

S.B._____ -

COLLEGE ATHLETE PROTECTION ACT

A BILL

5 To amend section 487(a) of the Higher Education Act of 1965 to ensure that higher education
6 institutions that receive federal funds provide students participating in commercialized athletic
7 programs with sufficient health and medical protection and prevent their academic or financial
8 exploitation. The unprecedented commercialization of these intercollegiate athletics programs
9 threatens the academic success of college athletes and the integrity of higher education institutions,
10 creates excessive institutional expenditures and burdensome student fees, and has resulted in
11 inappropriate financial benefits to individuals conducting those programs. The Act (1) provides
12 remedies addressing these issues, (2) exempts from the antitrust laws certain conduct engaged in by
13 national governance associations in order to restore the ability of these associations to combat
14 commercial excesses in college sports and to maintain a clear line of demarcation between collegiate
15 and professional sports, (3) provides due process for persons and institutions accused of violating the
16 rules of such Associations, (4) provides increased scholarship support and injury and medical benefits
17 to college athletes, and (5) better enables institutions to comply with the athletics provisions of Title IX
18 of the Education Amendments of 1972.

19 *Be it enacted by the Senate and House of Representatives of the United States of America in*
20 *Congress assembled,*

21
22 **Sec.1. Short Title**

23 This Act may be cited as the “College Athlete Protection Act.” or the “CAP Act.”

24
25 **Sec. 2 Findings**

26 The Congress finds that—

27 (1) Nationwide, institutions of higher education receive approximately \$150 billion to \$200
28 billion in funding under title IV of the Higher Education Act of 1965 (20 U.S.C. 1070 et
29 seq.) annually, including approximately \$20 billion to \$30 billion in Federal Pell Grants;
30 (2) In fiscal year 2014, institutions of higher education are projected to receive approximately
31 \$140 billion in Federal student aid under title IV of such Act, which accounts for 77
32 percent of all funding received by these institutions from the Federal Government.
33 (3) Funding under title IV of such Act is used to provide grants, loans, and work-study funds
34 from the Federal Government to eligible students enrolled in institutions of higher
35 education, including career schools.

1 (4) Many institutions of higher education participate in voluntary, nonprofit athletic
2 associations and athletic conferences, with the largest such association having over 1,000
3 member institutions of higher education with more than 430,000 students participating in
4 athletics, and providing approximately \$523,000,000 in revenue sharing to such members.
5 (5) Athletic programs at institutions of higher education are some of the largest revenue
6 generators for such institutions nationwide, accounting for approximately \$6.1 billion in
7 revenue from ticket sales, radio and television receipts, alumni contributions, guarantees,
8 royalties, and association distributions.
9 (6) Athletic associations and their member institutions conduct collegiate athletic events in the
10 50 states and have a direct and substantial effect on interstate commerce;
11 (7) Athletic associations and their member institutions receive revenue from these collegiate
12 athletic events through a variety of commercial means, including broadcasting rights,
13 cable television rights, sponsorship of amateur athletic events, endorsement of products,
14 licensing agreements, event ticket sales, parking and concessions, and advertising;
15 (8) The unprecedented commercialization of college sports threatens the institutions housing
16 and sponsoring college teams by (a) encouraging the construction of elaborate and costly
17 athletic facilities, (b) driving an “arms race” that results in athletics program annual cost
18 increases that exceed the growth rates of other higher education expenses, (c) elevating the
19 compensation of football and men’s basketball coaches at levels far exceeding the
20 compensation of top institutional faculty and administrators, and (d) causing insufficient
21 attention to the academic success, prevention and treatment of athletics injuries,
22 scholarship support and nonathletic career preparation of college athletes;
23 (9) Antitrust laws limit the authority of national athletic governance associations to combat
24 commercial excesses in college sports and to maintain a clear line of demarcation between
25 collegiate and professional sports;
26 (10) Despite the potential loss of a livelihood by coaches or a college scholarship by athletes
27 accused of violating athletic association rules, the procedural protections they receive in
28 such circumstances fail to meet constitutional standards of due process;
29 (11) Congress has supported numerous tax preferences enjoyed by college athletics and federal
30 funding programs supporting the higher education institutions sponsoring athletic
31 programs. These tax preferences and federal funding are defensible only if athletics
32 programs fulfill their educational functions and do not result in excessive institutional
33 expenditures, burdensome student fees, or inappropriate financial benefits to individuals
34 conducting those programs; and
35 (12) Athletic associations have been unable to enact the reforms necessary to control
36 commercial excesses because representatives of top revenue producing athletic programs
37 have threatened departure from such Associations if desired legislative rules, preferential
38 decision-making structures, or revenue distribution policies are not adopted. The result has
39 been an increased consolidation of riches among a small number of elite athletics

1 programs, increased institutional and student fee subsidization for the vast majority of
2 athletics programs, and a continued decline in academic values.
3

