

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2021

H

D

HOUSE BILL 91
Committee Substitute Favorable 2/23/21
Committee Substitute #2 Favorable 3/11/21
Senate Education/Higher Education Committee Substitute Adopted 7/21/21
Senate Finance Committee Substitute Adopted 7/22/21
PROPOSED SENATE COMMITTEE SUBSTITUTE H91-PCS30467-TC-52

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

Sponsors:

Referred to:

February 17, 2021

1 A BILL TO BE ENTITLED
2 AN ACT TO RESTRUCTURE OVERSIGHT OF PUBLIC HIGH SCHOOL
3 INTERSCHOLASTIC ATHLETIC ACTIVITIES TO ENSURE ACCOUNTABILITY AND
4 FAIR PLAY.

5 The General Assembly of North Carolina enacts:

6
7 **PART I. REGULATION OF INTERSCHOLASTIC ATHLETIC ACTIVITIES**

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

10 "Article 29E.

11 "Interscholastic Athletic Activities.

12 "Part 1. Definitions.

13 "**§ 115C-407.50. Definitions.**

14 The following definitions apply in this Article:

- 15 (1) Administering organization. – A nonprofit organization that has entered into
16 and is in compliance with a memorandum of understanding with the State
17 Board of Education to administer and enforce the adopted rules and
18 requirements of this Article for interscholastic athletic activities at the high
19 school level.
- 20 (2) Gameplay rules. – Rules adopted in accordance with this Article governing
21 oversight of the administration, classification, scheduling, and conduct of
22 interscholastic athletic activities.
- 23 (3) Parent. – The parent or legal guardian of a student participating or seeking to
24 participate in interscholastic athletic activities.
- 25 (4) Participating school. – A school serving any grade between six and 12 that
26 elects to offer interscholastic athletic activities.
- 27 (5) Penalty rules. – Rules adopted in accordance with this Article governing
28 infractions of student participation rules and gameplay rules.
- 29 (6) Student participation rules. – Rules adopted in accordance with this Article
30 governing student eligibility to participate in interscholastic athletic activities.
31 Student participation rules include both student participation and student
32 health and safety requirements.



* H 9 1 - P C S 3 0 4 6 7 - T C - 5 2 *

1 "Part 2. Oversight of Interscholastic Athletic Activities.

2 **"§ 115C-407.55. Regulation of interscholastic athletic activities.**

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

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

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

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

- 23 (1) Academic standards.
- 24 (2) Enrollment requirements.
- 25 (3) Attendance requirements.
- 26 (4) Medical eligibility requirements.
- 27 (5) Recruiting limitations.
- 28 (6) Hardship exceptions.

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

- 33 (1) Classification of all participating schools in the State into one of four athletic
34 divisions based solely on average daily membership. For charter or nonpublic
35 schools, the rules shall classify those schools into the next largest conference
36 than the school would be assigned to based solely on average daily
37 membership.
- 38 (2) Classification of all participating schools in the State into conferences based
39 solely on geography, division classification, and average daily membership.
- 40 (3) Game rules, including rules specific to individual sports.
- 41 (4) Game administration.
- 42 (5) Coaching requirements.
- 43 (6) Officiating requirements.
- 44 (7) Sportsmanship requirements.
- 45 (8) Season and conference schedules and requirements, including the following:
 - 46 a. Preseason calendars and requirements.
 - 47 b. Regular season calendars and requirements.
 - 48 c. Postseason conference and State tournament calendars and
49 requirements. The rules shall limit all conference and State tournament
50 participation to participating schools.

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

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

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

16 **"§ 115C-407.60. Conduct of interscholastic athletic activities.**

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

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

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

27 **"§ 115C-407.65. Rules on concussions and head injuries.**

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

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

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

43 (2) If a student participating in an interscholastic athletic activity exhibits signs
44 or symptoms consistent with concussion, the student shall be removed from
45 the activity at that time and shall not be allowed to return to play or practice
46 that day. The student shall not return to play or practice on a subsequent day
47 until the student is evaluated by and receives written clearance for such
48 participation from one of the following:

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

- 1 b. A neuropsychologist licensed under Article 18A of Chapter 90 of the
2 General Statutes with training in concussion management and working
3 in consultation with a physician licensed under Article 1 of Chapter 90
4 of the General Statutes.
5 c. An athletic trainer licensed under Article 34 of Chapter 90 of the
6 General Statutes.
7 d. A physician assistant, consistent with the limitations of G.S. 90-18.1.
8 e. A nurse practitioner, consistent with the limitations of G.S. 90-18.2.

