

BILL ANALYSIS

C.S.H.B. 2804
By: Kuempel
Higher Education
Committee Report (Substituted)

BACKGROUND AND PURPOSE

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. C.S.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.

CRIMINAL JUSTICE IMPACT

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

C.S.H.B. 2804 amends the Education Code to prohibit a student athlete participating in an intercollegiate athletic program at a general academic teaching institution or a private or independent institution of higher education from using the 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 (NIL) unless the student athlete obtains the institution's express permission. The bill conditions an institution's authorization of such use by a student athlete on the institution being compensated for the use in an amount consistent with the market average compensation for the use and the institution requiring the student athlete and the person with which they contract to comply with any requirements established by the institution.

C.S.H.B. 2804 removes the prohibition against a student athlete entering into a NIL contract for use of the student athlete's NIL if the compensation for such use is provided in exchange for institution-owned property or for providing an endorsement while using institution-owned property. The bill prohibits a student athlete instead from entering into such a contract if the compensation is provided in exchange for an act that occurs while the athlete is engaged in an official team activity, as designated by the institution. The bill replaces the prohibition against a student athlete entering into such a contract if compensation is provided in exchange for

attendance at the institution with a prohibition against the student athlete entering into the contract if the compensation is provided in exchange for registration at the institution.

C.S.H.B. 2804 prohibits an athletic association, an athletic conference, or any other group or organization with authority over an intercollegiate athletic program at an applicable institution 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 under provisions regarding the compensation and professional representation of student athletes participating in intercollegiate athletic programs.

C.S.H.B. 2804 establishes the confidentiality of information written, produced, collected, assembled, or maintained by an applicable institution that includes or reveals any term of a contract or proposed contract for the use of the student athlete's NIL. The bill excepts such information from required disclosure under state public information law and authorizes the institution to withhold such information without requesting a decision from the attorney general. These provisions apply only to a request for information received on or after the bill's effective date.

C.S.H.B. 2804 authorizes an applicable institution or any employee of the institution to identify 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 NIL, but prohibits the institution or employee, in assisting the student athlete, from doing the following:

- acting as an athlete agent for the student athlete;
- being compensated by the student athlete or third party for providing the assistance;
- attempting to influence a student athlete's choice of professional representation in connection with such an opportunity; or
- attempting to diminish the student athlete's opportunities from competing third parties.

The bill establishes that provisions relating to the compensation and professional representation of student athletes participating in intercollegiate athletic programs may not be construed as creating a cause of action against an institution or an institution's officers or employees relating to the use of a student athlete's NIL. The bill's provisions relating to a contract for the use of a student athlete's NIL apply only to a contract entered into on or after the bill's effective date.

C.S.H.B. 2804 replaces the requirement for an applicable institution to require a student athlete participating in an intercollegiate athletic program to attend a financial literacy and life skills workshop at the beginning of the student's first and third academic years at the institution with a requirement for the institution to require the student athlete to attend a financial literacy and life skills course during the student's first academic year at the institution.

EFFECTIVE DATE

July 1, 2023, or, if the bill does not receive the necessary vote, September 1, 2023.

COMPARISON OF INTRODUCED AND SUBSTITUTE

While C.S.H.B. 2804 may differ from the introduced in minor or nonsubstantive ways, the following summarizes the substantial differences between the introduced and committee substitute versions of the bill.

The substitute includes a provision absent from the introduced that prohibits any group or organization with authority over an intercollegiate athletic program at an institution from enforcing a 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 provisions regarding student athlete compensation and professional representation.

The substitute includes a provision absent from the introduced that replaces the prohibition against a student athlete entering into a NIL contract if compensation is provided in exchange for attendance at the institution with a prohibition against the student athlete entering into the contract if the compensation is provided in exchange for registration at the institution.

Whereas the introduced made attendance of an institution's financial literacy and life skills program by a student athlete during the student's first academic year at the institution discretionary, the substitute requires an institution to require a student to attend a financial literacy and life skills course during that year.

Whereas the introduced provided for the confidentiality of information written, produced, collected, assembled, or maintained by an applicable institution that reveals the terms of a NIL contract or proposed NIL contract, the substitute provides for the confidentiality of information that includes or reveals any term of such a contract or proposed contract.