

1-1 By: Creighton, Miles, West S.B. No. 1385  
 1-2 (In the Senate - Filed March 10, 2021; March 18, 2021, read  
 1-3 first time and referred to Committee on Higher Education;  
 1-4 April 19, 2021, reported adversely, with favorable Committee  
 1-5 Substitute by the following vote: Yeas 9, Nays 0; April 19, 2021,  
 1-6 sent to printer.)

1-7 COMMITTEE VOTE

	Yea	Nay	Absent	PNV
1-8				
1-9	X			
1-10	X			
1-11	X			
1-12	X			
1-13	X			
1-14	X			
1-15	X			
1-16	X			
1-17	X			

1-18 COMMITTEE SUBSTITUTE FOR S.B. No. 1385 By: Creighton

1-19 A BILL TO BE ENTITLED  
 1-20 AN ACT

1-21 relating to the compensation and professional representation of  
 1-22 student athletes participating in intercollegiate athletic  
 1-23 programs at certain institutions of higher education.

1-24 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-25 SECTION 1. The legislature finds and declares the  
 1-26 following:

1-27 (1) intercollegiate athletics are an essential part of  
 1-28 the fabric of this state;

1-29 (2) the competitive integrity of intercollegiate  
 1-30 athletics is of vital importance;

1-31 (3) the United States Congress has failed to act to  
 1-32 provide uniform guidance to the states on the matter of  
 1-33 intercollegiate athletes receiving compensation in exchange for  
 1-34 the use of the athlete's name, image, or likeness; and

1-35 (4) the United States Congress must act on this matter  
 1-36 to ensure the competitive integrity of intercollegiate athletics.

1-37 SECTION 2. Subchapter 2, Chapter 51, Education Code, is  
 1-38 amended by adding Section 51.9246 to read as follows:

1-39 Sec. 51.9246. COMPENSATION AND PROFESSIONAL REPRESENTATION  
 1-40 OF STUDENT ATHLETES PARTICIPATING IN INTERCOLLEGIATE ATHLETIC  
 1-41 PROGRAMS. (a) In this section:

1-42 (1) "Athlete agent" has the meaning assigned by  
 1-43 Section 2051.001, Occupations Code.

1-44 (2) "General academic teaching institution" and  
 1-45 "private or independent institution of higher education" have the  
 1-46 meanings assigned by Section 61.003.

1-47 (3) "Honor code" means a set of rules or principles  
 1-48 governing an academic community to which a student agrees to abide  
 1-49 when attending an institution to which this section applies.

1-50 (4) "Institutional contract" means a contract between  
 1-51 an institution to which this section applies or its designated  
 1-52 representative and an external party that includes a sponsorship  
 1-53 agreement governing the use of the institution's trademarks in  
 1-54 connection with athletics.

1-55 (5) "Team contract" means a contract between a student  
 1-56 athlete and an institution to which this section applies and  
 1-57 includes any rules or expectations of the institution's athletic  
 1-58 department or head coach that require a student athlete's  
 1-59 compliance as a condition under the contract of participation as a  
 1-60 member of the intercollegiate athletic program.

