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Short Title: Accountability and Fair Play in Athletics. (Public)

Sponsors:

Referred to:

February 17, 2021

A BILL TO BE ENTITLED

AN ACT TO RESTRUCTURE OVERSIGHT OF PUBLIC HIGH SCHOOL INTERSCHOLASTIC ATHLETIC ACTIVITIES TO ENSURE ACCOUNTABILITY AND FAIR PLAY.

The General Assembly of North Carolina enacts:

PART I. REGULATION OF INTERSCHOLASTIC ATHLETIC ACTIVITIES

SECTION 1.(a) Chapter 115C of the General Statutes is amended by adding a new Article to read:

"Article 29E.
"Interscholastic Athletic Activities.
"Part 1. Definitions.

"**§ 115C-407.50. Definitions.**

The following definitions apply in this Article:

(1) Administering organization. – A nonprofit organization that has entered into and is in compliance with a memorandum of understanding with the State Board of Education to administer and enforce the adopted rules and requirements of this Article for interscholastic athletic activities at the high school level.

(2) Gameplay rules. – Rules adopted in accordance with this Article governing oversight of the administration, classification, scheduling, and conduct of interscholastic athletic activities.

(3) Parent. – The parent or legal guardian of a student participating or seeking to participate in interscholastic athletic activities.

(4) Participating school. – A school serving any grade between six and 12 that elects to offer interscholastic athletic activities.

(5) Penalty rules. – Rules adopted in accordance with this Article governing infractions of student participation rules and gameplay rules.

(6) Student participation rules. – Rules adopted in accordance with this Article governing student eligibility to participate in interscholastic athletic activities. Student participation rules include both student participation and student health and safety requirements.

"Part 2. Oversight of Interscholastic Athletic Activities.

"**§ 115C-407.55. Regulation of interscholastic athletic activities.**

(a) The State Board of Education shall adopt rules governing interscholastic athletic activities conducted by public school units in accordance with the requirements of this Article.

(b) The State Board of Education may enter into a memorandum of understanding for a term not to exceed four years with one or more nonprofit organizations to administer and enforce the requirements of this Article and the rules adopted by the State Board for interscholastic athletic activities at the high school level. A memorandum of understanding shall comply with the requirements of this Article. If the State Board does not enter into a memorandum of understanding, the State Board shall assign the administration of high school interscholastic athletic activities to the Department of Public Instruction, and establish fees sufficient to support the administration of the program. In the event the Department of Public Instruction is assigned to administer high school interscholastic athletic activities either (i) due to a termination of a memorandum of understanding during any school year or (ii) following July 1 of any school year due to the inability of the State Board to finalize negotiations for a memorandum of understanding, the State Board may establish fees for that school year through emergency rulemaking.

(c) The rules adopted by the State Board of Education for interscholastic athletic activities at the middle school level shall be administered by the Department of Public Instruction.

(d) The State Board of Education shall adopt student participation rules consistent with the requirements of G.S. 115C-407.65 and G.S. 115C-407.70, that include at least the following:

(1) Academic standards.
(2) Enrollment requirements.
(3) Attendance requirements.
(4) Medical eligibility requirements.
(5) Recruiting limitations.
(6) Hardship exceptions.

(e) The State Board of Education shall either adopt gameplay rules or provide the responsibility for adoption of gameplay rules to an administering organization through the memorandum of understanding, consistent with the requirements of this subsection. Gameplay rules shall include the following:

(1) Classification of all participating schools in the State into one of four athletic divisions based solely on average daily membership. For charter or nonpublic schools, the rules shall classify those schools into the next largest conference than the school would be assigned to based solely on average daily membership.
(2) Classification of all participating schools in the State into conferences based solely on geography, division classification, and average daily membership.
(3) Game rules, including rules specific to individual sports.
(4) Game administration.
(5) Coaching requirements.
(6) Officiating requirements.
(7) Sportsmanship requirements.
(8) Season and conference schedules and requirements, including the following:
    a. Preseason calendars and requirements.
    b. Regular season calendars and requirements.
    c. Post-season conference and State tournament calendars and requirements. The rules shall limit all conference and State tournament participation to participating schools.

