By:  Kuempel H.B. No. 2804

A BILL TO BE ENTITLED

AN ACT

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.

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

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

(a-1)  For purposes of this section, 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.

(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, a policy of the athletic department 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 an act that occurs while the athlete is engaged in an official team activity [~~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, sports betting, 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)  is not considered an employee of the institution based on the student athlete's participation in the intercollegiate athletic program; [~~and~~]

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

(5)  may not use 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.

(g-1)  An institution may not authorize a use described by Subsection (g)(5) unless the institution requires that:

(1)  the student athlete and the person with which the student athlete has contracted 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

(2)  the institution is compensated for the use in a manner consistent with market rates.

(i)  An institution to which this section applies shall offer a financial literacy and life skills program that [~~require~~] a student athlete participating in an intercollegiate athletic program at the institution may [~~to~~] attend during [~~a financial literacy and life skills workshop at the beginning of~~] the student's first year [~~and third academic years~~] at the institution. The program [~~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 program [~~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.

(l)  Information written, produced, collected, assembled, or maintained by an institution to which this section applies, that reveals the terms of a student athlete's 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, Government Code. An institution to which this section applies may withhold information described by this subsection without requesting a decision from the attorney general under Subchapter G, Chapter 552, Government Code.

(m)  An institution to which this section applies, or any employee of the institution, may 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 name, image, or likeness provided that an institution's employee shall not:

(1)  serve as an athlete agent for the student athlete;

(2)  receive compensation from the student athlete or third party for facilitating or enabling such opportunities;

(3)  attempt to influence a student athlete's choice of professional representation related to such opportunities; or

(4)  attempt to reduce a student athlete's opportunities from competing third parties.

(n)  This section 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 name, image, or likeness.

SECTION 2.  Except as provided by Section 3, the changes in law made by this Act apply only to a contract for the use of a student athlete's name, image, or likeness entered into on or after the effective date of this Act. A contract for the use of a student athlete's name, image, or likeness entered into before the effective date of this Act is governed by the law as it existed immediately before the effective date of this Act, and that law is continued in effect for that purpose.

SECTION 3.  The change in law made by Section 51.9246(l), Education Code, as added by this Act, applies to a request for information that is received by an institution to which Section 51.9246 applies on or after the effective date of this Act. A request for information that was received before the effective date of this Act is governed by the law in effect on the date the request was received, and the former law is continued in effect for that purpose.

SECTION 4.  This Act takes effect July 1, 2023, if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary to take effect July 1, 2023, this Act takes effect September 1, 2023.