RIGHTS TO MARKET NAME, IMAGE, AND**
6 **LIKENESS.**

7 (a) RIGHT TO MARKET USE OF NAME, IMAGE, AND
8 LIKENESS.—

9 (1) IN GENERAL.—An institution of higher edu-
10 cation or intercollegiate athletic association may not
11 enact or enforce any rule, requirement, standard, or
12 other limitation that prevents college athletes or pro-
13 spective college athletes, individually or as a group,
14 from marketing the use of their names, images, or
15 likenesses.

16 (2) COLLUSION.—An institution of higher edu-
17 cation may not coordinate with any other institution
18 of higher education or third party to impose a limi-
19 tation on the amount of payment offered to a college
20 athlete, prospective college athlete, or group of col-
21 lege athletes or prospective college athletes under a
22 contract for the use of the name, image, or likeness
23 of the college athlete, prospective college athlete, or
24 group of college athletes or prospective college ath-

1 letes, unless such a limitation is the result of nego-
2 tiations with a collective representative.

3 (3) RIGHT TO COLLECTIVE REPRESENTA-
4 TION.—An institution of higher education or inter-
5 collegiate athletic association may not enact or en-
6 force any rule, requirement, standard, or other limi-
7 tation, or engage in conduct that prevents college
8 athletes from forming or recognizing, or interferes
9 with such formation or recognition of, a collective
10 representative—

11 (A) to facilitate contracts for the use of
12 the name, image, or likeness of college athletes,
13 or group licensing agreements; or

14 (B) to provide representation for college
15 athletes.

16 (4) GROUP LICENSING.—

17 (A) IN GENERAL.—An institution of higher
18 education or intercollegiate athletic association
19 may not use the name, image, or likeness of
20 any group of college athletes for any type of
21 promotion, including a media rights agreement,
22 unless the institution of higher education or
23 intercollegiate athletic association obtains a li-
24 cense from the group for that purpose.

1 (B) NOTIFICATION.—An institution of
2 higher education or intercollegiate athletic asso-
3 ciation seeking a license described in subpara-
4 graph (A) shall notify the group of college ath-
5 letes concerned with respect to—

6 (i) the manner in which the name,
7 image, or likeness of the group will be used
8 under the license; and

9 (ii) the amount of revenue the institu-
10 tion of higher education or intercollegiate
11 athletic association will receive in connec-
12 tion with any type of promotion, including
13 a media rights agreement and any other
14 revenue source, based on the use of the
15 name, image, or likeness of the group.

16 (5) GRANTS-IN-AID.—Receipt of compensation
17 for the use of the name, image, or likeness of a col-
18 lege athlete or prospective college athlete shall not
19 adversely affect—

20 (A) the eligibility or opportunity of a col-
21 lege athlete or prospective college athlete to
22 apply for a grant-in-aid; or

23 (B) the amount, duration, or renewal of
24 the grant-in-aid of a college athlete or prospec-
25 tive college athlete.

1 (b) EQUITABLE INSTITUTIONAL SUPPORT.—

2 (1) IN GENERAL.—An institution of higher edu-
3 cation, an intercollegiate athletic association, or a
4 party affiliated with an institution of higher edu-
5 cation or an intercollegiate athletic association that
6 provides direct or indirect support to college athletes
7 with respect to the marketing of their names, im-
8 ages, or likenesses shall make such support available
9 and accessible to all college athletes in the applicable
10 athletic program, regardless of gender, race, or par-
11 ticipating sport.

12 (2) INSTITUTIONAL NAME, IMAGE, AND LIKE-
13 NESS COLLECTIVES.—Each institutional name,
14 image, and likeness collective—

15 (A) shall—

16 (i) for purposes of paragraph (1), be
17 considered to be affiliated with each insti-
18 tution of higher education the athletic in-
19 terests of which the collective supports;

20 (ii) register with the Federal Trade
21 Commission as an institutional name,
22 image, and likeness collective, including by
23 identifying the institutions of higher edu-
24 cation with which the collective affiliates;

1 (iii) maintain, with respect to college
2 athletes enrolled at each affiliated institu-
3 tion of higher education—

4 (I) the number of name, image,
5 or likeness agreements facilitated by
6 the collective, disaggregated by gen-
7 der, race, and participating sport;

