

Department of Legislative Services
Maryland General Assembly
2020 Session

FISCAL AND POLICY NOTE
First Reader

House Bill 533
Appropriations

(Delegate Lierman, *et al.*)

Higher Education – Council on the Fair Treatment of Student Athletes
(Jordan McNair Safe and Fair Play Act)

This bill establishes the Council on the Fair Treatment of Student Athletes to review and make recommendations as needed on issues related to student athletes, including those specified. In doing so, the council may receive information and complaints and conduct investigations. The council must advise the University System of Maryland (USM) Board of Regents and the Morgan State University (MSU) Board of Regents, as specified. Beginning July 1, 2022, USM, MSU, and athletic associations, including the National Collegiate Athletic Association (NCAA), must follow specified rules regarding student athlete compensation for the use of the student’s name, image, or likeness. Beginning July 1, 2022, professional representation of student athletes, and specified student athlete contracts, must meet specified standards. **The bill generally takes effect July 1, 2020.**

Fiscal Summary

State Effect: USM can staff the council using existing resources. The impact of the rules regarding the use of a student’s name, image, or likeness beginning in FY 2023 on USM and MSU is likely minimal; however, if NCAA bylaws or rules are in conflict with the requirements of the bill, the impact on USM and MSU auxiliary revenues and expenditures could be significant as explained below.

Local Effect: None.

Small Business Effect: None.

Analysis

Bill Summary:

Council Membership and Terms

The bill establishes membership of the council, including one member of the Senate and one member of the House of Delegates and members appointed jointly by the President of the Senate and the Speaker of the House. The members of the council must designate a chair. Except for the student body president who serves two years, the term of a member is four years. At the end of a term, a member continues to serve until a successor is appointed and qualifies. A member who is appointed after a term has begun serves only for the rest of the term and until a successor is appointed and qualified. USM must provide staff to the council.

The council must review, as needed, and make recommendations on issues related to student athletes, including:

- the implementation of any name, image, and likeness policy changes by public institutions of higher education;
- the implementation of the changes in NCAA rules and the effect on student athletes;
- student athlete health;
- return-to-play protocols;
- protection from sexual abuse and other forms of abuse;
- educational opportunities;
- financial matters;
- gender equity;
- disciplinary processes; and
- the ability to voice concerns without fear of retribution.

In making recommendations, the council must consider any relevant policies and practices related to student athletes at any other institution of higher education in the State or country.

The council must have its first meeting on or before November 1, 2020, and the initial members of the council must be appointed before then.

Use of a Student Athlete's Name, Image, or Likeness

Beginning July 1, 2022, specified rules regarding a student athlete's name, image, or likeness must be followed by the constituent institutions of USM and MSU as well as athletic associations such that a student athlete may receive compensation from use of his
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or her name, image, or likeness but cannot receive such compensation from USM or MSU. An athletic association, conference, or any other group or organization with authority over intercollegiate athletics, including NCAA, is prohibited from preventing student athletes from receiving compensation, as specified. Student athlete contracts regarding compensation for the student athlete's name, image, or likeness must meet specified conditions, including disclosing the contract to USM or MSU, as appropriate.

Professional Representation and Agents

Under the bill, a professional representative obtained by a student athlete must be licensed under the Maryland Uniform Athlete Agents Act or admitted to the Maryland Bar to practice law. Further, an agent who represents student athletes must comply with the federal Sports Agent Responsibility and Trust Act (SPARTA) while representing them.

Current Law/ Background:

Jordan McNair

Jordan McNair was a 19-year-old offensive lineman who played for the University of Maryland, College Park Campus. In May 2018, following an offseason workout with the Maryland Terrapins football team, McNair was hospitalized with heat stroke; despite an emergency liver transplant, McNair died 15 days later on June 13, 2018. According to multiple sources, he was touted as a four-star recruit, ranked in the top 25 nationally for offensive linemen. During his high school career, when he played offensive tackle for McDonogh School in Owings Mills, McNair was named to the American Family Insurance All-USA Maryland Football Team (2016) and the Baltimore Sun All-Metro first team (2015, 2016). The circumstances surrounding his collapse, the care he received prior to his hospitalization, and the investigation following his death highlighted concerns about the treatment of student athletes in Maryland.