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

11 **"§ 115C-407.70. Emergency action plans.**

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

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

- 19 (1) In writing.
20 (2) Reviewed by an athletic trainer licensed in North Carolina.
21 (3) Approved by the principal of the school.
22 (4) Distributed to all appropriate personnel.
23 (5) Posted conspicuously at all venues.
24 (6) Reviewed and rehearsed annually by all licensed athletic trainers, first
25 responders, coaches, school nurses, athletic directors, and volunteers for
26 interscholastic athletic activities.

27 "Part 3. Memorandum of Understanding.

28 **"§ 115C-407.75. Memorandum of understanding.**

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

- 34 (1) Apply, enforce, and administer all rules adopted by the State Board.
35 (2) If delegated by the State Board, adopt, apply, enforce, and administer
36 gameplay rules and penalty rules. A rule shall not be adopted by an
37 administering organization until the organization has provided for publication
38 of the proposed rule on the organization's website and provided the
39 opportunity to the public for notice and comment on the rule. The State Board
40 by majority vote may deem any rule adopted by an administering organization
41 unenforceable.
42 (3) Make publicly available at no cost on the administering organization's website
43 the following:
44 a. The organization's handbook for participating schools.
45 b. All student participation rules.
46 c. All gameplay rules.
47 d. Information on the appeals process, including specific information on
48 how to make an initial and final appeal.
49 (4) Agree to adopt requirements for membership of the nonprofit board that
50 require equal representation on the board from each educational district
51 established as provided in G.S. 115C-65.

- 1 (5) Adopt an ethics policy that requires board members to avoid conflicts of
2 interests and the appearance of impropriety.
- 3 (6) Agree to adopt procedures for its operations that are comparable to those of
4 Article 33C of Chapter 143 of the General Statutes, the Open Meetings Law,
5 and Chapter 132 of the General Statutes, the Public Records Law, and provide
6 for enforcement by the State Board. The procedures may provide for the
7 confidentiality of personnel files comparable to Article 7 of Chapter 126 of
8 the General Statutes.
- 9 (7) Apply the standards established by the federal Family Educational Rights and
10 Privacy Act, 20 U.S.C. § 1232g, to all student records containing personally
11 identifiable information in the possession of the administering organization.
12 The administering organization shall be authorized to display and share
13 student information designated by a participating school as directory
14 information unless the participating school indicates that a parent has opted
15 out of disclosure of that information. Other than directory information, all
16 student records containing personally identifiable information held by the
17 administering organization are not public records and should not be released
18 under procedures adopted in accordance with subdivision (5) of this
19 subsection.
- 20 (8) Enter into contracts with participating schools as to the monetary requirements
21 for participation, including the payment of reasonable annual fees by
22 participating schools as needed to support the duties of the administering
23 association. Annual fees may vary based on the division to which the school
24 is assigned.
- 25 (9) Agree to reduce annual fees to participating schools by a minimum of twenty
26 percent (20%) when the total fund balance for the administering organization
27 is two hundred fifty percent (250%) of the administering organization's total
28 expenses from the prior fiscal year. The administering organization may
29 increase annual fees to participating schools when the total fund balance is
30 one hundred fifty percent (150%) of the organization's total expenses from the
31 prior fiscal year.
- 32 (10) Agree to retain no more than thirty-three percent (33%) of the net proceeds of
33 any State tournament game.
- 34 (11) Agree to be audited annually by the State Auditor pursuant to Article 5A of
35 Chapter 147 of the General Statutes.
- 36 (12) Agree to not engage in any of the following activities:
- 37 a. Solicit grant funding and sponsorships from third-party organizations,
38 other than for State tournament games.
- 39 b. Provide grants to schools regulated by the administering organization.
- 40 c. Provide scholarships to players, except when funded by
41 donor-directed funds.
- 42 d. Designate the use of specific or preferred vendors.
- 43 e. Retain a percentage of gate receipts for games other than State
44 tournament games.
- 45 f. Regulate or control the intellectual property of schools, including team
46 logos, mascots, and audio or video of any game other than the State
47 tournament games.
- 48 g. Restrict the recording of audio or video at a State tournament game by
49 any parent of a student participating in the game or any employee of
50 the school participating in the game.

- 1 **b.** Concession sales.
- 2 **c.** Merchandise sales or sales of items directly related to interscholastic
- 3 athletics, including apparel and audiovisual materials.
- 4 **d.** Student fees.
- 5 **e.** Monetary and in-kind contributions from third-party organizations.
- 6 **f.** State or local funding expended on capital costs for athletics facilities.
- 7 **g.** Other identified sources of funds.

