

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 2, 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.

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

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

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

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

18 (b) This section applies only to:

19 (1) a general academic teaching institution; or
20 (2) a private or independent institution of higher
21 education.

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

23 (1) adopt or enforce a policy, requirement, standard,
24 or limitation that prohibits or otherwise prevents a student
25 athlete participating in an intercollegiate athletic program at the
26 institution from:

27 (A) earning compensation for the use of the

1 student athlete's name, image, or likeness when the student athlete
2 is not engaged in official team activities, as that term is defined
3 by the institution; or

4 (B) obtaining professional representation,
5 including representation by an attorney licensed to practice law in
6 this state, for contracts or other legal matters relating to the use
7 of the student athlete's name, image, or likeness; or

8 (2) provide or solicit a prospective student athlete
9 of an intercollegiate athletic program at the institution with
10 compensation in relation to the prospective student athlete's name,
11 image, or likeness.

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

16 (e) A student athlete participating in an intercollegiate
17 athletic program at an institution to which this section applies
18 may not be disqualified from eligibility for a scholarship, grant,
19 or similar financial assistance awarded by the institution because
20 the student athlete:

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

24 (2) obtains professional representation, including
25 representation by an attorney licensed to practice law in this
26 state, for contracts or other legal matters relating to use of the
27 student athlete's name, image, or likeness.

1 (f) An institution to which this section applies may not
2 prescribe a team contract for an intercollegiate athletic program
3 that prohibits or otherwise prevents a student athlete from using
4 the student athlete's name, image, or likeness for a commercial
5 purpose when the student athlete is not engaged in official team
6 activities.

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

9 (1) shall, before entering into the contract, disclose
10 to the institution, in the manner prescribed by the institution,
11 any proposed contract the student athlete may sign for use of the
12 student athlete's name, image, or likeness;

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

15 (A) any provision of the contract conflicts with
16 a provision of the student athlete's team contract, a provision of
17 an institutional contract of the institution, a policy of the
18 athletic department of the institution, or a provision of the honor
19 code of the institution;

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

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

24 (ii) by the institution;

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

1 or

2 (iv) in exchange for an endorsement of
3 alcohol, tobacco products, e-cigarettes or any other type of
4 nicotine delivery device, anabolic steroids, sports betting,
5 casino gambling, a firearm the student athlete cannot legally
6 purchase, or a sexually oriented business as defined in Section
7 243.002, Local Government Code; or

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

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

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

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

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

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

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

15 (j) No individual, corporate entity, or other organization
16 may:

17 (1) enter into any arrangement with a prospective
18 student athlete relating to the prospective student athlete's name,
19 image, or likeness prior to their enrollment in an institution of
20 higher education; or

21 (2) use inducements of future name, image, and
22 likeness compensation arrangement to recruit a prospective student
23 athlete to any institution of higher education.

24 (k) Nothing in this section may be construed as permitting
25 an athlete agent to take any action prohibited under Section
26 2051.351, Occupations Code.

27 SECTION 3. Section 51.9246(f), Education Code, as added by

1 this Act, applies only to a contract entered into, modified, or
2 renewed on or after the effective date of this Act.

3 SECTION 4. This Act takes effect July 1, 2021, if it
4 receives a vote of two-thirds of all the members elected to each
5 house, as provided by Section 39, Article III, Texas Constitution.
6 If this Act does not receive the vote necessary to take effect July
7 1, 2021, this Act takes effect September 1, 2021.

President of the Senate

Speaker of the House

I hereby certify that S.B. No. 1385 passed the Senate on April 22, 2021, by the following vote: Yeas 28, Nays 2, one present not voting; and that the Senate concurred in House amendment on May 28, 2021, by the following vote: Yeas 28, Nays 2, one present not voting.

Secretary of the Senate

I hereby certify that S.B. No. 1385 passed the House, with amendment, on May 23, 2021, by the following vote: Yeas 117, Nays 27, one present not voting.

Chief Clerk of the House

Approved:

Date

Governor