4 **Sec. 3 Definitions**

5 For purposes of this Act—

- 6 (1) “academic progress rate” has the meaning given to it by the *NCAA Division I Manual*,
7 published annually by the National Collegiate Athletic Association (“NCAA”);
8 (2) “collegiate athletic events” means regular playing season and pre- or post-playing season
9 intercollegiate athletic contests between teams sponsored by Association member
10 institutions and played under rules promulgated by the Association;
11 (3) “antitrust laws” has the meaning given to it in subsection (a) of the first Section of the
12 Clayton Act (15 U.S.C. 12(a)), except that such term includes section 5 of the Federal
13 Trade Commission Act (15 U.S.C. 45) to the extent section 5 applies to unfair methods of
14 competition;
15 (4) “coaches” means individuals who—
 - 16 (A) are employed, full time or part time, by Association member institutions to instruct,
17 manage, and prepare for competition institutionally sponsored athletic teams or
18 (B) are graduate students who receive educational financial assistance from the
19 institutions they attend in return for assisting in coaching athletic teams sponsored by
20 those institutions; or
21 (C) are volunteers who assist in coaching institutionally sponsored athletic teams for the
22 purpose of acquiring experience in coaching;
23 (5) “college athlete” means any college student who participates in an intercollegiate athletic
24 program of an institution of higher education, and includes athletes who participate in
25 basketball, football, and other intercollegiate sports regardless of scholarship status;
26 (6) “discovery,” “depositions,” and “document production” have the meanings given to them
27 by the Federal Rules of Civil Procedure;
28 (7) “direct governmental support” means funds received from state and local governmental
29 agencies that are designated for athletics;
30 (8) “direct institutional support” means financial transfers directly from the institutional
31 general fund to athletics;
32 (9) “federal graduation rate” means the percentage of first time full-time freshmen students
33 who enter an institution in the fall of a given year and leave with a degree within six years
34 as required to be reported by the “Student Right-to-Know and Campus Security Act” (P.L.
35 101-542) adopted by Congress in 1990. The rate includes comparisons between college
36 athletes and the undergraduate student body;
37 (10) “indirect institutional support” means payment of utilities, maintenance, support staff
38 salaries, etc. by the institution on behalf of athletics;

1 (11) “generated revenues” means only those gross revenues earned by activities of the athletics
2 programs including ticket sales, radio and television receipts, alumni contributions,
3 guarantees, royalties, national or conference governance organization distributions, and
4 other revenue sources that are not dependent upon institutional entities outside the athletics
5 department;

6 (12) “graduation success rate” has the meaning given to it by the *NCAA Division I Manual*,
7 published annually by the NCAA, accounting for two factors not considered in the Federal
8 Graduation Rate: (a) when college athletes transfer from an institution before graduating
9 and are in good academic standing and (b) when college athletes who transfer to an
10 institution and earn a degree;

11 (13) “independent director” means an individual who has not held a position as a president,
12 member of a governing board, faculty member, college athlete, athletic director, and/or
13 other paid employee of a higher education institution or non-profit athletic association or
14 conference during the two years preceding commencement of or at any time during his or
15 her term or position as a director and is charged with the exercise of governance
16 responsibilities in the educational interest of all college athletes rather than the interest of
17 any member institution, conference, or membership division;

18 (14) “national nonprofit athletic association” means any nationwide (i.e. at least 50 member
19 institutions located in at least 25 states) organization of member colleges and/or
20 universities that conducts athletic competition among its members, sets playing rules for
21 that competition, regulates the eligibility of players and institutions to participate, and
22 determines a national champion in one or more sports annually;

23 (15) “net generated revenue” means results of total generated revenues less institution paid or
24 guaranteed expenses;

25 (16) “net negative revenue” means results of institutional-paid or guaranteed expenses less
26 generated revenues;

27 (17) “professional athlete” means one who receives any kind of payment, directly or indirectly,
28 for athletics participation except as permitted by the governing legislation of the
29 Association.

30 (18) “qualifier” has the meaning given to it by the *NCAA Division I Manual*, published annually
31 by the NCAA;

32 (19) “member institutions” means postsecondary educational institutions belonging to the
33 Association;

34 (20) “representative of an institution’s athletic interests” has the meaning given to it by the
35 *NCAA Division I Manual*, published annually by the NCAA;

36 (21) “total compensation” means salary or bonus payments from all institutional sources and
37 private or public foundations dedicated to the support of such institutions plus the benefit
38 payments made on behalf of the employee (excluding any employee contribution)
39 including (a) retirement contribution, regardless of the plan’s vesting provision; (b) medical

1 insurance; (c) disability income protection; (d) tuition for faculty dependents (both waivers
2 and remissions are included); (e) dental insurance; (f) social security contribution (FICA);
3 (g) unemployment insurance; (h) life insurance; (i) workers' compensation premiums; and
4 (j) other benefits with cash alternatives (typically including moving expenses, housing, use
5 of automobiles, cafeteria plans, or cash options); and
6 (22) "whistle-blower protection" means the prohibition of any Association member institution,
7 conference, or the Association retaliating or threatening to retaliate against any student,
8 employee, or employee applicant because of disclosure of information by that student,
9 employee, or employee applicant.

