

117TH CONGRESS  
1ST SESSION

# S. 238

To establish name, image, likeness, and athletic reputation rights for college athletes, and for other purposes.

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IN THE SENATE OF THE UNITED STATES

FEBRUARY 4, 2021

Mr. MURPHY introduced the following bill; which was read twice and referred to the Committee on Commerce, Science, and Transportation

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## A BILL

To establish name, image, likeness, and athletic reputation 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 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) ATHLETIC REPUTATION.—The term “ath-  
4 letic reputation” means, with respect to a college  
5 athlete or prospective college athlete, the recognition  
6 or fame of the athlete relating to the participation  
7 or performance of the college athlete or prospective  
8 college athlete in a sport.

9 (3) COLLEGE ATHLETE.—The term “college  
10 athlete” means an individual who participates in or  
11 is eligible to participate in an intercollegiate sport  
12 for an institution of higher education.

13 (4) COMPENSATION.—The term “compensa-  
14 tion”—

15 (A) means any payment, remuneration, or  
16 benefit provided to a college athlete or prospec-  
17 tive college athlete in exchange for the use of  
18 the name, image, likeness, or athletic reputation  
19 of the college athlete or prospective college ath-  
20 lete; and

21 (B) does not include—

22 (i) a grant-in-aid; or

23 (ii) a stipend scholarship from the in-  
24 stitution of higher education in which a  
25 college athlete is enrolled.

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) INTERCOLLEGIATE ATHLETIC ASSOCIA-  
 16 TION.—The term “intercollegiate athletic associa-  
 17 tion” means any association, conference, or other  
 18 group or organization that—

19                   (A) exercises authority over intercollegiate  
 20 athletics and the recruitment of college athletes  
 21 or prospective college athletes; and

22                   (B) is engaged in interstate commerce or  
 23 in any industry or activity affecting interstate  
 24 commerce.

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

7           (10) NAME.—The term “name”, with respect to  
8           a college athlete or prospective college athlete, means  
9           the first or last name, or a nickname, of the college  
10          athlete or prospective college athlete when used in a  
11          context that reasonably identifies the college athlete  
12          or prospective college athlete.

13          (11) PROSPECTIVE COLLEGE ATHLETE.—The  
14          term “prospective college athlete” means an indi-  
15          vidual who—

16                 (A) has not enrolled at an institution of  
17                 higher education; and

18                 (B) may be recruited by an institution of  
19                 higher education.

20          (12) THIRD PARTY.—The term “third party”  
21          means an individual or entity other than an institu-  
22          tion of higher education or an intercollegiate athletic  
23          association.

1 **SEC. 3. ATHLETE RIGHTS TO MARKET NAME, IMAGE, LIKE-**  
2 **NESS, AND ATHLETIC REPUTATION.**

3 (a) RIGHT TO MARKET USE OF NAME, IMAGE, LIKE-  
4 NESS, AND ATHLETIC REPUTATION.—

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

12 (2) COLLUSION.—An institution of higher edu-  
13 cation may not coordinate with any other institution  
14 of higher education or third party to limit the  
15 amount of payment offered to a college athlete, pro-  
16 spective college athlete, or group of college athletes  
17 or prospective college athletes under a contract for  
18 the use of the name, image, likeness, or athletic rep-  
19 utation of the college athlete, prospective college ath-  
20 lete, or group of college athletes or prospective col-  
21 lege athletes.

22 (3) RIGHT TO COLLECTIVE REPRESENTA-  
23 TION.—An institution of higher education or inter-  
24 collegiate athletic association may not enact or en-  
25 force any rule, requirement, standard, or other limi-  
26 tation, or engage in conduct that prevents college

1 athletes from forming or recognizing, or interferes  
2 with such formation or recognition of, a collective  
3 representative to facilitate group licensing agree-  
4 ments or provide representation for college athletes.

5 (4) GROUP LICENSING.—A third party may not  
6 use the name, image, likeness, or athletic reputation  
7 of any member of a group of college athletes to mar-  
8 ket any product unless the third party obtains a li-  
9 cense from the group for that purpose.

10 (5) GRANTS-IN-AID.—Receipt of compensation  
11 for the use of the name, image, likeness, or athletic  
12 reputation of a college athlete or prospective college  
13 athlete shall not adversely affect—

14 (A) the eligibility or opportunity of a col-  
15 lege athlete or prospective college athlete to  
16 apply for a grant-in-aid; or

17 (B) the amount, duration, or renewal of  
18 the grant-in-aid of a college athlete or prospec-  
19 tive college athlete.

20 (6) EQUITABLE INSTITUTIONAL SUPPORT.—An  
21 institution of higher education, an intercollegiate  
22 athletic association, or a party affiliated with an in-  
23 stitution of higher education or an intercollegiate  
24 athletic association that provides direct or indirect  
25 support to college athletes with respect to the mar-

1       keting of their names, images, likenesses, and ath-  
2       letic reputations shall make such support accessible  
3       to all college athletes in the applicable athletic pro-  
4       gram, regardless of gender, race, or participating  
5       sport.

