

## **BILL ANALYSIS**

Senate Research Center

H.B. 2804  
By: Kuempel (Creighton)  
Education  
5/9/2023  
Engrossed

### **AUTHOR'S / SPONSOR'S STATEMENT OF INTENT**

Last session, the legislature passed S.B. 1385, which established a name, image, and likeness (NIL) law in Texas that balanced the interests of student athletes and institutions of higher education. Various states have passed some version of NIL legislation, but states without such legislation or a related executive order are required to follow ever-evolving NCAA guidance on the issue. It is vital that Texas and all of its institutions of higher education stay competitive with NIL legislation as the college sports landscape continues to evolve. H.B. 2804 seeks to revise statutory provisions relating to NIL contracts entered into by a student athlete by providing for assistance to student athletes with respect to such contracts, establishing the confidentiality of related information, and providing for the use of institution-owned property by a student athlete, among other provisions.

H.B. 2804 amends current law relating to use of the name, image, or likeness of a student athlete participating in an intercollegiate athletic program at an institution 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. Amends Section 51.9246, Education Code, by adding Subsections (a-1), (c-1), (g-1), (g-2), (l), (m), (n), (o), and (p) and amending Subsections (g) and (i), as follows:

(a-1) Provides that, for purposes of Section 51.9246 (Compensation and Professional Representation of Student Athletes Participating in Intercollegiate Athletic Programs), official team activities of an intercollegiate athletic program at an institution to which this section applies include any activity the institution designates as an official team activity.

(c-1) Prohibits an athletic association, an athletic conference, or any other group or organization with authority over an intercollegiate athletic program at an institution to which this section applies from enforcing a contract term, a rule, a regulation, a standard, or any other requirement that prohibits the institution from participating in intercollegiate athletics or otherwise penalizes the institution or the institution's intercollegiate athletic program for performing, participating in, or allowing an activity required or authorized by this section.

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

(1) makes no change to this subdivision;

(2) entering into a contract for the use of the student athlete's name, image, or likeness if:

(A) makes no change to this paragraph;

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

(i) in exchange for athletic performance or accepting an offer of admission to attend the institution;

(ii) makes no change to this subparagraph;

(iii) in exchange for an act that occurs while the athlete is engaged in an official team activity, rather than in exchange for property owned by the institution or for providing an endorsement while using intellectual property or other property owned by the institution; and

(iv) makes no change to this subparagraph; or

(C) makes no change to this paragraph; and

(3)-(4) makes nonsubstantive changes to these subdivisions; and

(5) using an institution's facility, uniform, registered trademark, copyright-protected product, or official logo, mark, or other indicia in connection with a contract for the use of the student athlete's name, image, or likeness unless the student athlete obtains the institution's express permission.

Makes nonsubstantive changes.

(g-1) Provides that certain activities do not constitute compensation provided by an institution to which this section applies under Subsection (g)(2)(B)(ii), including:

(1) an activity authorized under Subsection (m); or

(2) recognition by an institution to which this section applies of a third-party entity that compensates a student athlete for the use of the student athlete's name, image, or likeness, or the entity's donors, including the institution's provision of priority status or other items of de minimis value equivalent to status or items the institution provides to the institution's donors.

(g-2) Prohibits an institution from authorizing a use described by Subsection (g)(5) unless the institution requires that the student athlete and the person contracting for the use of the student athlete's name, image, or likeness comply with any requirements the institution establishes, including requirements related to licensing; and the institution is compensated for the use in an amount consistent with market rates.

(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 course during the student's first academic year at the institution, rather than 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 the course, rather than the workshop, to 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, during the course, from allowing any provider of financial products or services to perform certain behaviors. Makes nonsubstantive changes.

(l) Provides that information written, produced, collected, assembled, or maintained by an institution to which this section applies, that includes or reveals any term of a contract or proposed contract for the use of the student athlete's name, image, or likeness is confidential and excepted from required public disclosure in accordance with Chapter 552 (Public Information), Government Code. Authorizes an institution to which this

section applies to withhold information described by this subsection without requesting a decision from the attorney general under Subchapter G (Attorney General Decisions), Chapter 552, Government Code.

(m) Provides that an institution to which this section applies or third-party entity acting on the institution's behalf, or employee of the institution or third-party entity:

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

(2) is prohibited from, in assisting a student athlete as described by Subdivision (1):

(A) acting as an athlete agent for the student athlete;

(B) being compensated by the student athlete or third party for providing the assistance;

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

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

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

(o) Prohibits an activity of a third-party entity that compensates a student athlete for the use of the student athlete's name, image, or likeness from being construed as an act on behalf of an institution to which this section applies, provided that:

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

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

(p) Prohibits this section from being construed as creating a cause of action against an institution or an institution's officers or employees relating to a student athlete's name, image, or likeness.

**SECTION 2.** (a) Makes application of the changes in law made by this Act, except as provided by Subsection (b) of this section, prospective.

(b) Makes application of Section 51.9246(l), Education Code, as added by this Act, prospective.

**SECTION 3.** Effective date: July 1, 2023, or September 1, 2023.