

By: Kuempel

H.B. No. 2804

A BILL TO BE ENTITLED

AN ACT

1  
2 relating to use of the name, image, or likeness of a student athlete  
3 participating in an intercollegiate athletic program at an  
4 institution of higher education.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

6 SECTION 1. Section 51.9246, Education Code, is amended by  
7 adding Subsections (a-1), (c-1), (g-1), (g-2), (l), (m), (n), (o),  
8 and (p) and amending Subsections (g) and (i) to read as follows:

9 (a-1) For purposes of this section, official team  
10 activities of an intercollegiate athletic program at an institution  
11 to which this section applies include any activity the institution  
12 designates as an official team activity.

13 (c-1) An athletic association, an athletic conference, or  
14 any other group or organization with authority over an  
15 intercollegiate athletic program at an institution to which this  
16 section applies may not enforce a contract term, a rule, a  
17 regulation, a standard, or any other requirement that prohibits the  
18 institution from participating in intercollegiate athletics or  
19 otherwise penalizes the institution or the institution's  
20 intercollegiate athletic program for performing, participating in,  
21 or allowing an activity required or authorized by this section.

22 (g) A student athlete participating in an intercollegiate  
23 athletic program at an institution to which this section applies:

24 (1) shall, before entering into the contract, disclose

1 to the institution, in the manner prescribed by the institution,  
2 any proposed contract the student athlete may sign for use of the  
3 student athlete's name, image, or likeness;

4 (2) may not enter into a contract for the use of the  
5 student athlete's name, image, or likeness if:

6 (A) any provision of the contract conflicts with  
7 a provision of the student athlete's team contract, a provision of  
8 an institutional contract of the institution, a policy of the  
9 athletic department of the institution, or a provision of the honor  
10 code of the institution;

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

13 (i) in exchange for athletic performance or  
14 accepting an offer of admission to attend ~~[attendance at]~~ the  
15 institution;

16 (ii) by the institution;

17 (iii) in exchange for an act that occurs  
18 while the athlete is engaged in an official team activity ~~[property~~  
19 ~~owned by the institution or for providing an endorsement while~~  
20 ~~using intellectual property or other property owned by the~~  
21 ~~institution]~~; or

22 (iv) in exchange for an endorsement of  
23 alcohol, tobacco products, e-cigarettes or any other type of  
24 nicotine delivery device, anabolic steroids, sports betting,  
25 casino gambling, a firearm the student athlete cannot legally  
26 purchase, or a sexually oriented business as defined in Section  
27 [243.002](#), Local Government Code; or

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

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

7 (4) may earn compensation from selling the student  
8 athlete's autograph in a manner that does not otherwise conflict  
9 with a provision of this section; and

10 (5) may not use an institution's facility, uniform,  
11 registered trademark, copyright-protected product, or official  
12 logo, mark, or other indicia in connection with a contract for the  
13 use of the student athlete's name, image, or likeness unless the  
14 student athlete obtains the institution's express permission.

15 (g-1) The following activities do not constitute  
16 compensation provided by an institution to which this section  
17 applies under Subsection (g)(2)(B)(ii):

18 (1) an activity authorized under Subsection (m); or  
19 (2) recognition by an institution to which this  
20 section applies of a third-party entity that compensates a student  
21 athlete for the use of the student athlete's name, image, or  
22 likeness, or the entity's donors, including the institution's  
23 provision of priority status or other items of de minimis value  
24 equivalent to status or items the institution provides to the  
25 institution's donors.

26 (g-2) An institution may not authorize a use described by  
27 Subsection (g)(5) unless the institution requires that:

1           (1) the student athlete and the person contracting for  
2 the use of the student athlete's name, image, or likeness comply  
3 with any requirements the institution establishes, including  
4 requirements related to licensing; and

5           (2) the institution is compensated for the use in an  
6 amount consistent with market rates.

7           (i) An institution to which this section applies shall  
8 require a student athlete participating in an intercollegiate  
9 athletic program at the institution to attend a financial literacy  
10 and life skills course during [~~workshop at the beginning of~~] the  
11 student's first [~~and third~~] academic year [~~years~~] at the  
12 institution. The course [~~workshop~~] must be at least five hours in  
13 duration and include information on financial aid, debt management,  
14 time management, budgeting, and academic resources available to the  
15 student athlete. The institution may not during the course  
16 [~~workshop~~] allow any provider of financial products or services to:

17           (1) market, advertise, or refer the provider's  
18 services to a student athlete; or

19           (2) solicit a student athlete to use the provider's  
20 services.

21           (1) Information written, produced, collected, assembled, or  
22 maintained by an institution to which this section applies that  
23 includes or reveals any term of a contract or proposed contract for  
24 the use of the student athlete's name, image, or likeness is  
25 confidential and excepted from required public disclosure in  
26 accordance with Chapter 552, Government Code. An institution to  
27 which this section applies may withhold information described by

1 this subsection without requesting a decision from the attorney  
2 general under Subchapter G, Chapter 552, Government Code.

3 (m) An institution to which this section applies or  
4 third-party entity acting on the institution's behalf, or employee  
5 of the institution or third-party entity:

6 (1) may identify, create, facilitate, or otherwise  
7 assist with opportunities for a currently enrolled student athlete  
8 to earn compensation from a third party for the use of the student  
9 athlete's name, image, or likeness; and

10 (2) may not, in assisting a student athlete as  
11 described by Subdivision (1):

12 (A) act as an athlete agent for the student  
13 athlete;

14 (B) be compensated by the student athlete or  
15 third party for providing the assistance;

16 (C) attempt to influence the student athlete's  
17 choice of professional representation in connection with an  
18 opportunity; or

19 (D) attempt to diminish the student athlete's  
20 opportunities from competing third parties.

21 (n) A charitable organization exempt from taxation under  
22 Section 501(a), Internal Revenue Code of 1986, as an organization  
23 described by Section 501(c)(3) of that code, may compensate a  
24 student athlete for the use of the student athlete's name, image, or  
25 likeness.

26 (o) An activity of a third-party entity that compensates a  
27 student athlete for the use of the student athlete's name, image, or

1 likeness may not be construed as an act on behalf of an institution  
2 to which this section applies, provided that:

3 (1) the entity is a separate legal entity from the  
4 institution; and

5 (2) the institution does not own or control the  
6 entity.

7 (p) This section may not be construed as creating a cause of  
8 action against an institution or an institution's officers or  
9 employees relating to a student athlete's name, image, or likeness.

10 SECTION 2. (a) Except as provided by Subsection (b) of this  
11 section, the changes in law made by this Act apply only to a  
12 contract for the use of a student athlete's name, image, or likeness  
13 entered into on or after the effective date of this Act. A contract  
14 for the use of a student athlete's name, image, or likeness entered  
15 into before the effective date of this Act is governed by the law as  
16 it existed immediately before the effective date of this Act, and  
17 that law is continued in effect for that purpose.

18 (b) Section 51.9246(1), Education Code, as added by this  
19 Act, applies only to a request for information received on or after  
20 the effective date of this Act. A request for information received  
21 before the effective date of this Act is governed by the law in  
22 effect on the date the request was received, and the former law is  
23 continued in effect for that purpose.

24 SECTION 3. This Act takes effect July 1, 2023, if it  
25 receives a vote of two-thirds of all the members elected to each  
26 house, as provided by Section 39, Article III, Texas Constitution.  
27 If this Act does not receive the vote necessary for effect on that

H.B. No. 2804

1 date, this Act takes effect September 1, 2023.