6       (b) RIGHT TO REPRESENTATION.—

7               (1) ABILITY FOR COLLEGE ATHLETES TO RE-  
8       TAIN REPRESENTATION.—An institution of higher  
9       education or intercollegiate athletic association may  
10      not prevent a college athlete or prospective college  
11      athlete from fully participating in intercollegiate ath-  
12      letics based on the college athlete or prospective col-  
13      lege athlete having obtained professional representa-  
14      tion with respect to a contract or legal matter, in-  
15      cluding—

16               (A) representation provided by an athlete  
17               agent or financial advisor; and

18               (B) legal representation provided by an at-  
19               torney.

20               (2) PROHIBITIONS ON THE REGULATION OF  
21      REPRESENTATION.—An institution of higher edu-  
22      cation or intercollegiate athletic association may not  
23      regulate the legal, financial, or agency representa-  
24      tion of college athletes and prospective college ath-  
25      letes with respect to the marketing of their names,

1 images, likenesses, or athletic reputations, including  
2 the certification of such legal, financial, or agency  
3 representation.

4 (c) PROHIBITION ON WAIVER.—A college athlete, a  
5 prospective college athlete, an institution of higher edu-  
6 cation, an intercollegiate athletic association, or any other  
7 person may not enter into any agreement or a legal settle-  
8 ment that waives or permits noncompliance with this Act.

9 **SEC. 4. GRANTS FOR ANALYZING NAME, IMAGE, LIKENESS,**  
10 **AND ATHLETIC REPUTATION MONETIZATION.**

11 (a) DEFINITIONS.—In this section:

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

14 (A) a business in the United States;

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

17 (C) a consortium of entities described in  
18 subparagraph (A) or (B).

19 (2) SECRETARY.—The term “Secretary” means  
20 the Secretary of Commerce.

21 (b) GRANTS AUTHORIZED.—Annually, the Secretary  
22 may award a grant to, or enter into a contract or a cooper-  
23 ative agreement with, an eligible entity for the purpose  
24 of conducting a market analysis of the monetization of the



1 rights granted to college athletes under this Act during  
2 the 1-year period preceding the date of the analysis.

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

6 (1) make the analysis and information relating  
7 to the analysis publicly available, including—

8 (A) the surveys and interviews the eligible  
9 entity conducted during the course of the anal-  
10 ysis; and

11 (B) estimates of the compensation received  
12 by college athletes during the 1-year period pre-  
13 ceding the date of the analysis as a result of  
14 the monetization of the names, images,  
15 likenesses, and athletic reputations of those col-  
16 lege athletes, separated by—

17 (i) gender;

18 (ii) race; and

19 (iii) sport; and

20 (2) provide recommendations to the Secretary  
21 to address any disparate estimates described in  
22 paragraph (1)(B).

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

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. ENFORCEMENT PROVISIONS.**

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

6 (1) IN GENERAL.—A violation of section 3 shall  
7 be treated as a violation of a rule defining an unfair  
8 or deceptive act or practice prescribed under section  
9 18(a)(1)(B) of the Federal Trade Commission Act  
10 (15 U.S.C. 57a(a)(1)(B)).

11 (2) ACTIONS BY THE COMMISSION.—The Com-  
12 mission shall enforce section 3 in the same manner,  
13 by the same means, and with the same jurisdiction,  
14 powers, and duties as though all applicable terms  
15 and provisions of the Federal Trade Commission Act  
16 (15 U.S.C. 41 et seq.) were incorporated into and  
17 made a part of this Act.

18 (3) ENFORCEMENT RELATED TO NONPROFIT  
19 ORGANIZATIONS.—Notwithstanding section 4,  
20 5(a)(2), or 6 of the Federal Trade Commission Act  
21 (15 U.S.C. 44, 45(a)(2), 46) or any jurisdictional  
22 limitation of the Federal Trade Commission, the  
23 Commission shall also enforce this Act and the regu-  
24 lations promulgated under this Act, in the same  
25 manner provided in paragraphs (1) and (2) of this

1 subsection, with respect to organizations not orga-  
2 nized to carry on business for their own profit or  
3 that of their members.

4 (b) PRIVATE RIGHT OF ACTION.—

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

9 (2) DAMAGES; COSTS AND ATTORNEY'S FEES.—

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

12 (A) actual damages sustained by the party  
13 as a result of the violation that is the subject  
14 of the action; and

15 (B) the costs of the action and reasonable  
16 attorney's fees.

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

21 **SEC. 6. STATE PREEMPTION.**

22 (a) IN GENERAL.—A State may not enforce a State  
23 law relating to the ability of college athletes to enter into  
24 contracts for the use of their names, images, likenesses,  
25 or athletic reputations pursuant to this Act.

1           (b) EXCEPTION FOR THE CERTIFICATION OF ATH-  
2     LETE AGENTS.—A State may enforce a State law or regu-  
3     lation relating to the certification of athlete agents under  
4     the Sports Agent Responsibility and Trust Act (15 U.S.C.  
5     7801 et seq.).

6     **SEC. 7. RULE OF CONSTRUCTION.**

7           Nothing in this Act shall affect the treatment of  
8     qualified scholarships under section 117 of the Internal  
9     Revenue Code of 1986.

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