

BILL ANALYSIS

Senate Research Center
87R19952 ADM-D

C.S.S.B. 1385
By: Creighton
Higher Education
4/14/2021
Committee Report (Substituted)

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.

C.S.S.B. 1385 differs from the original bill in that it provides:

- clarification in the morality clause that student athletes may not endorse casino gambling or firearms that would be illegal for them to own;
- clarification that a student athlete may not use a university's intellectual property in their endorsements;
- clarification that the life skills and literacy workshop is a financial literacy workshop;
- clarification that a student athlete may sell their autograph;
- clarification that a student athlete's NIL contracts must be in line with their institution's honor code; and
- a declaration that the federal government has failed to address this issue and calls on the federal government to address this issue.

C.S.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. Provides that the legislature finds and declares the following:

- (1) intercollegiate athletics are an essential part of the fabric of this state;
- (2) the competitive integrity of intercollegiate athletics is of vital importance;

(3) the United States Congress has failed to act to provide uniform guidance to the states on the matter of intercollegiate athletes receiving compensation in exchange for the use of the athlete's name, image, or likeness; and

(4) the United States Congress must act on this matter to ensure the competitive integrity of intercollegiate athletics.

SECTION 2. 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," "private or independent institution of higher education," "honor code," "institutional contract," and "team contract."

(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, as that term is defined by the institution; 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 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.

(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) Prohibits an institution to which this section applies 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.

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

(1) is required, before entering into the contract, to disclose to the institution, in the manner prescribed by the institution, any proposed contract the student athlete may sign 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, a provision of an institutional contract of the institution, or a provision of the honor code of the institution;

(B) the compensation for the use of the student athlete's name, image, or likeness is provided:

(i) in exchange for athletic performance or attendance at the institution;

(ii) by the institution;

(iii) in exchange for property owned by the institution or for providing an endorsement while using intellectual property or other property owned by the institution; or

(iv) in exchange for an endorsement of alcohol, tobacco products, e-cigarettes or any other type of nicotine delivery device, anabolic steroids, casino gambling, a firearm the student athlete cannot legally purchase, or a sexually oriented business as defined in Section 243.002 (Definition), Local Government Code; or

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

(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;

(4) is not considered an employee of the institution based on the student athlete's participation in the intercollegiate athletic program; and

(5) is authorized to earn compensation from selling the student athlete's autograph in a manner that does not otherwise conflict with a provision of this section.

(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, an institutional contract of the institution, or the honor code of the institution to promptly disclose the conflict to the student athlete or the student athlete's representative, if applicable. Provides that the student athlete or the student

athlete's representative is responsible for resolving the conflict not later than the 10th day after the date of the disclosure.

(i) 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 financial 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 allowing during the workshop any provider of financial products or services to market, advertise, or refer the provider's services to a student athlete or to solicit a student athlete to use the provider's services.

SECTION 3. Amends Section 2051.351, Occupations Code, by adding Subsection (b-1), as follows:

(b-1) Provides that Chapter 2051, including Section 2051.351 (Prohibitions), 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 4. Makes application of Section 51.9246(f), Education Code, as added by this Act, prospective.

SECTION 5. Effective date: September 1, 2021.