8 (II) the total monetary value of
9 name, image, or likeness agreements
10 facilitated by the collective,
11 disaggregated by gender, race, and
12 participating sport; and

13 (III) the number of college ath-
14 letes and prospective college athletes
15 assisted by the collective,
16 disaggregated by gender, race, and
17 participating sport; and

18 (iv) not later than September 1 each
19 year, submit to the Federal Trade Com-
20 mission a report containing, for the period
21 beginning on July 1 of the preceding year
22 and ending on June 30 of the year in
23 which the report is submitted, the informa-
24 tion described in subclauses (I) through
25 (III) of clause (iii); and

1 (B) shall not discriminate, on the basis of
2 gender, race, or participating sport, in the fa-
3 cilitation of name, image, or likeness agree-
4 ments for college athletes in the athletic pro-
5 gram of, or prospective college athletes for, any
6 particular institution of higher education.

7 (3) DETERMINATIONS UNDER TITLE IX.—For
8 purposes of determinations about discrimination on
9 the basis of sex under title IX of the Education
10 Amendments of 1972 (20 U.S.C. 1681 et seq.), the
11 support of an institution of higher education or
12 intercollegiate athletic association related to athletes'
13 names, images, or likenesses shall be considered, in-
14 cluding how an institution of higher education or
15 intercollegiate athletic association promotes sports
16 predominantly comprised of women relative to men.
17 (c) RIGHT TO REPRESENTATION.—

18 (1) ABILITY FOR COLLEGE ATHLETES TO RE-
19 TAIN REPRESENTATION.—An institution of higher
20 education or intercollegiate athletic association may
21 not prevent a college athlete or prospective college
22 athlete from fully participating in intercollegiate ath-
23 letics based on the college athlete or prospective col-
24 lege athlete having obtained professional representa-

1 tion with respect to a contract or legal matter, in-
2 cluding—

3 (A) representation provided by an athlete
4 agent, financial advisor, or collective representa-
5 tive; and

6 (B) legal representation provided by an at-
7 torney.

8 (2) PROHIBITIONS ON THE REGULATION OF
9 REPRESENTATION.—An institution of higher edu-
10 cation or intercollegiate athletic association may not
11 regulate the legal, financial, or agency representa-
12 tion of college athletes and prospective college ath-
13 letes with respect to the marketing of their names,
14 images, or likenesses, including the certification of
15 such legal, financial, or agency representation.

16 (d) PROHIBITION ON WAIVER.—

17 (1) IN GENERAL.—Except as provided in para-
18 graph (2), a college athlete, prospective college ath-
19 lete, institution of higher education, intercollegiate
20 athletic association, or any other person may not
21 enter into any agreement or a legal settlement that
22 waives or permits noncompliance with this Act.

23 (2) EXCEPTION.—An institution of higher edu-
24 cation or intercollegiate athletic association may re-
25 strict the commercial use of the name, image, or

1 likeness of college athletes if such a restriction is
2 part of a collective bargaining agreement between
3 the institution of higher education or intercollegiate
4 athletic association and college athletes.

5 **SEC. 4. GRANTS FOR ANALYZING NAME, IMAGE, LIKENESS,**
6 **AND ATHLETIC REPUTATION MONETIZATION.**

7 (a) DEFINITIONS.—In this section:

8 (1) ELIGIBLE ENTITY.—The term “eligible enti-
9 ty” means—

10 (A) a business in the United States;

11 (B) a public or private education and re-
12 search organization in the United States; or

13 (C) a consortium of entities described in
14 subparagraph (A) or (B).

15 (2) SECRETARY.—The term “Secretary” means
16 the Secretary of Commerce.

17 (b) GRANTS AUTHORIZED.—Not less frequently than
18 annually, the Secretary may award a grant to, or enter
19 into a contract or a cooperative agreement with, an eligible
20 entity for the purpose of conducting a market analysis of
21 the monetization of the rights granted to college athletes
22 and prospective college athletes under this Act during the
23 1-year period preceding the date on which the analysis is
24 completed.