Workgroup on Intercollegiate Athletics and Other Recent Actions

The board of regents has a standing [Workgroup on Intercollegiate Athletics](#) that is staffed by USM. The workgroup has recently reviewed and updated the charter for the group and annually focuses not only on ongoing areas of oversight like student-athlete academic achievement, Title IX compliance and equity matters, athletic department financial matters, but also on student-athlete health and welfare issues. A student regent with a background in intercollegiate athletics has been added to the workgroup during the past year.

USM advises that it has recently taken measures to ensure that its constituent institutions with intercollegiate athletics have adopted the 60 plus recommendations of the [Walters Report](#), which USM commissioned in response McNair's death.

Intercollegiate Athletics Programs

Intercollegiate athletics programs are auxiliary enterprises of public institutions. They are supported by revenues generated by athletic programs and athletic fees paid by students. In addition to intercollegiate athletics, auxiliary enterprises include the other self-supporting entities such as residence halls, food services, and college stores.

NCAA – Governance of Student Athletics

In the United States, institutions join NCAA in order to participate in intercollegiate athletics. When a college joins, it agrees to follow the NCAA constitution and bylaws regarding student-athletes on a host of topics, including admissions, financial aid, eligibility, recruiting, academic performance, playing and practice seasons, and extra benefits. Infraction penalties, which generally take the form of fines, probation, and prohibition from postseason play and loss of television rights, are applied to institutions and coaches when they fail to fulfill the NCAA constitution or bylaws.

NCAA is divided into three divisions with different bylaws. The divisions are generally based on the size of the college, with Division I institutions being the largest. Each division is made up of several conferences for regional league play. Approximately 1,100 colleges and universities belong to NCAA.

NCAA is a nonprofit organization that has over \$1 billion in annual revenue. Most of its [revenue](#) comes from Division I Men's Basketball Championship television and marketing rights and Championships ticket sales. NCAA also receives funding from a few other sources such as membership dues from member institutions. The majority of the revenue is then distributed to member institutions to be used for specific purposes.

Membership in NCAA is voluntary; however, there currently are no bona fide alternatives for participation at the highest level of college athletics.

NCAA – Use of Student-athlete Name, Image, or Likeness

NCAA bylaws are made by the institutional members. Member representatives serve on committees that propose rules and policies surrounding college athletics. Membership decides which rules to adopt and implement on campuses. [NCAA bylaws](#) cover a range of topics, including scholarships and the use of a student-athlete's image.

In October 2019, the NCAA Board of Governors voted to allow student-athletes to be paid for the use of their name, image, and likeness once its three divisions decide on rules for such opportunities. The board asked each division to create rules by January 2021. NCAA said new rules should continue to make compensation for play impermissible and that

athletes are not employees of the universities. As of February 2020, the new rules have not yet been made.

NCAA's decision to change the rules was made in response to proposed and enacted state and federal legislation, including California's Fair to Play Act. The California law would allow athletes to sign endorsement deals and licensing contracts, something NCAA rule makers will address.

Athletic Conferences

Institutions that belong to NCAA also belong to at least one conference. Conferences are groups of teams (generally 8 to 12 institutions, occasionally as many as 16) that regularly play against each other within NCAA. The conferences, especially the more elite ones, are also a source of revenues for member institutions.

The Sports Agent Responsibility and Trust Act

SPARTA, seeks to protect student-athletes by prohibiting sports agents from signing athletes to an agency contract by:

- providing false or misleading information, or making false or misleading promises or representations;
- providing anything of value, such as gifts, cash, or a loan to the student-athlete or anyone associated with the athlete;
- failing to disclose in writing to the student-athlete that he or she may lose NCAA eligibility after signing an agency contract; or
- predating or postdating contracts.

SPARTA makes certain activities of sports agents come within the regulations of the Federal Trade Commission (FTC) and considers sports agents who entice student-athletes with misrepresentations and gifts to enter into agency contracts in violation of FTC's regulations regarding the Federal Trade Commission Act (FTCA). FTCA was passed by the U.S. Congress to protect businesses and consumers from unfair competition and unfair or deceptive acts in the conduct of business. If a business engages in deceptive practices aimed at the average consumer, it may be in violation of FTCA regulations.

Three duties of sports agents under SPARTA are:

- a duty to be truthful;
- a duty of disclosure; and
- a duty to refrain from "buying" an athlete.