10 **Sec. 4. Program Participation Agreements**

11 Section 487(a) of the Higher Education Act of 1965 (20 U.S.C. 1094(a)), which establishes
12 conditions that higher education institutions must meet to be eligible for federal financial aid, is
13 amended by adding at the end the following:

14
15 (30) In the case of a four-year institution of higher education that has an intercollegiate athletic
16 program with total generated revenues in excess of \$1 million annually, the institution will
17 not be a member of a national nonprofit college athletic association ("Association") unless
18 the Association conforms to the following minimum standards which shall be applicable to
19 all of its members unless otherwise specified—

20
21 (A) **Limited Antitrust Exemption.** Effective one year from the enactment of this Act, the
22 Association qualifies and continues to qualify for a limited antitrust exemption as specified
23 by (i) through (iii) below.

24 (i) The Association demonstrates that it has a membership of no less than forty percent
25 of all four-year institutions of higher education in the United States, with at least one
26 third of those member institutions generating revenues in excess of \$1 million
27 annually.

28 (ii) The Association has adopted and enforces the standards specified in Sec. 487 (a) (30)
29 (B) through (G). The antitrust laws shall not apply to these standards or to current or
30 future rules in the categories specified under Sec. 487 (a) (30) (B) (ii) (IV) because
31 the primary purpose of those standards and rules is to enhance educational
32 opportunities for or to protect the health and well-being of college athletes or to make
33 intercollegiate athletic programs compatible with the educational missions of colleges
34 and universities.

35 (iii) The antitrust exemption shall not extend to commercial activities (selling of media
36 rights, licensing the rights to use the names, likenesses and images of college athletes,
37 etc.) of the Association that occurred prior to the adoption of this Act.

1
2
3 (B) **Governance.**

4 i. **Board of Directors.** The Association is governed by a board of directors (“Board”)
5 that consists of “independent directors” who shall reflect all athletics program
6 stakeholders (presidents, trustees, athletic directors, tenured faculty, and college
7 athletes), diversity of gender, race and ethnicity, and shall conform to the definition of
8 ‘independent director’. At least 40% of the Board shall be former college presidents
9 and all membership divisions shall be equally represented. Except for college athlete
10 nominees, each nominee shall have previously served for no less than five years in a
11 leadership position directly related to the oversight of intercollegiate athletics or, in
12 lieu of such leadership experience, have demonstrated expert knowledge of
13 intercollegiate athletics. Each college athlete nominee shall have completed four
14 years of eligibility, earned a baccalaureate degree, and completed his or her eligibility
15 within 10 years of the time of election.

16 ii. **Duties of the Board.** The Board members shall exercise a fiduciary duty to act in
17 good faith and in the interests of the Association to enhance the educational
18 opportunities for and protect the health and well-being of college athletes and to make
19 intercollegiate athletic programs compatible with the educational missions of higher
20 education. Specifically, the Board shall:

21 I. control the internal operation of the Association including the hiring,
22 firing, evaluation, and compensation of the chief executive officer, approval
23 and oversight of the Association’s budget, and shall take other actions
24 customary for a board of directors of a non-profit organization;

25 II. establish a rules enforcement system and coaches’ code of conduct
26 consistent with the requirements of this Act;

27 III. exercise the authority to cancel or modify existing contracts to which the
28 Association or its member institutions or conferences are parties when the
29 requirements of this Act affect such contracts;

30 IV. act as the sole decision-making authority, notwithstanding the advice of its own
31 expert committees or the Association’s membership divisions, to set the
32 following standards, all of which are exempt from the antitrust laws per (A) (ii):
33 (a) establish limits on the number and compensation of coaches and sport
34 support personnel consistent with part (F) (v) of this section, sport
35 expenditure caps, scholarship limits by sport, or other rules that limit
36 athletic program expenditures;

37 (b) establish limits on numbers of contests, length of competitive seasons,
38 hours per week of athletics-related activities and other scheduling

1 constraints that enable college athletes to devote sufficient time to their
2 academic responsibilities;

3 (c) establish conditions for member institution participation in pre- or post-
4 season collegiate athletic events conducted by third parties;

5 (d) establish rules of conduct to be included in contractual agreements or
6 appointments between a coach and an institution;

7 (e) determine the criteria for membership in each membership division;

8 (f) maintain a catastrophic insurance program, including the use of a gap
9 claims fund, that shall be annually reviewed by an independent board of
10 experts and adjusted based on the needs of athletes then covered by such
11 program.