(f) The State Board of Education shall either adopt penalty rules, or provide the responsibility for adoption of penalty rules to an administering organization through a memorandum of understanding, consistent with the requirements of this section. The penalty rules shall establish a system of demerits for infractions of student participation rules and gameplay rules which may result in reprimands, probations, suspensions, forfeitures of contests, forfeitures of titles, and disqualifications, but shall not result in monetary penalties of any kind.

(g) The State Board of Education shall require an appeals process that provides due process to students, parents, and participating schools in enforcement of student participation, gameplay, and penalty rules. The appeals process shall include an independent appeals board appointed by the State Board of Education. The appeals process established by the State Board may be coordinated by an administering organization subject to restrictions established in the memorandum of understanding.

(h) The State Board of Education shall establish a mechanism for participating schools to report intimidation or harassment of the participating school or its employees or students by an administering organization.

"**§ 115C-407.60. Conduct of interscholastic athletic activities.**

(a) All public school units shall conduct middle school interscholastic athletic activities in accordance with the rules adopted by the State Board of Education as administered by the Department of Public Instruction.

(b) All public school units shall conduct high school interscholastic athletic activities in accordance with the rules adopted by the State Board of Education and as administered and enforced by either an administering organization that is in compliance with the memorandum of understanding or the Department of Public Instruction. Public school units shall not be regulated by any other entities for regular and postseason interscholastic athletics.

(c) Public school units may require students meet additional standards for participation in interscholastic athletic activities in excess of the student participation rules established by the State Board. Any standard in excess of a student participation rule shall only be enforced by and appealed according to requirements established by the governing body of the public school unit.

(d) Public school units shall obtain catastrophic insurance for interscholastic athletic activities as provided in Part 2 of Article 31A of Chapter 58 of the General Statutes.

"**§ 115C-407.65. Rules on concussions and head injuries.**

(a) For the purpose of this section, a concussion is a traumatic brain injury caused by a direct or indirect impact to the head that results in disruption of normal brain function which may or may not result in loss of consciousness.

(b) With regard to middle schools and high schools, the State Board of Education shall adopt rules that provide for the following:

(1) All coaches, school nurses, athletic directors, first responders, volunteers, students who participate in interscholastic athletic activities, and the parents of those students shall receive, on an annual basis, a concussion and head injury information sheet. School employees, first responders, volunteers, and students must sign the sheet and return it to the coach before they can participate in interscholastic athletic activities, including tryouts, practices, or competition. Parents must sign the sheet and return it to the coach before their children can participate in any such interscholastic athletic activities. The signed sheets shall be maintained in accordance with subsection (c) of this section.

(2) If a student participating in an interscholastic athletic activity exhibits signs or symptoms consistent with concussion, the student shall be removed from the activity at that time and shall not be allowed to return to play or practice that day. The student shall not return to play or practice on a subsequent day

until the student is evaluated by and receives written clearance for such participation from one of the following:

a. A physician licensed under Article 1 of Chapter 90 of the General Statutes with training in concussion management.

b. A neuropsychologist licensed under Article 18A of Chapter 90 of the General Statutes with training in concussion management and working in consultation with a physician licensed under Article 1 of Chapter 90 of the General Statutes.

c. An athletic trainer licensed under Article 34 of Chapter 90 of the General Statutes.

d. A physician assistant, consistent with the limitations of G.S. 90-18.1.

e. A nurse practitioner, consistent with the limitations of G.S. 90-18.2.

(c) Each middle and high school shall maintain complete and accurate records of its compliance with the requirements of this section.

"**§ 115C-407.70. Emergency action plans.**

(a) With regard to middle schools and high schools, the State Board of Education shall adopt a rule that requires each school to develop a venue-specific emergency action plan to deal with serious injuries and acute medical conditions in which the condition of the patient may deteriorate rapidly. The plan shall include a delineation of roles, methods of communication, available emergency equipment, and access to and plan for emergency transport.