There are two ways to enforce the duties created by SPARTA:

- state action taken by the state's attorney general on behalf of the residents of that attorney general's state; or
- federal action taken by FTC.

Maryland Uniform Athlete Agents Act

An individual must be licensed under the Maryland Uniform Athlete Agents Act to act as an athlete agent in the State. A person who wishes to be licensed as an athlete agent must submit an application, a \$25 application fee, and a \$1,000 licensing fee to the Maryland Department of Labor. Generally, an agency contract entered into by an unlicensed athlete agent is void, and any consideration received by the athlete agent must be returned. An athlete agent may not communicate with a student-athlete, directly or indirectly, with the intention of recruiting or soliciting the student-athlete to enter into an agency contract, without being licensed.

The contract between an athlete agent and a student-athlete must contain specified information relating to payment and services and a conspicuous warning to the student-athlete regarding eligibility and notification responsibilities if an agency contract is signed. The student has a statutory right to cancel a contract within 14 days of the contract being signed without penalty.

Prohibited acts for athlete agents include:

- giving false or misleading statements;
- furnishing anything of value to the student-athlete before the student-athlete enters into the agency contract;
- furnishing anything of value to any individual other than the student-athlete or another licensed athlete agent;
- initiating contact with a student-athlete unless licensed as an athlete agent;
- refusing inspection of, or failing to retain, required records;
- pre-dating or post-dating a contract;
- failing to notify the student-athlete of potential ineligibility as a student-athlete upon signing an agency contract; and
- receiving compensation from or splitting fees with a professional sports league, sports franchise, a representative or employee of a professional sports league or sports franchise, or an employee of an educational institution in the State.

A person who violates the Act is guilty of a misdemeanor and subject to a fine of up to \$10,000 or imprisonment for up to one year, or both. The Secretary of Labor may also assess a civil penalty of up to \$25,000 for a violation of the Act.

State Fiscal Effect: USM advises two new staff members with specialized backgrounds, along with additional support staff, are required to staff the council established by the bill. USM estimates these costs to be as much as \$470,000 annually.

The Department of Legislative Services advises that USM staffs an existing Workgroup on Intercollegiate Athletics using existing resources; thus, these resources can be directed to supporting the council established by the bill. Therefore, no additional staff are required. Implementing specific recommendations by the council may increase expenditures, potentially significantly; however, any such costs are not directly attributable to the bill as such recommendations could be made by the current workgroup absent the bill.

Beginning July 1, 2022, USM, MSU, and other specified entities, including NCAA, must follow specified rules regarding the use of a student's name, image, or likeness. MSU advises that the bill's requirements can be met using existing resources. USM advises that noncompliance with NCAA and conference rules may expose athletic departments to financial sanction by their conferences, or penalties by NCAA, which will decrease revenues or increase expenditures. In addition, USM advises that the bill may conflict with current contractual obligations that institutions may have entered into to handle intercollegiate sports marketing or other arrangements involving matters addressed by provisions of the bill.

As stated above, the NCAA board has asked each division (*i.e.*, I, II, and III) to create new rules regarding the use of a student-athlete's name, image, and likeness by January 2021. Given the [guidelines](#) the board set for the rules, it is likely that the bill will not be in conflict with the rules and, thus, the bill will have minimal fiscal impact on USM and MSU. However, to the extent that the bill's provisions are in opposition to NCAA bylaws or conference rules, institutions may need to withdraw from NCAA or conferences, which will result in a significant loss of revenue, and potential fines, which would increase expenditures due to current contracts with these organizations. Likewise, current marketing contracts may need to be rewritten due to the bill if the new NCAA bylaws or rules are less strict than the bill, which may decrease revenues or increase expenditures. Absent the new NCAA bylaw or rules, any such impacts cannot be accurately determined.

Finally, USM and MSU staff can likely review student-athlete contracts using existing resources. To the extent additional staff resources are required, USM and MSU can charge athletes a fee to review contracts.

Additional Information

Prior Introductions: None.

Designated Cross File: SB 518 (Senator Ready, *et al.*) - Education, Health, and Environmental Affairs.

Information Source(s): Maryland Department of Labor; University System of Maryland; Morgan State University; *The Diamondback*; CNN; Wikipedia; National College Athletics Association; Penn State Law Review; US Legal; Department of Legislative Services

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