12 (g) determine additional insurance, medical cost subsidies, academic
13 support program subsidies and other college athlete benefit programs to
14 be financed by the Association;

15 (h) determine the distribution of Association revenues to members
16 consistent with the purposes of the Association, its stated principles and
17 the requirements of this Act;

18 (i) establish academic conditions for individual college athlete eligibility
19 for regular participation and team eligibility for conference and national
20 championship participation and other pre- or post-season competition;

21 (j) promulgate legislation to protect the health, freedom, and well-being of
22 college athletes, which shall minimally include the right of every college
23 athlete, regardless of sport or scholarship status, to:
24 (aa) transfer to another institution without athletic participation
25 ineligibility or other penalty at least once during that college
26 athlete's undergraduate enrollment and conditioned on that college
27 athlete meeting all academic and athletic participation eligibility
28 requirements at the current institution at the time of transfer;

29 (bb) for college athletes predisposed to injury risk due to the nature of
30 their sports participation, receive institutionally financed
31 prevention education and baseline and/or monitoring assessments
32 (e.g., neurological baseline assessments related to concussion,
33 presence of sickle cell trait, review of susceptibility to dehydration,
34 etc.) as recommended by the American College of Sports
35 Medicine, the U.S. Centers for Disease Control and Prevention, or
36 other national Associations of specialist physicians.

37 (cc) for any college athlete identified as having potentially life-
38 threatening health conditions, receive institutionally provided
39 exercise and supervision guidelines;

1 (dd) have the responsibility for return-to-play following injury or other
2 medical decision affecting the college athlete's safe participation
3 rest with a licensed physician designated by the institution;
4 (ee) receive initial and continuing treatment for up to two years
5 following the date of injury, and for a catastrophic injury, receive
6 continuing treatment under the terms of a comprehensive
7 catastrophic injury policy, for any injury directly resulting from
8 participation in his or her institution's athletic program at no cost
9 to the college athlete or his/her parents and at the expense of their
10 institutions and the Association, including the cost of insurance
11 deductibles and co-pays (see (D) (iii) (IV) (bb) and (cc) for
12 funding mechanism). This requirement is not applicable to any
13 preexisting medical condition that predates the college athlete's
14 participation in the institution's athletic program;
15 (ff) have coaches and athletics staff members adhere to a coaching
16 ethics code established by the Association that prohibits sexual or
17 other relationship misconduct, physical or mental abuse, or
18 pedagogy practices that endanger athletes' health and welfare;
19 (gg) have an institutional process that allows the college athlete to
20 report a coach, other athletics personnel, or other college athlete's
21 alleged misconduct to a non-athletics institutional employee with
22 an assurance of "whistle blower protection"; and
23 (hh) due process protections consistent with part (D) of this section.

24 V. Each membership division or subdivision shall operate on the basis of one
25 vote per member institution in deliberative assembly and shall adopt
26 legislation governing its programs that is consistent with the requirements of
27 this Act. Such legislation shall be restricted to subjects other than those
28 over which the Board of Directors has sole authority (B) (ii)(IV).
29 VI. By a three-quarters vote of the entire membership, casting one vote per
30 institution in deliberative assembly, shall amend or repeal provisions of the
31 Bylaws, rules or regulations adopted by the Board of Directors or any
32 membership division or subdivision.

33
34 (C) **Due Process Protections.** The requirements of this section are met if the athletic
35 Association puts in place and enforces rules providing for due process before issuing a
36 "show cause" order or suspending a coach, athlete, or other athletics personnel from
37 representing a member institution in athletics events; suspending the athletics events
38 telecommunications privileges of a member institution; or suspending a member
39 institution from participating in a collegiate athletics event except that such due process

1 shall not be required in the case of reductions to an athlete's financial aid dollar amount
2 or award period per Sec. 4 (F) (xiii) of this Act or of claims for reinstatement of athletic
3 eligibility, which claims shall be the exclusive responsibility of arbitration panels, as
4 provided in Sec. 4 (F) (ix) of this Act.

5 (i) The Association shall maintain a "cooperative principle," which requires member
6 institutions to self-report Association rules violations, investigate themselves, and
7 assist the Association in its own investigation or face enhanced penalties for not
8 cooperating or taking appropriate corrective action.

9 (ii) Not later than one year after the date of the enactment of this Act, the Association
10 shall---

11 (I) hire professional judges from among candidates with experience as trial or
12 appellate judges or administrative law judges, and hire experienced
13 investigators, as independent contractors. These judges and investigators,
14 would participate in enforcement cases featuring severe and significant
15 breaches of conduct enforcement cases, but would be excluded from
16 participating in breaches of conduct and incidental issues for which penalties
17 are not onerous. They would preside at hearings and appeals, issue subpoenas
18 when necessary, and possess exclusive authority to adjudicate, resolve, and
19 issue final judgments including penalties in enforcement cases under their
20 jurisdiction.

21 (II) In severe or significant breach of conduct cases, institute a pre-hearing
22 "discovery" process, including depositions and document production, during
23 which Association staff and counsel for accused parties may gather and
24 exchange pertinent information;

25 (III) In severe or significant breach of conduct cases, permit accused parties,
26 including coaches, athletes, institutional employees, and institutions
27 themselves, to confront and cross-examine opposing witnesses at hearings;

28 (IV) At the discretion of the hearing judge, permit a nonparty whom the
29 Association or the accused institution has identified as having engaged in
30 wrongdoing, or having enabled wrongdoing to occur, to present an oral or
31 written statement at the hearing, subject to rebuttal by the institution. At any
32 party's request, the judge shall require the statements to be given under oath
33 or affirmation;

34 (V) Prohibit member institutions from firing or permanently reassigning
35 employees or disassociating themselves from representatives of the
36 institutions' athletic interests whom the Association or the accused institution
37 have identified as having engaged in or enabled wrongdoing until after the
38 case has been resolved and the nonparty's role in it has been determined; and

1 (VI) Open all hearings and appellate proceedings to the public, except when an
2 accused party objects. This rule shall not apply to the post-hearing
3 deliberations of the appellate panels, which shall be closed to the public.

