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(Original Signature of Member)

118TH CONGRESS
1ST SESSION

H. R.

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

IN THE HOUSE OF REPRESENTATIVES

Mrs. TRAHAN introduced the following bill; which was 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:

1 (1) ATHLETE AGENT.—The term “athlete
2 agent” has the meaning given the term in section 2
3 of the Sports Agent Responsibility and Trust Act
4 (15 U.S.C. 7801).

5 (2) COLLECTIVE REPRESENTATIVE.—The term
6 “collective representative”—

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

13 (B) includes—

- 14 (i) legal representatives;
15 (ii) athlete agents; and
16 (iii) players’ associations.

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

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

1 or likeness of the college athlete or prospective col-
2 lege athlete.

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

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

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

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

21 (A) either—

22 (i) subject to the Federal Trade Com-
23 mission Act (15 U.S.C. 41 et seq.); or

1 (ii) an organization not organized to
2 carry on business for its own profit or the
3 profit of its members; and

4 (B) with respect to college athletes enrolled
5 at, or prospective college athletes for, an insti-
6 tution of higher education or a limited group of
7 institutions of higher education, supports the
8 athletic interests of such institutions of higher
9 education by—

10 (i) accepting contributions for the
11 purpose of entering into or funding name,
12 image, or likeness agreements with such
13 college athletes; or

14 (ii) arranging for such college athletes
15 to be paid by third parties for the commer-
16 cial use of their names, images, or
17 likenesses.

18 (9) INTERCOLLEGIATE ATHLETIC ASSOCIA-
19 TION.—The term “intercollegiate athletic associa-
20 tion” means any association, conference, or other
21 group or organization that—

22 (A) exercises authority over intercollegiate
23 athletics and the recruitment of college athletes
24 or prospective college athletes; and

1 (B) is engaged in interstate commerce or
2 in any industry or activity affecting interstate
3 commerce.

4 (10) INTERNATIONAL COLLEGE ATHLETE.—
5 The term “international college athlete” means an
6 alien (as defined in section 101(a) of the Immigra-
7 tion and Nationality Act (8 U.S.C. 1101(a))) law-
8 fully present in the United States in the status of
9 a nonimmigrant described in subparagraph (F)(ii) of
10 section 101(a)(15) of the Immigration and Nation-
11 ality Act (8 U.S.C. 1101(a)(15)) who participates in
12 or is eligible to participate in an intercollegiate sport
13 for an institution of higher education.

14 (11) LIKENESS.—The term “likeness”, with re-
15 spect to a college athlete or prospective college ath-
16 lete, means the uniquely identifiable voice, catch
17 phrase, or any other mark that when used in a con-
18 text that reasonably identifies the college athlete or
19 prospective college athlete.

20 (12) NAME.—The term “name”, with respect to
21 a college athlete or prospective college athlete, means
22 the first or last name, or a nickname, of the college
23 athlete or prospective college athlete when used in a
24 context that reasonably identifies the college athlete
25 or prospective college athlete.

1 (13) PROSPECTIVE COLLEGE ATHLETE.—The
2 term “prospective college athlete” means an indi-
3 vidual who—

4 (A) has not enrolled at an institution of
5 higher education; and

6 (B) may be recruited by an institution of
7 higher education.

8 (14) THIRD PARTY.—The term “third party”
9 means an individual or entity other than an institu-
10 tion of higher education or an intercollegiate athletic
11 association.

12 **SEC. 3. ATHLETE RIGHTS TO MARKET NAME, IMAGE, AND**
13 **LIKENESS.**

14 (a) RIGHT TO MARKET USE OF NAME, IMAGE, AND
15 LIKENESS.—

16 (1) IN GENERAL.—An institution of higher edu-
17 cation or intercollegiate athletic association may not
18 enact or enforce any rule, requirement, standard, or
19 other limitation that prevents college athletes or pro-
20 spective college athletes, individually or as a group,
21 from marketing the use of their names, images, or
22 likenesses.