(b) The rule required by subsection (a) of this section shall require the plan to be at least the following:

(1) In writing.

(2) Reviewed by an athletic trainer licensed in North Carolina.

(3) Approved by the principal of the school.

(4) Distributed to all appropriate personnel.

(5) Posted conspicuously at all venues.

(6) Reviewed and rehearsed annually by all licensed athletic trainers, first responders, coaches, school nurses, athletic directors, and volunteers for interscholastic athletic activities.

"Part 3. Memorandum of Understanding.

"**§ 115C-407.75. Memorandum of understanding.**

(a) If the State Board of Education enters into a memorandum of understanding with a nonprofit organization as provided in G.S. 115C-407.55(b), the memorandum shall require the that organization to do the following in accordance with the requirements of this Article to maintain the authority to administer and enforce the requirements for high school interscholastic athletic activities:

(1) Apply, enforce, and administer all rules adopted by the State Board.

(2) If delegated by the State Board, adopt, apply, enforce, and administer gameplay rules and penalty rules. A rule shall not be adopted by an administering organization until the organization has provided for publication of the proposed rule on the organization's website, and provided the opportunity to the public for notice and comment on the rule. The State Board by majority vote may deem any rule adopted by an administering organization unenforceable.

(3) Make publicly available at no cost on the administering organization's website the following:

a. The organization's handbook for participating schools.

b. All student participation rules.

c. All gameplay rules.

d. Information on the appeals process, including specific information on how to make an initial and final appeal.

(4) Agree to adopt requirements for membership of the nonprofit board that require equal representation on the board from each educational district established as provided in G.S. 115C-65.

(5) Adopt an ethics policy that requires board members to avoid conflicts of interests and the appearance of impropriety.

(6) Agree to adopt procedures for its operations that are comparable to those of Article 33C of Chapter 143 of the General Statutes, the Open Meetings Law, and Chapter 132 of the General Statutes, the Public Records Law, and provide for enforcement by the State Board. The procedures may provide for the confidentiality of personnel files comparable to Article 7 of Chapter 126 of the General Statutes.

(7) Apply the standards established by the federal Family Educational Rights and Privacy Act, 20 U.S.C. § 1232g, to all student records containing personally identifiable information in the possession of the administering organization. The administering organization shall be authorized to display and share student information designated by a participating school as directory information unless the participating school indicates that a parent has opted out of disclosure of that information. Other than directory information, all student records containing personally identifiable information held by the administering organization are not public records and should not be released under procedures adopted in accordance with subdivision (5) of this section.

(8) Enter into contracts with participating schools as to the monetary requirements for participation, including the payment of reasonable annual fees by participating schools as needed to support the duties of the administering association. Annual fees may vary based on the division to which the school is assigned.

(9) Agree to reduce annual fees to participating schools by a minimum of twenty percent (20%) when the total fund balance for the administering organization is two hundred fifty percent (250%) of the administering organization's total expenses from the prior fiscal year. The administering organization may increase annual fees to participating schools when the total fund balance is one hundred fifty percent (150%) of the organization's total expenses from the prior fiscal year.

(10) Agree to retain no more than thirty-three percent (33%) of the net proceeds of any State tournament game.

(11) Agree to be audited annually by the State Auditor pursuant to Article 5A of Chapter 147 of the General Statutes.

(12) Agree to not engage in any of the following activities:

a. Solicit grant funding and sponsorships from third-party organizations, other than for State tournament games.

b. Provide grants to schools regulated by the administrating organization.

c. Provide scholarships to players, except when funded by donor-directed funds.

d. Designate the use of specific or preferred vendors.

e. Retain a percentage of gate receipts for games other than State tournament games.

f. Regulate or control the intellectual property of schools, including team logos, mascots, and audio or video of any game other than the State tournament game.

g. Restrict the recording of audio or video at a State tournament game by any parent of a student participating in the game or any employee of the school participating in the game.
h. Retain any portion of receipts collected from ticket sales, concessions, or sale of merchandise by a participating school.
i. Retaliate against participating schools, or the employees or students of those schools, for reporting to the administering organization on any of the following topics. For the purposes of the sub-subdivision, retaliate does not include the application of a penalty rule that is appealable to an independent appeals board.
1. Violations of laws or rules.
2. Fraud.
3. Misappropriation of resources.
4. Substantial and specific danger to student or employee health and safety.
5. Gross mismanagement or abuse of authority.