- 2-1           (b) This section applies only to:  
 2-2           (1) a general academic teaching institution; or  
 2-3           (2) a private or independent institution of higher  
 2-4 education.  
 2-5           (c) An institution to which this section applies may not:  
 2-6           (1) adopt or enforce a policy, requirement, standard,  
 2-7 or limitation that prohibits or otherwise prevents a student  
 2-8 athlete participating in an intercollegiate athletic program at the  
 2-9 institution from:  
 2-10           (A) earning compensation for the use of the  
 2-11 student athlete's name, image, or likeness when the student athlete  
 2-12 is not engaged in official team activities, as that term is defined  
 2-13 by the institution; or  
 2-14           (B) obtaining professional representation,  
 2-15 including representation by an athlete agent or attorney, for  
 2-16 contracts or other legal matters relating to the use of the student  
 2-17 athlete's name, image, or likeness; or  
 2-18           (2) provide or solicit a prospective student athlete  
 2-19 of an intercollegiate athletic program at the institution with  
 2-20 compensation in relation to the prospective student athlete's name,  
 2-21 image, or likeness.  
 2-22           (d) A scholarship, grant, or similar financial assistance  
 2-23 awarded to a student athlete by an institution to which this section  
 2-24 applies that covers the student athlete's cost of attendance at the  
 2-25 institution is not compensation for purposes of this section.  
 2-26           (e) A student athlete participating in an intercollegiate  
 2-27 athletic program at an institution to which this section applies  
 2-28 may not be disqualified from eligibility for a scholarship, grant,  
 2-29 or similar financial assistance awarded by the institution because  
 2-30 the student athlete:  
 2-31           (1) earns compensation from the use of the student  
 2-32 athlete's name, image, or likeness when the student athlete is not  
 2-33 engaged in official team activities; or  
 2-34           (2) obtains professional representation, including  
 2-35 representation by an athlete agent or attorney, for contracts or  
 2-36 other legal matters relating to use of the student athlete's name,  
 2-37 image, or likeness.  
 2-38           (f) An institution to which this section applies may not  
 2-39 prescribe a team contract for an intercollegiate athletic program  
 2-40 that prohibits or otherwise prevents a student athlete from using  
 2-41 the student athlete's name, image, or likeness for a commercial  
 2-42 purpose when the student athlete is not engaged in official team  
 2-43 activities.  
 2-44           (g) A student athlete participating in an intercollegiate  
 2-45 athletic program at an institution to which this section applies:  
 2-46           (1) shall, before entering into the contract, disclose  
 2-47 to the institution, in the manner prescribed by the institution,  
 2-48 any proposed contract the student athlete may sign for use of the  
 2-49 student athlete's name, image, or likeness;  
 2-50           (2) may not enter into a contract for the use of the  
 2-51 student athlete's name, image, or likeness if:  
 2-52           (A) any provision of the contract conflicts with  
 2-53 a provision of the student athlete's team contract, a provision of  
 2-54 an institutional contract of the institution, or a provision of the  
 2-55 honor code of the institution;  
 2-56           (B) the compensation for the use of the student  
 2-57 athlete's name, image, or likeness is provided:  
 2-58           (i) in exchange for athletic performance or  
 2-59 attendance at the institution;  
 2-60           (ii) by the institution;  
 2-61           (iii) in exchange for property owned by the  
 2-62 institution or for providing an endorsement while using  
 2-63 intellectual property or other property owned by the institution;  
 2-64 or  
 2-65           (iv) in exchange for an endorsement of  
 2-66 alcohol, tobacco products, e-cigarettes or any other type of  
 2-67 nicotine delivery device, anabolic steroids, casino gambling, a  
 2-68 firearm the student athlete cannot legally purchase, or a sexually  
 2-69 oriented business as defined in Section 243.002, Local Government

3-1 Code; or  
3-2 (C) the duration of the contract extends beyond  
3-3 the student athlete's participation in the intercollegiate  
3-4 athletic program;

3-5 (3) may not enter into a contract for the student  
3-6 athlete's representation by an athlete agent relating to use of the  
3-7 student athlete's name, image, or likeness unless the athlete agent  
3-8 holds a certificate of registration under Chapter 2051, Occupations  
3-9 Code;

3-10 (4) is not considered an employee of the institution  
3-11 based on the student athlete's participation in the intercollegiate  
3-12 athletic program; and

3-13 (5) may earn compensation from selling the student  
3-14 athlete's autograph in a manner that does not otherwise conflict  
3-15 with a provision of this section.

3-16 (h) An institution to which this section applies that  
3-17 identifies a provision in a contract disclosed to the institution  
3-18 by a student athlete under Subsection (g)(1) that conflicts with a  
3-19 provision in the student athlete's team contract, an institutional  
3-20 contract of the institution, or the honor code of the institution  
3-21 shall promptly disclose the conflict to the student athlete or the  
3-22 student athlete's representative, if applicable. The student  
3-23 athlete or the student athlete's representative is responsible for  
3-24 resolving the conflict not later than the 10th day after the date of  
3-25 the disclosure.

3-26 (i) An institution to which this section applies shall  
3-27 require a student athlete participating in an intercollegiate  
3-28 athletic program at the institution to attend a financial literacy  
3-29 and life skills workshop at the beginning of the student's first and  
3-30 third academic years at the institution. The workshop must be at  
3-31 least five hours in duration and include information on financial  
3-32 aid, debt management, time management, budgeting, and academic  
3-33 resources available to the student athlete. The institution may  
3-34 not during the workshop allow any provider of financial products or  
3-35 services to:

3-36 (1) market, advertise, or refer the provider's  
3-37 services to a student athlete; or

3-38 (2) solicit a student athlete to use the provider's  
3-39 services.

3-40 SECTION 3. Section 2051.351, Occupations Code, is amended  
3-41 by adding Subsection (b-1) to read as follows:

3-42 (b-1) This chapter, including this section, does not  
3-43 prohibit an athlete agent from representing a student athlete in  
3-44 the use of the student athlete's name, image, or likeness in  
3-45 accordance with Section 51.9246, Education Code.

3-46 SECTION 4. Section 51.9246(f), Education Code, as added by  
3-47 this Act, applies only to a contract entered into, modified, or  
3-48 renewed on or after the effective date of this Act.

3-49 SECTION 5. This Act takes effect September 1, 2021.

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