1 (c) REQUIREMENTS.—An eligible entity that receives
2 a grant or enters into a contract or cooperative agreement
3 to conduct an analysis under subsection (b) shall—

4 (1) make the analysis and information relating
5 to the analysis available to the public, including—

6 (A) the surveys and interviews conducted
7 by the eligible entity during the course of the
8 analysis; and

9 (B) estimates of the compensation received
10 by college athletes and prospective college ath-
11 letes during the 1-year period preceding the
12 date of on which the analysis is completed as a
13 result of the monetization of the names, images,
14 or likenesses of such college athletes and pro-
15 spective college athletes, disaggregated by—

16 (i) gender;

17 (ii) race; and

18 (iii) sport; and

19 (2) provide recommendations to the Secretary
20 to address any disparity among estimates based on
21 the factors described in clauses (i), (ii), and (iii) of
22 paragraph (1)(B).

23 (d) PUBLIC AVAILABILITY OF RECOMMENDA-
24 TIONS.—The Secretary shall make available to the public
25 any recommendations received under subsection (c)(2).

1 (e) AUTHORIZATION OF APPROPRIATIONS.—There
2 are authorized to be appropriated to the Secretary such
3 sums as may be necessary to carry out this section.

4 **SEC. 5. INTERNATIONAL COLLEGE ATHLETES.**

5 (a) ELIGIBILITY FOR F VISAS.—Section
6 101(a)(15)(F) of the Immigration and Nationality Act (8
7 U.S.C. 1101(a)(15)(F)) is amended by—

8 (1) by striking “(i) an alien having” and insert-
9 ing “(i)(I) an alien having”;

10 (2) by redesignating clauses (ii) and (iii) as
11 subclauses (II) and (III), respectively;

12 (3) by striking the semicolon and inserting “;
13 or”; and

14 (4) by adding at the end the following:

15 “(ii) an alien having a residence in a foreign
16 country which he has no intention of abandoning,
17 who is a bona fide college athlete (as defined in sec-
18 tion 2 of the College Athlete Economic Freedom
19 Act) qualified to pursue a full course of study and
20 who seeks to enter the United States temporarily
21 and for the purpose of pursuing a course of study
22 at an established college, university, or other aca-
23 demic institution while also participating in inter-
24 collegiate athletics, which institution or place of
25 study shall have agreed to report to the Secretary of

1 Homeland Security the termination of attendance of
2 each nonimmigrant student, and if any such institu-
3 tion of learning or place of study fails to make re-
4 ports promptly the approval shall be withdrawn;”.

5 (b) NAME, IMAGE, AND LIKENESS ACTIVITIES BY
6 INTERNATIONAL COLLEGE ATHLETES.—Section
7 212(a)(5)(A) of the Immigration and Nationality Act (8
8 U.S.C. 1182(a)(5)(A)) is amended by adding at the end
9 the following:

10 “(v) INTERNATIONAL COLLEGE ATH-
11 LETES.—Notwithstanding clause (i), an
12 alien who seeks admission to the United
13 States to compete in intercollegiate ath-
14 letics as an international college athlete
15 nonimmigrant described in subparagraph
16 (F)(ii) of section 101(a)(15) shall not be
17 inadmissible for having participated or en-
18 gaged in activities described in section 3 of
19 the College Athlete Economic Freedom Act
20 (relating to the marketing of the name,
21 image, or likeness, of the alien), individ-
22 ually or as a member of a group of ath-
23 letes, and such activities shall not con-
24 stitute a violation of or failure to maintain
25 such nonimmigrant status.”.

1 (c) EMPLOYMENT AUTHORIZATION FOR NAME,
2 IMAGE, AND LIKENESS ACTIVITY.—Section 214 of the
3 Immigration and Nationality Act (8 U.S.C. 1184) is
4 amended by adding at the end the following:

5 “(s) INTERNATIONAL COLLEGE ATHLETES.— In the
6 case of an international college athlete nonimmigrant de-
7 scribed in section 101(a)(15)(F)(ii) who participates in
8 intercollegiate athletics, the Secretary of Homeland Secu-
9 rity shall—

10 “(1) authorize the alien, incident to status, to
11 engage in employment activities described in section
12 3 of the College Athlete Economic Freedom Act (re-
13 lating to the marketing of the nonimmigrant’s name,
14 image, or likeness of the nonimmigrant), individually
15 or as a member of a group of athletes, in the United
16 States during the period of authorized admission;
17 and

18 “(2) provide the international college athlete
19 nonimmigrant with an ‘employment authorized’ en-
20 dorsement or other appropriate document signifying
21 authorization of employment.”.