23 (2) COLLUSION.—An institution of higher edu-
24 cation may not coordinate with any other institution
25 of higher education or third party to impose a limi-

1 tation on the amount of payment offered to a college
2 athlete, prospective college athlete, or group of col-
3 lege athletes or prospective college athletes under a
4 contract for the use of the name, image, or likeness
5 of the college athlete, prospective college athlete, or
6 group of college athletes or prospective college ath-
7 letes, unless such a limitation is the result of nego-
8 tiations with a collective representative.

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

17 (A) to facilitate contracts for the use of
18 the name, image, or likeness of college athletes,
19 or group licensing agreements; or

20 (B) to provide representation for college
21 athletes.

22 (4) GROUP LICENSING.—

23 (A) IN GENERAL.—An institution of higher
24 education or intercollegiate athletic association
25 may not use the name, image, or likeness of

1 any group of college athletes for any type of
2 promotion, including a media rights agreement,
3 unless the institution of higher education or
4 intercollegiate athletic association obtains a li-
5 cense from the group for that purpose.

6 (B) NOTIFICATION.—An institution of
7 higher education or intercollegiate athletic asso-
8 ciation seeking a license described in subpara-
9 graph (A) shall notify the group of college ath-
10 letes concerned with respect to—

11 (i) the manner in which the name,
12 image, or likeness of the group will be used
13 under the license; and

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

21 (5) GRANTS-IN-AID.—Receipt of compensation
22 for the use of the name, image, or likeness of a col-
23 lege athlete or prospective college athlete shall not
24 adversely affect—

1 (A) the eligibility or opportunity of a col-
2 lege athlete or prospective college athlete to
3 apply for a grant-in-aid; or

4 (B) the amount, duration, or renewal of
5 the grant-in-aid of a college athlete or prospec-
6 tive college athlete.

7 (b) **EQUITABLE INSTITUTIONAL SUPPORT.**—

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

18 (2) **INSTITUTIONAL NAME, IMAGE, AND LIKE-**
19 **NESS COLLECTIVES.**—Each institutional name,
20 image, and likeness collective—

21 (A) shall—

22 (i) for purposes of paragraph (1), be
23 considered to be affiliated with each insti-
24 tution of higher education that the collec-
25 tive supports the athletic interests of;

1 (ii) register with the Federal Trade
2 Commission as an institutional name,
3 image, and likeness collective, including by
4 identifying the institutions of higher edu-
5 cation with which the collective affiliates;

6 (iii) maintain, with respect to college
7 athletes enrolled at each affiliated institu-
8 tion of higher education—

9 (I) the number of name, image,
10 or likeness agreements facilitated by
11 the collective, disaggregated by gen-
12 der, race, and participating sport;

13 (II) the total monetary value of
14 name, image, or likeness agreements
15 facilitated by the collective,
16 disaggregated by gender, race, and
17 participating sport; and

18 (III) the number of college ath-
19 letes or prospective college athletes as-
20 sisted by the collective, disaggregated
21 by gender, race, and participating
22 sport; and

23 (iv) by September 1 of each year, sub-
24 mit to the Federal Trade Commission a re-
25 port containing the information described

1 in subclauses (I) through (III) of clause
2 (iii), corresponding to the time period be-
3 tween July 1 of the previous year and
4 June 30 of that year; and

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

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

21 (c) RIGHT TO REPRESENTATION.—

22 (1) ABILITY FOR COLLEGE ATHLETES TO RE-
23 TAIN REPRESENTATION.—An institution of higher
24 education or intercollegiate athletic association may
25 not prevent a college athlete or prospective college

1 athlete from fully participating in intercollegiate ath-
2 letics based on the college athlete or prospective col-
3 lege athlete having obtained professional representa-
4 tion with respect to a contract or legal matter, in-
5 cluding—

6 (A) representation provided by an athlete
7 agent, financial advisor, or collective representa-
8 tive; and

9 (B) legal representation provided by an at-
10 torney.