(13) Report annually by December 1 to the State Board of Education on the following:
a. Activities during the prior school year and recommendations and findings regarding improvement of high school interscholastic athletics.
b. A copy of the most recent audit conducted by the State Auditor.
c. A schedule of current fees charged to participating schools.
d. The amount of fees and gate receipts collected.
e. The current fund balance for the administering organization.

(b) The State Board may terminate any memorandum of understanding for noncompliance with this Article or the terms of the memorandum of understanding. In the event of termination of a memorandum of understanding, the nonprofit organization shall return any remaining funds paid to the organization by a participating school within 30 days of termination of the memorandum.

(c) The State Auditor is authorized to conduct audits of any administering organization in the same manner as for State agencies in accordance with Article 5A of Chapter 147 of the General Statutes.

"Part 4. Public School Unit Reports.

"**§ 115C-407.80. Public school units annual interscholastic athletic reports.**

(a) Each public school unit with one or more participating schools shall annually report the following information for the three school years completed prior to July 15 to the State Board of Education:

(1) The total dollar amount spent on interscholastic athletic activities, by the following categories:
a. Administering association fees.
b. Salaries or stipends for coaches and faculties for duties associated solely with interscholastic athletics.
c. Capital costs, including new construction, repair and renovation, and maintenance costs for existing athletic facilities.
d. Uniform and equipment costs.
e. Travel and transportation costs.
f. Officiating costs.
g. Other identified costs.

(2) The total dollar amount received from interscholastic athletic activities, including funds held in special funds of individual schools, by the following categories:

a. Gate receipts.

b. Concession sales.

c. Merchandise sales or sales of items directly related to interscholastic athletics, including apparel and audiovisual materials.

d. Student fees.

e. Monetary and in-kind contributions from third-party organizations.

f. State or local funding expended on capital costs for athletics facilities.

g. Other identified sources of funds.

(b) The State Board shall provide a summary of the reports by public school units and a copy of each public school unit report to the Joint Legislative Education Oversight Committee no later than October 15 annually."

SECTION 1.(b) The State Board of Education shall review and adopt new or revised emergency rules on interscholastic athletics for use in the 2021-2022 school year in accordance with the requirements of Article 29E of Chapter 115C of the General Statutes, as enacted by this act, no later than September 30, 2021. For the 2021-2022 school year only, the State Board shall not require students to meet any academic requirements for participation, and shall provide for hardship waivers for age eligibility requirements, in recognition of the impacts of COVID-19 on students during the 2020-2021 school year. Notwithstanding G.S. 150B-21.1A, no findings of need shall be required for an emergency rule adopted for the 2021-2022 school year, an emergency rule adopted as provided in this subsection shall be effective until June 30, 2022, and the State Board of Education shall not be required to adopt temporary rules to replace an emergency rule for use in the 2021-2022 school year. The State Board shall submit all emergency rules in accordance with the requirements in 26 NCAC 02C.

SECTION 1.(c) The State Board of Education shall adopt new or revised permanent rules for use in the 2022-2023 and following school years.

SECTION 1.(d) Notwithstanding G.S. 115C-407.55, a memorandum of understanding entered into during the 2021-2022 school year by the State Board of Education with an administering organization shall terminate no later than June 30, 2023.

SECTION 1.(e) The State Board of Education shall not authorize any nonprofit organization to apply and enforce the Board's rules for participation in interscholastic athletic activities during the 2021-2022 school year or thereafter except by a memorandum of understanding in accordance with this act.