22 (d) EMPLOYEE STATUS OF COLLEGE ATHLETES.—
23 In the event that any Federal or State court of competent
24 jurisdiction or any government agency declares college

1 athletes to be employees of an institution of higher edu-
2 cation or intercollegiate athletic association—

3 (1) participation in intercollegiate athletics shall
4 not violate or be considered to be a violation of or
5 a failure to maintain nonimmigrant status described
6 in subparagraph (F)(ii) of section 101(a)(15) of the
7 Immigration and Nationality Act (8 U.S.C.
8 1101(a)(15)); and

9 (2) international college athletes admitted to
10 the United States pursuant to visas issued under
11 that subparagraph may be paid for their participa-
12 tion in college athletics in the same manner as other
13 college athletes are paid.

14 (e) EVIDENCE OF EMPLOYMENT ELIGIBILITY.—En-
15 dorsement of the Form I-20 (Certificate of Eligibility for
16 Nonimmigrant Student Status) of an international college
17 athlete by a designated school official for name, image,
18 or likeness activities described in section 3 shall serve as
19 evidence of eligibility for employment in the United States.

20 **SEC. 6. ENFORCEMENT PROVISIONS.**

21 (a) UNFAIR OR DECEPTIVE ACT OR PRACTICE.—

22 (1) IN GENERAL.—A violation of section 3 shall
23 be treated as a violation of a rule defining an unfair
24 or deceptive act or practice prescribed under section

1 18(a)(1)(B) of the Federal Trade Commission Act
2 (15 U.S.C. 57a(a)(1)(B)).

3 (2) ACTIONS BY THE COMMISSION.—The Com-
4 mission shall enforce section 3 in the same manner,
5 by the same means, and with the same jurisdiction,
6 powers, and duties as though all applicable terms
7 and provisions of the Federal Trade Commission Act
8 (15 U.S.C. 41 et seq.) were incorporated into and
9 made a part of this Act.

10 (3) ENFORCEMENT RELATED TO NONPROFIT
11 ORGANIZATIONS.—Notwithstanding section 4,
12 5(a)(2), or 6 of the Federal Trade Commission Act
13 (15 U.S.C. 44, 45(a)(2), 46) or any jurisdictional
14 limitation of the Federal Trade Commission, the
15 Commission shall also enforce this Act and the regu-
16 lations promulgated under this Act, in the same
17 manner provided in paragraphs (1) and (2) of this
18 subsection, with respect to organizations not orga-
19 nized to carry on business for their own profit or
20 that of their members.

21 (b) PRIVATE RIGHT OF ACTION.—

22 (1) IN GENERAL.—An individual who is ag-
23 grieved by a violation of section 3 may bring a civil
24 action in an appropriate Federal district court of
25 competent jurisdiction.

1 (2) DAMAGES; COSTS AND ATTORNEY’S FEES.—

2 A court may award to a prevailing party in a civil
3 action brought under paragraph (1)—

4 (A) actual damages sustained by the party
5 as a result of the violation that is the subject
6 of the action; and

7 (B) the costs of the action and reasonable
8 attorney’s fees.

9 (c) SHERMAN ACT.—A violation of this Act shall be
10 deemed to be a per se violation of the Sherman Act (15
11 U.S.C. 1 et seq.) and subject to all remedies and rights
12 afforded under that Act.

13 **SEC. 7. STATE PREEMPTION.**

14 (a) IN GENERAL.—A State may not enforce a State
15 law relating to the ability of college athletes to enter into
16 contracts with third parties for the use of their names,
17 images, or likenesses pursuant to this Act.

18 (b) EXCEPTION FOR THE CERTIFICATION OF ATH-
19 LETE AGENTS.—A State may enforce a State law or regu-
20 lation relating to the certification of athlete agents under
21 the Sports Agent Responsibility and Trust Act (15 U.S.C.
22 7801 et seq.).

1 SEC. 8. RULE OF CONSTRUCTION.

2 Nothing in this Act shall affect the treatment of
3 qualified scholarships under section 117 of the Internal
4 Revenue Code of 1986.