By:  Creighton, Miles, West S.B. No. 1385

(In the Senate - Filed March 10, 2021; March 18, 2021, read first time and referred to Committee on Higher Education; April 19, 2021, reported adversely, with favorable Committee Substitute by the following vote: Yeas 9, Nays 0; April 19, 2021, sent to printer.)

COMMITTEE VOTE

               Yea Nay Absent  PNV

Creighton       X

West            X

Birdwell        X

Blanco          X

Miles           X

Paxton          X

Springer        X

Taylor          X

Zaffirini       X

COMMITTEE SUBSTITUTE FOR S.B. No. 1385 By:  Creighton

A BILL TO BE ENTITLED

AN ACT

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

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

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

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

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

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

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

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

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

(b)  This section applies only to:

(1)  a general academic teaching institution; or

(2)  a private or independent institution of higher education.

(c)  An institution to which this section applies may not:

(1)  adopt or enforce 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)  provide or solicit 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)  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)  A student athlete participating in an intercollegiate athletic program at an institution to which this section applies may not be 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)  An institution to which this section applies may not prescribe 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)  A student athlete participating in an intercollegiate athletic program at an institution to which this section applies:

(1)  shall, before entering into the contract, 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)  may not enter 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, Local Government Code; or

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

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

(h)  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 shall promptly disclose the conflict to the student athlete or the student athlete's representative, if applicable. 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)  An institution to which this section applies shall 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. The workshop must 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. The institution may not during the workshop allow any provider of financial products or services to:

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

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

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

(b-1)  This chapter, including this section, 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.  Section 51.9246(f), Education Code, as added by this Act, applies only to a contract entered into, modified, or renewed on or after the effective date of this Act.

SECTION 5.  This Act takes effect September 1, 2021.

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