SECTION 1.(f) If the State Board of Education enters into a memorandum of understanding with the North Carolina High School Athletic Association (NCHSAA) for the 2021-2022 school year, a condition of the memorandum shall be that the NCHSAA waive collection of all fees for participating schools for the 2021-2022 school year, except for fees associated with post-season conference games, in recognition of decreased access to interscholastic sports for participating schools in the 2020-2021 school year due to COVID-19.

SECTION 1.(g) The State Board of Education, in consultation with any administering organization, shall study and make findings and recommendations on the following issues and report on its findings and recommendations to the Joint Legislative Education Oversight Committee by April 1, 2022:

(1) Whether an administering organization should be responsible for overseeing the conduct of middle school interscholastic athletics for public school units. The State Board shall include in its deliberations an examination of the potential costs to public school units for oversight of middle school interscholastic athletics by an administering organization. The State Board shall establish workgroups of athletic directors, principals, and coaches

employed by schools serving students in grades six through eight and parents of students in grades six through eight to provide input on this recommendation.

(2) Factors that should be considered in (i) home school students' participation in interscholastic athletics, including how to address insurance and liability issues for those students while participating in interscholastic athletics, (ii) cooperative innovative high school students' participation in interscholastic activities, and (iii) nonpublic schools. The State Board shall establish workgroups of athletic directors, principals, and parents of students in home schools, cooperative innovative high schools, and nonpublic schools to provide input on this recommendation.

SECTION 1.(h) Notwithstanding the requirements of G.S. 115C-407.80, as enacted by this act, all public school units shall submit the first annual interscholastic athletic report to the State Board of Education no later than July 15, 2023, and shall include data from the 2018-2019, 2019-2020, 2020-2021, 2021-2022, and 2022-2023 school years.

SECTION 1.(i) This section is effective when it becomes law. Subsection (a) of this section applies beginning with interscholastic athletic competitions occurring on or after September 30, 2021.

PART II. CONFORMING CHANGES

SECTION 2.(a) G.S. 115C-12(23) reads as rewritten:

"(23) Power to Adopt Eligibility Rules for Interscholastic Athletic Competition. – ~~The~~ In accordance with Article 29E of this Chapter, the State Board of Education shall adopt rules governing interscholastic athletic activities conducted by ~~local boards of education, including eligibility for student participation. With regard to middle schools and high schools, the rules shall provide for the following:~~public school units.

~~a. All coaches, school nurses, athletic directors, first responders, volunteers, students who participate in interscholastic athletic activities, and the parents of those students shall receive, on an annual basis, a concussion and head injury information sheet. School employees, first responders, volunteers, and students must sign the sheet and return it to the coach before they can participate in interscholastic athletic activities, including tryouts, practices, or competition. Parents must sign the sheet and return it to the coach before their children can participate in any such interscholastic athletic activities. The signed sheets shall be maintained in accordance with sub-subdivision d. of this subdivision.~~

~~For the purpose of this subdivision, a concussion is a traumatic brain injury caused by a direct or indirect impact to the head that results in disruption of normal brain function, which may or may not result in loss of consciousness.~~

~~b. If a student participating in an interscholastic athletic activity exhibits signs or symptoms consistent with concussion, the student shall be removed from the activity at that time and shall not be allowed to return to play or practice that day. The student shall not return to play or practice on a subsequent day until the student is evaluated by and receives written clearance for such participation from (i) a physician licensed under Article 1 of Chapter 90 of the General Statutes with training in concussion management, (ii) a neuropsychologist licensed under Article 18A of Chapter 90 of the General Statutes with training~~

~~in concussion management and working in consultation with a physician licensed under Article 1 of Chapter 90 of the General Statutes, (iii) an athletic trainer licensed under Article 34 of Chapter 90 of the General Statutes, (iv) a physician assistant, consistent with the limitations of G.S. 90-18.1, or (v) a nurse practitioner, consistent with the limitations of G.S. 90-18.2.~~

