

## **BILL ANALYSIS**

S.B. 1385  
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Higher Education  
Committee Report (Unamended)

### **BACKGROUND AND PURPOSE**

In 2019 the California State Legislature passed Senate Bill 206, which permitted student athletes to earn compensation from their name, image, and likeness. Since then, a handful of additional states have passed similar legislation, with dozens more considering doing so. While efforts to pass this legislation at the federal level are ongoing, it is unknown whether any federal legislation will pass before other state laws take effect. It is imperative that Texas act quickly in addressing this matter in order to ensure Texas universities are competing on an equal playing field with other states and institutions in the world of collegiate athletics. S.B. 1385 seeks to address this issue by allowing student athletes at Texas institutions of higher education to earn compensation for their name, image, and likeness and to obtain professional representation in making related contracts.

### **CRIMINAL JUSTICE IMPACT**

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

### **RULEMAKING AUTHORITY**

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

### **ANALYSIS**

S.B. 1385 amends the Education Code to prohibit a general academic teaching institution or a private or independent institution of higher education from doing the following:

- providing or soliciting a prospective student athlete of an intercollegiate athletic program at the institution with compensation in relation to the prospective student athlete's name, image, or likeness; or
- adopting or enforcing a policy, requirement, standard, or limitation that prohibits or otherwise prevents a student athlete participating in an intercollegiate athletic program at the institution from doing the following:
  - earning compensation for the use of the student athlete's name, image, or likeness when the student athlete is not engaged in official team activities, as that term is defined by the institution; or
  - obtaining professional representation, including representation by an athlete agent or attorney, for contracts or other legal matters relating to the use of the student athlete's name, image, or likeness.

The bill prohibits the disqualification of an applicable student athlete from eligibility for a scholarship, grant, or similar financial assistance awarded by the institution because the student athlete earned such compensation or obtained such professional representation. The bill establishes that a scholarship, grant, or similar financial assistance awarded to a student athlete

by the institution and covering the student athlete's cost of attendance at the institution is not compensation for purposes of the bill's provisions.

S.B. 1385 prohibits the institution from prescribing a team contract for an intercollegiate athletic program that prohibits or otherwise prevents a student athlete from using the student athlete's name, image, or likeness for a commercial purpose when the student athlete is not engaged in official team activities. The bill sets out the following provisions relating to the terms and conditions on which a student athlete may enter into a contract for use of the student athlete's name, image, or likeness:

- requires the student athlete to disclose to the institution any such proposed contract in the manner prescribed by the institution before entering into the contract;
- prohibits the student athlete from entering into such a contract under the following conditions:
  - if any provision of the contract conflicts with a provision of the student athlete's team contract or with an institutional contract provision, athletic department policy, or honor code provision;
  - if compensation for the use of the student's name, image, or likeness is provided by the institution, in exchange for athletic performance or attendance at the institution, or in exchange for property owned by the institution or for providing an endorsement while using the institution's intellectual property or other property;
  - if such compensation is provided in exchange for an endorsement of specified products; or
  - if the duration of the contract extends beyond the student athlete's participation in the intercollegiate athletic program;
- prohibits the student athlete from entering into a contract for related representation by an athlete agent who is unregistered in Texas;
- establishes that the student athlete is not considered an institution employee based on participation in the intercollegiate athletic program; and
- authorizes the student athlete to earn compensation from selling the athlete's autograph in a manner that does not otherwise conflict with the bill's applicable provisions.

S.B. 1385 requires an institution that identifies certain conflicts in a contract for use of a student athlete's name, image, or likeness to promptly disclose the conflict to the student athlete or the student athlete's representative, if applicable, and makes the student athlete or representative responsible for resolving the conflict not later than the 10th day after the date of the disclosure.

S.B. 1385 requires an institution to require the student athlete to attend a financial literacy and life skills workshop at the beginning of the student's first and third academic years at the institution and sets out additional requirements for the workshop. The bill prohibits an individual, corporate entity, or other organization from doing the following:

- entering into any arrangement with a prospective student athlete relating to the prospective student athlete's name, image, or likeness prior to their enrollment in an applicable institution of higher education; or
- using inducements of future name, image, and likeness compensation arrangements to recruit a prospective student athlete to any institution of higher education.

S.B. 1385 sets out certain legislative findings and amends the Occupations Code to make a conforming change.

#### **EFFECTIVE DATE**

September 1, 2021.