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

19 (d) PROHIBITION ON WAIVER.—

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

1 (2) EXCEPTION.—An institution of higher edu-
2 cation or intercollegiate athletic association may re-
3 strict the commercial use of the name, image, or
4 likeness of college athletes if such a restriction is
5 part of a collective bargaining agreement between
6 the institution of higher education or intercollegiate
7 athletic association and college athletes.

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

10 (a) DEFINITIONS.—In this section:

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

13 (A) a business in the United States;

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

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

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

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

1 athletes under this Act during the 1-year period preceding
2 the date on which the analysis is completed.

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 and prospective college ath-
13 letes during the 1-year period preceding the
14 date on which the analysis is completed as a re-
15 sult of the monetization of the names, images,
16 and likenesses of those college athletes and pro-
17 spective college athletes, separated by—

18 (i) gender;

19 (ii) race; and

20 (iii) sport; and

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

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

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

7 **SEC. 5. INTERNATIONAL COLLEGE ATHLETES.**

8 (a) ELIGIBILITY FOR F VISAS.—Section
9 101(a)(15)(F) of the Immigration and Nationality Act (8
10 U.S.C. 1101(a)(15)(F)) is amended by—

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

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

15 (3) by striking the semicolon and inserting “;
16 or”; and

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

18 “(ii) an alien having a residence in a foreign
19 country which he has no intention of abandoning,
20 who is a bona fide college athlete (as defined in sec-
21 tion 2 of the College Athlete Economic Freedom
22 Act) qualified to pursue a full course of study and
23 who seeks to enter the United States temporarily
24 and for the purpose of pursuing a course of study
25 at an established college, university, or other aca-

1 demic institution while also participating in inter-
2 collegiate athletics, which institution or place of
3 study shall have agreed to report to the Secretary of
4 Homeland Security the termination of attendance of
5 each nonimmigrant student, and if any such institu-
6 tion of learning or place of study fails to make re-
7 ports promptly the approval shall be withdrawn;”.

8 (b) NAME, IMAGE, AND LIKENESS ACTIVITIES BY
9 INTERNATIONAL COLLEGE ATHLETES.—Section
10 212(a)(5)(A) of the Immigration and Nationality Act (8
11 U.S.C. 1182(a)(5)(A)) is amended by adding at the end
12 the following:

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

1 letes, and such activities shall not con-
2 stitute a violation of or failure to maintain
3 such nonimmigrant status.”.

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

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

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

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

1 (d) EMPLOYEE STATUS OF COLLEGE ATHLETES.—
2 In the event that any Federal or State court of competent
3 jurisdiction or any government agency declares college
4 athletes to be employees of an institution of higher edu-
5 cation or intercollegiate athletic association—

6 (1) participation in intercollegiate athletics shall
7 not violate or be considered to be a violation of or
8 a failure to maintain nonimmigrant status described
9 in subparagraph (F)(ii) of section 101(a)(15) of the
10 Immigration and Nationality Act (8 U.S.C.
11 1101(a)(15)); and

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

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

23 **SEC. 6. ENFORCEMENT PROVISIONS.**

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

1 (1) IN GENERAL.—A violation of section 3 shall
2 be treated as a violation of a rule defining an unfair
3 or deceptive act or practice prescribed under section
4 18(a)(1)(B) of the Federal Trade Commission Act
5 (15 U.S.C. 57a(a)(1)(B)).

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

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

24 (b) PRIVATE RIGHT OF ACTION.—

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

5 (2) DAMAGES; COSTS AND ATTORNEY’S FEES.—
6 A court may award to a prevailing party in a civil
7 action brought under paragraph (1)—

8 (A) actual damages sustained by the party
9 as a result of the violation that is the subject
10 of the action; and

11 (B) the costs of the action and reasonable
12 attorney’s fees.

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

17 **SEC. 7. STATE PREEMPTION.**

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

22 (b) EXCEPTION FOR THE CERTIFICATION OF ATH-
23 LETE AGENTS.—A State may enforce a State law or regu-
24 lation relating to the certification of athlete agents under

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

3 **SEC. 8. RULE OF CONSTRUCTION.**

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