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

11 **SECTION 1.(b)** The State Board of Education shall review and adopt new or revised
12 emergency rules on interscholastic athletics for use in the 2021-2022 school year in accordance
13 with the requirements of Article 29E of Chapter 115C of the General Statutes, as enacted by this
14 act, no later than October 15, 2021. For the 2021-2022 school year only, the State Board shall
15 not require students to meet any academic requirements for participation and shall provide for
16 hardship waivers for age eligibility requirements in recognition of the impacts of COVID-19 on
17 students during the 2020-2021 school year. Notwithstanding G.S. 150B-21.1A, no findings of
18 need shall be required for an emergency rule adopted for the 2021-2022 school year, an
19 emergency rule adopted as provided in this subsection shall be effective until June 30, 2022, and
20 the State Board of Education shall not be required to adopt temporary rules to replace an
21 emergency rule for use in the 2021-2022 school year. The State Board shall submit all emergency
22 rules in accordance with the requirements in 26 NCAC 02C.

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

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

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

32 **SECTION 1.(f)** If the State Board of Education enters into a memorandum of
33 understanding with the North Carolina High School Athletic Association (NCHSAA) for the
34 2021-2022 school year, a condition of the memorandum shall be that the NCHSAA waive
35 collection of all fees for participating schools for the 2021-2022 school year, except for fees
36 associated with postseason conference games, in recognition of decreased access to
37 interscholastic sports for participating schools in the 2020-2021 school year due to COVID-19.

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

- 42 (1) Whether an administering organization should be responsible for overseeing
43 the conduct of middle school interscholastic athletics for public school units.
44 The State Board shall include in its deliberations an examination of the
45 potential costs to public school units for oversight of middle school
46 interscholastic athletics by an administering organization. The State Board
47 shall establish workgroups of athletic directors, principals, and coaches
48 employed by schools serving students in grades six through eight and parents
49 of students in grades six through eight to provide input on this
50 recommendation.

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

9 **SECTION 1.(h)** Notwithstanding the requirements of G.S. 115C-407.80, as enacted
 10 by this act, all public school units shall submit the first annual interscholastic athletic report to
 11 the State Board of Education no later than July 15, 2023, and shall include data from the
 12 2018-2019, 2019-2020, 2020-2021, 2021-2022, and 2022-2023 school years.

13 **SECTION 1.(i)** This section is effective when it becomes law. Subsection (a) of this
 14 section applies beginning with interscholastic athletic competitions occurring on or after October
 15 15, 2021.

16
 17 **PART II. CONFORMING CHANGES**

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

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

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

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

40 b. ~~If a student participating in an interscholastic athletic activity exhibits~~
 41 ~~signs or symptoms consistent with concussion, the student shall be~~
 42 ~~removed from the activity at that time and shall not be allowed to~~
 43 ~~return to play or practice that day. The student shall not return to play~~
 44 ~~or practice on a subsequent day until the student is evaluated by and~~
 45 ~~receives written clearance for such participation from (i) a physician~~
 46 ~~licensed under Article 1 of Chapter 90 of the General Statutes with~~
 47 ~~training in concussion management, (ii) a neuropsychologist licensed~~
 48 ~~under Article 18A of Chapter 90 of the General Statutes with training~~
 49 ~~in concussion management and working in consultation with a~~
 50 ~~physician licensed under Article 1 of Chapter 90 of the General~~
 51 ~~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 October 15, 2021.

PART III. STUDENT CATASTROPHIC INSURANCE COVERAGE PROVIDED THROUGH THE DEPARTMENT OF INSURANCE

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 (1) Insurable hazards. – A minimum list of perils, risks, or hazards which must be
- 2 insured against loss, which includes the following: fire, lightning, windstorm,
- 3 hail, explosion, aircraft or vehicles, riot or civil commotion, smoke,
- 4 vandalism, sprinkler leakage, sinkhole collapse, volcanic action, falling
- 5 objects, weight of snow, ice or sleet, or water damage.
- 6 (2) Public education board. – A local board of education of a local school
- 7 administrative unit, as defined in G.S. 115C-5(5), a board of trustees of a
- 8 regional school, as defined in G.S. 115C-238.63, or a board of trustees of a
- 9 community college, as defined in G.S. 115D-12.
- 10 (3) Public education property. – Property owned by a local board of education, a
- 11 regional school board of directors, or a community college board of trustees.

12 ...

13 "Part 2. Student-Athletic Catastrophic Insurance.

14 "§ 58-31A-60. Catastrophic insurance for covered activities.

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

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

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

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

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

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

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

30
 31 **PART IV. EFFECTIVE DATE**

32 **SECTION 4.** Except as otherwise provided herein, this act is effective when it
 33 becomes law.