

BILL ANALYSIS

Senate Research Center
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S.B. 1385
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Higher Education
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As Filed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

In 2019, the California Legislature passed S.B. 206, which permitted student athletes to earn compensation from their name, image, and likeness (NIL). Since then, five additional states have passed NIL legislation, and an additional 30 states are considering NIL bills.

While efforts to pass NIL legislation in the federal government are ongoing, it is unknown whether federal NIL legislation will pass before other state laws take effect. It is imperative that the State of Texas act now to pass NIL legislation in order to ensure Texas universities are competing on an equal playing field in the competitive world of collegiate athletics.

S.B. 1385 allows student athletes at Texas institutions of higher education to earn compensation for their name, image, and likeness.

As proposed, S.B. 1385 amends current law relating to the compensation and professional representation of student athletes participating in intercollegiate athletic programs at certain institutions of higher education.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Subchapter Z, Chapter 51, Education Code, by adding Section 51.9246, as follows:

Sec. 51.9246. COMPENSATION AND PROFESSIONAL REPRESENTATION OF STUDENT ATHLETES PARTICIPATING IN INTERCOLLEGIATE ATHLETIC PROGRAMS. (a) Defines "athlete agent," "general academic teaching institution," and "private or independent institution of higher education."

(b) Provides that this section applies only to a general academic teaching institution or a private or independent institution of higher education.

(c) Prohibits an institution to which this section applies from:

(1) 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:

(A) 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; or

(B) 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;
or

(2) providing 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.

(d) Provides that a scholarship, grant, or similar financial assistance awarded to a student athlete by an institution to which this section applies that covers the student athlete's cost of attendance at the institution is not compensation for purposes of this section.

(e) Prohibits a student athlete participating in an intercollegiate athletic program at an institution to which this section applies from being disqualified from eligibility for a scholarship, grant, or similar financial assistance awarded by the institution because the student athlete:

(1) earns compensation from the use of the student athlete's name, image, or likeness when the student athlete is not engaged in official team activities; or

(2) obtains professional representation, including representation by an athlete agent or attorney, for contracts or other legal matters relating to use of the student athlete's name, image, or likeness.

(f) Provides that an institution to which this section applies:

(1) is prohibited 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; and

(2) is authorized to adopt a policy requiring a team contract for an intercollegiate athletic program to include a provision that requires a student athlete to deposit all money paid as compensation for the use of the student athlete's name, image, or likeness into a trust fund to be held for the student athlete until the student athlete is no longer eligible to participate in the program.

(g) Provides that a student athlete participating in an intercollegiate athletic program at an institution to which this section applies:

(1) is required to promptly disclose to the institution, in the manner prescribed by the institution, any contract entered into by the student athlete for use of the student athlete's name, image, or likeness;

(2) is prohibited from entering into a contract for the use of the student athlete's name, image, or likeness if:

(A) any provision of the contract conflicts with a provision of the student athlete's team contract;

(B) the compensation for the use of the student athlete's name, image, or likeness exceeds the fair market value of the use of the student athlete's name, image, or likeness;

(C) the compensation for the use of the student athlete's name, image, or likeness is provided in exchange for athletic performance

or attendance at the institution or by the institution or a person affiliated with the institution; or

(D) the duration of the contract extends beyond the student athlete's participation in the intercollegiate athletic program; and

(3) is prohibited from entering into a contract for the student athlete's representation by an athlete agent relating to use of the student athlete's name, image, or likeness unless the athlete agent holds a certificate of registration under Chapter 2051 (Athlete Agents), Occupations Code.

(h) Requires an institution to which this section applies that identifies a provision in a contract disclosed to the institution by a student athlete under Subsection (g)(1) that conflicts with a provision in the student athlete's team contract to promptly disclose the conflict to the student athlete or the student athlete's representative, if applicable.

(i) Prohibits an athletic association, conference, or other group or organization with authority over intercollegiate athletics, including the National Collegiate Athletic Association, from:

(1) prohibiting or preventing a student athlete from participating in an intercollegiate athletic program at an institution to which this section applies because the student athlete:

(A) earns compensation from the use of the student athlete's name, image, or likeness; or

(B) obtains professional representation, including representation by an athlete agent or attorney, for contracts or other legal matters relating to use of the student athlete's name, image, or likeness;

(2) prohibiting or preventing a student athlete participating in an intercollegiate athletic program at an institution to which this section applies from engaging in conduct described by Subdivision (1)(A) or (B); or

(3) providing a prospective student athlete of an intercollegiate athletic program at an institution to which this section applies with compensation in relation to the prospective student athlete's name, image, or likeness.

(j) Requires an institution to which this section applies to require a student athlete participating in an intercollegiate athletic program at the institution to attend a literacy and life skills workshop at the beginning of the student's first and third academic years at the institution. Requires that the workshop be at least five hours in duration and include information on financial aid, debt management, time management, budgeting, and academic resources available to the student athlete. Prohibits the institution from during the workshop allowing any provider of financial products or services to market, advertise, or refer the provider's services to a student athlete or solicit a student athlete to use the provider's services.

SECTION 2. Amends Section 2051.351, Occupations Code, by adding Subsection (b-1), as follows:

(b-1) Provides that Chapter 2051, including Section 2051.351 (Prohibition), does not prohibit an athlete agent from representing a student athlete in the use of the student athlete's name, image, or likeness in accordance with Section 51.9246, Education Code.

SECTION 3. Makes application of Section 51.9246(f), Education Code, as added by this Act, prospective.

SECTION 4. Effective date: January 1, 2022.