4 (iii) Automatic Operation of Required Procedures. If the Association fails to put in place
5 the procedures identified in part (C) of this Act within one year of the date of the
6 enactment of this Act, then those procedures shall take effect automatically as of
7 that date.

8 (iv) Athlete Welfare Advocate – The Board shall hire and provide salary, benefits and
9 administrative expenses for and member institutions shall provide all athletes with
10 contact information for, an Athlete Welfare Advocate(s) who shall provide
11 independent legal advice to college athletes at no cost regarding the application of
12 Association rules and due process rights.

13

14 (D) **Revenues from Collegiate Athletic Events.** Association rules regarding revenues from
15 collegiate athletic events shall meet the following requirements:

16 (i) Association member institutions may sell media rights, event tickets, and event
17 sponsorships and may retain these and other event-related revenues (i.e.,
18 concessions, parking, programs, media guides, posters, schedule cards, highlight
19 films, documentaries, licensing of institutional marks, uniform/shoe/supplies/
20 equipment sponsorships, etc.) generated by the collegiate athletic events they
21 conduct during the year they are conducted. These events must conform to playing
22 seasons specified by the Association and Association-established limits on the
23 number of contests per season. Such revenues shall be used to support the
24 institutions' athletics program or be designated for the general fund of the
25 institutions for academic purposes.

26 (ii) The conferences to which Association member institutions belong may sell media
27 rights, event tickets, and sponsorships and may retain these and other event-related
28 revenues (i.e., concessions, parking, programs, media guides, posters, schedule
29 cards, highlight films, documentaries, licensing of conference marks etc.) generated
30 by the post season championships they conduct during the year they are conducted.
31 Participation in these events must be limited to conference members and such
32 events must conform to the Association established limits on the number and format
33 of such conference championship contests.

34 (I) Such revenues shall be used to support conference office services and
35 operations and shall be distributed among conference member institutions for
36 educational, athlete health and athlete welfare uses specified by the
37 conference governing authority.

38 (II) Distribution of revenues may not be conditioned on the competitive success of
39 participating institutions.

(iii) The Association may sell media rights, event tickets, and sponsorships and may retain these and other event-related revenues (i.e., concessions, parking, programs, media guides, posters, schedule cards, highlight films, documentaries, licensing of Association marks etc.) generated by the national championship or national play-off events it conducts during the year they are conducted. The Association shall use such revenues to support member services, athlete benefit programs (i.e., catastrophic insurance, etc.) and operations and the revenues shall be distributed among members for educational, athlete health, and athlete welfare uses specified by the Association. Regarding such events and distributions:

(I) The Association shall have the sole authority to provide its member institutions with open, divisional, or sub-divisional national championships or final play-off events in sports recognized by the Association based on qualification criteria established by the Association.

(II) The Association shall pay the necessary and reasonable expenses, as determined by the Association, of all institutions participating in its national championships.

(III) The Association shall require qualifying institutions to participate in its national championships as opposed to conflicting post-season events conducted by third parties.

(IV) To the extent possible given the limitations of such proceeds, the Association shall use the media rights revenues from its highest football division championship or play-off to accomplish the following in rank order:

(aa) fund the additional cost of compliance with Section (C) of this Act;

(bb) within two years following the adoption of this Act, establish an athletics injury insurance and/or institutional member medical cost subsidy program that covers usual and customary charges for treatment of athletics injuries suffered by athletes participating in the athletics programs of all of its member institutions as required by part (B) (iii) (X) (ee) of this section. In combination with institutional funding of Association specified insurance deductibles, co-pay or other medical expenses and an Association-funded claims gap fund for special circumstances, such program shall result in lower medical and/or insurance costs, as a proportion of total medical costs, for Association member institutions;

(cc) fund a basic catastrophic insurance policy and annual enhancements to such policy as required by Section (B) (iii) (VI) of this Act; and

(dd) increase allocations to institutions in the most competitive membership division to enable them to fund increases in athletically related

1 financial aid to cover the college athlete's full cost of college
2 attendance for athletes who receive full scholarships per Section (F) (i)
3 of this Act;

4 (V) Distribution of revenues may not be conditioned on the competitive success
5 of participating institutions.