~~e. Each school shall develop a venue specific emergency action plan to deal with serious injuries and acute medical conditions in which the condition of the patient may deteriorate rapidly. The plan shall include a delineation of roles, methods of communication, available emergency equipment, and access to and plan for emergency transport. This plan must be (i) in writing, (ii) reviewed by an athletic trainer licensed in North Carolina, (iii) approved by the principal of the school, (iv) distributed to all appropriate personnel, (v) posted conspicuously at all venues, and (vi) reviewed and rehearsed annually by all licensed athletic trainers, first responders, coaches, school nurses, athletic directors, and volunteers for interscholastic athletic activities.~~

~~d. Each school shall maintain complete and accurate records of its compliance with the requirements of this subdivision pertaining to head injuries.~~

~~The State Board of Education may authorize a designated organization to apply and enforce the Board's rules governing participation in interscholastic athletic activities at the high school level.~~"

SECTION 2.(b) G.S. 115C-47(4) reads as rewritten:

"(4) To Regulate Extracurricular Activities. – Local boards of education shall make all rules and regulations necessary for the conducting of extracurricular activities in the schools under their supervision, including a program of athletics, where desired, without assuming liability therefor; provided, that all interscholastic athletic activities shall be conducted in accordance with rules ~~and regulations prescribed~~ adopted by the State Board of ~~Education.~~Education, in accordance with Article 29E of this Chapter."

SECTION 2.(c) G.S. 115C-366(f) reads as rewritten:

"(f) This section shall not be construed to allow students to transfer from one local school administrative unit to another for athletic participation purposes in violation of eligibility requirements ~~established~~ adopted by the State Board of ~~Education and the North Carolina High School Athletic Association.~~Education."

SECTION 2.(d) G.S. 116-235(b) is amended by adding a new subdivision to read:

"(4) Interscholastic Athletics. – If the Board of Trustees elects to provide a program of interscholastic athletics, that program shall be conducted in accordance with rules adopted by the State Board of Education, in accordance with Article 29E of Chapter 115C of the General Statutes."

SECTION 2.(e) G.S. 143-291(c) is repealed.

SECTION 2.(f) This section becomes effective September 30, 2021.

PART III. STUDENT CATASTROPHIC INSURANCE COVERAGE

SECTION 3. Article 31A of Chapter 58 of the General Statutes reads as rewritten:

"Article 31A.

"State Insurance ~~of~~ for Public ~~Education Property.~~Education.

"Part 1. Public Education Property.

§ 58-31A-1. Definitions.

The following definitions shall apply in this ~~Article~~Part:

(1) Insurable hazards. – A minimum list of perils, risks, or hazards which must be insured against loss, which includes the following: fire, lightning, windstorm, hail, explosion, aircraft or vehicles, riot or civil commotion, smoke, vandalism, sprinkler leakage, sinkhole collapse, volcanic action, falling objects, weight of snow, ice or sleet, or water damage.

(2) Public education board. – A local board of education of a local school administrative unit, as defined in G.S. 115C-5(5), a board of trustees of a regional school, as defined in G.S. 115C-238.63, or a board of trustees of a community college, as defined in G.S. 115D-12.

(3) Public education property. – Property owned by a local board of education, a regional school board of directors, or a community college board of trustees.

...

"Part 2. Student-Athletic Catastrophic Insurance.

"**§ 58-31A-60. Catastrophic insurance for covered activities.**

(a) For the purposes of this section, the following definitions shall apply.

(1) Administering organization. – As defined in G.S. 115C-407.50.

(2) Covered activities – Interscholastic athletic activities that are authorized, sanctioned, or scheduled by a participating school or by an administering organization, including school supervised practice, game-related activity, and related travel.

(3) Covered persons. – Students or school personnel participating in or responsible for supervising covered activities.

(4) Participating school. – As defined in G.S. 115C-407.50.

(b) The Commissioner shall have the duty to offer catastrophic insurance coverage for covered persons to participating schools for covered activities.

(c) Premiums for catastrophic insurance for covered activities shall be paid by each participating school in accordance with rates fixed by the Commissioner, and the Commissioner may purchase from insurers admitted to do business in North Carolina such insurance as may be necessary."

PART III. EFFECTIVE DATE

SECTION 3. Except as otherwise provided herein, this act is effective when it becomes law.