6 (iv) The Association may permit its member institutions to participate in other pre-
7 playing season or post-playing season amateur athletic events sponsored by third
8 parties that are authorized to sell media rights, event tickets, and sponsorships and
9 earn other event-related revenues (i.e., concessions, parking, programs, media
10 guides, posters, schedule cards, highlight films, documentaries, licensing of third
11 party marks etc.) generated by the events during the year they are conducted only if:
12 (I) the expenses of the participating teams are paid in full;
13 (II) net revenues, excluding media rights fees, support one or more 501(c)3
14 organization(s) and are shared with participating conferences or institutions;
15 (III) media rights fees are distributed to the conferences of participating
16 institutions;
17 (IV) operators of the event do not retain excessive revenues or pay excessive
18 administrative salaries, or incur excessive costs as determined by the
19 Association;
20 (V) college athletes miss no classes as a result of participating in such events;
21 and
22 (VI) the event meets other operating conditions established by the Association.

23 (v) Institutions may use the names, likenesses, and images of college athletes and
24 coaches in publications sold in conjunction with athletic events as permitted in (i)
25 through (iv) of this section for historical purposes (e.g., performance records and
26 photographs of teams or athletes not currently participating who hold such
27 performance records) without violating part (E) of this section.

28 (vi) The Association and its member institutions and conferences shall each retain five
29 percent of their gross annual media rights fees in an Academic Trust Fund
30 (I) Sixty percent of these proceeds shall be used to disburse education-based
31 grants (not considered athletics-related financial aid) to their respective
32 college athletes who:
33 (aa) have completed their baccalaureate degrees and are continuing their
34 education to pursue another undergraduate or advanced degree; or
35 (bb) have completed at least one year of eligibility, are no longer eligible to
36 participate and are returning to complete their undergraduate degrees or
37 to pursue other training at an accredited educational institution.
38 (II) Forty percent of these proceeds shall be used to disburse education-based
39 grants based on merit and financial need to current non-athlete students. This

1 portion of the Association's Academic Trust Fund shall be equally distributed
2 among all Association member institution offices of student financial aid for
3 selection of and distribution to recipients. Institutions and conferences shall
4 distribute these proceeds to their respective institutions' offices of student
5 financial aid for administration.

6 The Association's Academic Trust Fund shall be in addition to its existing
7 Association student benefit programs, the student assistance program, or other
8 institutional subsidies that fund benefits to currently eligible Association athletes.
9 Existing Association student benefit program for athletes who have completed their
10 eligibility or undergraduate degrees may be incorporated into the Academic Trust
11 Fund.

12 **(E) Commercial Use of Names, Likenesses, and Images of College Athletes.** The

13 Association's rules regarding revenues from commercial use of names, likenesses, and
14 images of college athletes shall include the following requirements and shall be met if the
15 Association puts in place and enforces rules providing for these conditions:

16 (i) The Association, its member institutions and conferences, and approved third-party-
17 owned preseason and postseason collegiate athletic events may sell the rights to use
18 the name, likeness and image of any current college athlete participating in
19 collegiate athletic events with such sales limited to the promotion, publicity,
20 conduct, and/ or live or delayed electronic transmission of such events as specified
21 in part (D) of the section. These entities may retain the revenues from such sales
22 for uses that benefit college athletes, collegiate athletic programs, institutional
23 academic programs, or other purposes as specified in this Act with no portion of
24 such proceeds being paid to college athletes.

25 (ii) The Association, its member institutions and conferences, and approved third-party-
26 owned preseason and postseason collegiate athletic events may not sell the rights to
27 use the name, likeness or image of any college athlete for any other commercial
28 purpose related to athletic participation during the athlete's collegiate eligibility
29 (e.g., video games, names on apparel, or use on other merchandise or commercial
30 products).

31 (iii) Individual college athletes may not sell or donate the rights to use their respective
32 names, likenesses or images for any commercial purpose during the duration of
33 their collegiate eligibility unless specifically authorized by Association rules. Such
34 rules shall be limited to the college sport in which the student is participating as a
35 collegiate athlete. They shall permit an athlete to engage in commercial activities
36 (e.g., modeling, product endorsements, and similar enterprises) that reflect the
37 athlete's public visibility so long as neither the athlete's collegiate sport nor
38 institution is identified in any way.

1
2 (F) **Minimum Legislative Conditions of Educational Athletic Programs.** The Association
3 shall adopt and enforce the following minimum legislative conditions for the conduct of
4 its members' athletics programs:

5 (i) The maximum amount of athletics-related financial aid (full athletics grant in aid) that
6 may be awarded to a college athlete participating in the Association's membership
7 division generating the highest national championship commercial revenues shall cover
8 the full "cost of attendance" (COA) as defined in the Federal Student Aid Handbook
9 and determined by the member institution's office of student financial aid in a manner
10 identical for all students at that institution. The involvement of athletics department
11 personnel in such office of student financial aid determinations is prohibited.
12 (ii) 'Whistle-blower protection' afforded to college athletes under part (B) (iii) (X) (gg) of
13 this section shall extend to faculty and other Association member institution employees
14 who disclose unethical behavior or Association or institutional rules violations related
15 to the conduct of athletics programs.
16 (iii) Each member institution's athletics program shall undergo an Association certification
17 at least once every ten years, which certification process shall consist of peer review,
18 external to the institution as administered and funded by the Association, of a campus-
19 wide self-evaluation conducted by various committees assembled for that purpose. A
20 majority of the members of these committees shall be faculty members, and the
21 evaluation process shall be based on standards established by the Association's Board
22 of Directors consistent with the purposes of the Association, its stated principles, and
23 the requirements of this Act.
24 (iv) Academic counseling and academic support services for college athletes shall be under
25 the direct supervision and budgetary control of the institution's academic authority,
26 administered externally to the athletics department and shall be consistent with
27 counseling and support services available to all students.
28 (v) Head coach and athletic director annual compensation from all institutional sources,
29 including foundations or other legal entities established to support the institution, may
30 not exceed two times the national average of compensation of full professors at doctoral
31 institutions being paid at the 95th percentile based on the annual American Association
32 of University Professors *Report on the Economic Status of the Profession* adjusted to 12
33 months. The Association's Board of Directors shall establish similar lower limits for
34 full-time and part-time assistant coaches, and for associate and assistant athletic
35 directors that shall be correlated with lower academic ranks (associate professor,
36 assistant professor, and instructor). Full-time athletics personnel may not annually
37 earn outside income derived from their athletics positions (e.g., motivational speaking,
38 writing books, summer camps, endorsements, or consulting.) in excess of 20% of their

1 annual compensation from all institutional sources or \$100,000 whichever is greater.
2 Such outside income shall conform to the requirements of Section (F) (xv) of this Act.

3 (vi) No athlete with a cumulative GPA less than 2.0 shall be eligible to participate in
4 athletics and shall remain ineligible until the cumulative 2.0 GPA is achieved. Any
5 athlete with a cumulative GPA of less than 2.0 shall be restricted to a maximum of
6 10 practice hours per week.

7 (vii) Any athlete whose cumulative GPA falls below 2.0 for two consecutive semesters 1
8 shall not be eligible for financial aid based on athletics ability. Financial aid may 2
9 be restored at any time the athlete returns his or her cumulative GPA to 2.0.

10 (viii) In addition to the Association's initial eligibility "qualifier" requirements, a one
11 year residency shall be required prior to eligibility for athletic competition for all
12 freshmen whose high school grade point average or standardized test scores are
13 below one standard deviation from the mean academic profile of their entering class
14 as determined by the certifying institution. Admitted athletes restricted from
15 competition under this legislation shall be eligible for athletic related aid and four
16 years of eligibility. Athletes restricted from competition shall be limited to ten hours
17 of practice per week and shall be required to participate in an institutional academic
18 improvement plan designed to build academic skills.

19 (ix) Athletes declared ineligible for competition by their respective educational
20 institutions or national athletic association for reasons other than an insufficient
21 grade-point average, failure to make satisfactory progress toward a degree, or
22 similar academic failure,, shall have the right to appeal the eligibility determination
23 and seek reinstatement by means of binding arbitration only. A panel of arbitrators
24 certified by the American Arbitration Association (AAA), and approved by the
25 athlete and the athletic association, will conduct the arbitration process in
26 accordance with the AAA Commercial Arbitration Rules and Mediation
27 Procedures. Binding arbitration shall replace an appeal to any committee of a
28 national athletic association that reviews an institution's requests for the
29 reinstatement of athletic eligibility in accordance with the association's rules. The
30 arbitration panel's decision is final and shall bind the athlete(s) involved, the
31 athlete's educational institution, and any national athletic association of which the
32 institution is a member.

33 (x) Member institutions not in compliance with Title IX athletics regulations, as
34 determined by conference or external third party review at least once every four
35 years, shall be ineligible for post-season play if identified deficiencies are not
36 remedied within one year. Deficiencies not remedied within two years shall result
37 in suspension of membership in the Association.

38 (xi) Member institutions shall be required to adopt policies approved by their faculty
39 senates to ensure that athletic contests are scheduled to minimize conflict with class

1 attendance and that regular season contests during final examination periods are
2 prohibited.

3 (xii) Construction and exclusive use of 'athletics only' practice, competition,
4 conditioning, academic support, housing, dining (training tables), and other
5 facilities shall be prohibited.

6 (xiii) All athletics-related scholarship awards shall extend to graduation (a maximum of
7 five years) and shall not be reduced or cancelled during the award period based on a
8 coach's evaluation of athletic ability, performance or contribution to team success,
9 illness, incapacitating injury or physical or mental condition.

10 (I) Such awards may be reduced or cancelled per part (30) (F) (vii) of this section
11 and if the recipient:

- 12 1. Voluntarily withdraws from participation
- 13 2. Fraudulently misrepresents information on any application, letter of intent
14 or financial aid agreement
- 15 3. Engages in serious misconduct warranting substantial disciplinary penalty

16 (II) The dollar amount or period of award for such aid shall not be reduced or
17 removed without the approval of the institution's Office of Student Financial
18 Aid appeal committee. This appeal committee shall not include, in either a
19 voting or ex-officio non-voting capacity, any athletics department staff
20 member.

21 (III) College athlete disciplinary team and athletic department rules must be
22 consistent with student welfare best practices as defined by the Academic
23 Oversight Committee as defined in part (F) (xiii) of this section.

24 (IV) Adverse institutional decisions may be appealed to the Association under the
25 provisions of part (C) of this section.

26 (xiv) Each Association member institution must have a faculty only Committee on
27 Academic Oversight, which shall meet with the faculty senate annually to report the
28 academic progress and qualifications of players and, when possible, to compare
29 such data to non-athletes, including average SAT and ACT scores by sport, Federal
30 Graduation Rates by sport, graduation success rates by sport, independent studies
31 taken by sport, a list of professors offering the independent studies and their
32 average grade assigned, admissions profiles, athletes' progress toward a degree,
33 trends in selected majors by sport, average grade distributions of faculty by major,
34 incomplete grades by sport, grade changes by professors, and the name of each
35 athlete's faculty advisor.

36 (xv) The institution shall not use revenues derived from mandatory student fees to
37 support the athletics program without a vote and consent of the student government
38 at least once every four years.

1 (xvi) Coaches and other athletics personnel shall not sell or donate the rights to use their
2 names, likenesses, or images connected to their athletics position or institutional
3 affiliation for private gain during their collegiate athletics employment unless
4 specifically authorized by Association rules and their respective institutions.
5

6 (G) **Annual Report to Congress** – Not later than two years after the date of enactment of
7 this Act and annually thereafter, the Association’s member institutions shall provide to
8 the Association via an Association online reporting system and the Board of Directors
9 shall report to Congress the following data, which shall be electronically available to the
10 general public:

11 (i) certification status of each member institution per Section (F) (iii)
12 (ii) audited financial data of each member institution’s athletic program to include
13 (I) student fee revenues
14 (II) Direct Institutional Support
15 (III) Indirect Institutional Support
16 (IV) direct governmental support
17 (V) net generated revenues or negative net revenue, whichever is applicable
18 (VI) net sport operating expenses
19 (VII) total salaries, wages and benefits
20 (VIII) percentage of operating budget devoted to coaching and administrative
21 salaries
22 (IX) salaries, wages and benefits paid to the top five employees by position
23 receiving salaries, wages and benefits
24 (X) capital construction and other debt service
25 (XI) total outstanding athletics debt
26 (XII) media rights fee revenues
27 (XIII) Academic Trust Fund transfer and expenditures per Section (D) (vi)
28 (iii) graduation success rate overall and by sport for each member institution
29 (iv) federal graduation rate for all students overall, all athletes overall and athletes by
30 sport at each member institution
31 (v) academic progress rate by sport for each member institution
32 (vi) number of recruited “non-qualifiers” and number of “qualifiers” required to
33 complete one year in residency per Section (F) (viii) for each member institution
34 (vii) institutions ineligible for Association championships due to (a) deficiencies in
35 academic performance, (b) non-compliance with Title IX and (c) disciplinary or
36 other reasons
37 (viii) audited financial data for the Association that shall separately show funds expended
38 for direct support of college athlete benefits (e.g., college athlete assistance
39 programs, athletics injury insurance or medical subsidies, catastrophic insurance,

1 Academic Trust Fund, etc.) and aggregated amount distributed to member
2 institutions by purpose; and
3 (ix) amount of direct distribution of Association funds to each member institution.
4

5 **(H) Institutions Seeking to Separate from National Governance Association Affiliation.**

6 If an institution of higher education that has an intercollegiate athletic program with total
7 generated revenues in excess of \$1 million annually voluntarily discontinues its
8 membership in an Association that conforms to (A) (i) and (ii) above, the Secretary shall
9 be authorized to find that the institution is not in compliance with this participation
10 requirement of the Higher Education Act.

11 **(I) Implementation of Act.** The requirements of this Act shall be met within one year after
12 the date of its enactment unless otherwise indicated. Any Association that conforms
13 with (A) (i) of this Act shall, not later than 180 days after the date of the enactment of this
14 Act, submit a report to the Congress that lists all member institutions with intercollegiate
15 athletic programs with total generated revenues in excess of \$1 million annually (based
16 on previous year's audited financial reports), identifies the actions the Association has
17 taken to date to implement the procedures required by these sections; and describes the
18 remaining actions to be taken and the Association's plans for implementing them on or
19 before the one-year deadline.
20

21 **(J) Secretary of Education Oversight Responsibility.** The Secretary of Education shall be
22 responsible for determining whether institutional or association standards meet the
23 requirements of the Act. The Secretary is authorized to: (1) approve exceptions to the
24 timetable for implementation of various provisions of the Act; (2) promulgate regulations
25 necessary to clarify the requirements of the Act; and (3) exempt from those requirements
26 any institution generating in excess of \$1 million annually in athletic revenues that has
27 been a member for the previous ten years or more of a national nonprofit athletic
28 association having fewer than 900 members.
29

30 *END*