By:  Kuempel (Senate Sponsor - Creighton) H.B. No. 2804

(In the Senate - Received from the House April 26, 2023; May 2, 2023, read first time and referred to Subcommittee on Higher Education; May 12, 2023, reported favorably from Committee on Education by the following vote: Yeas 11, Nays 2; May 12, 2023, sent to printer.)

COMMITTEE VOTE

                    Yea Nay Absent  PNV

Creighton         X

Campbell             X

Bettencourt          X

Birdwell                 X

Flores               X

King                 X

LaMantia             X

Menéndez             X

Middleton            X

Parker               X

Paxton                   X

Springer             X

West                 X

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), (c-1), (g-1), (g-2), (l), (m), (n), (o), and (p) 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.

(c-1)  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 may not enforce 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)  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 accepting an offer of admission to attend [~~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)  The following activities do not constitute compensation provided by an institution to which this section applies under Subsection (g)(2)(B)(ii):

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

(1)  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

(2)  the institution is compensated for the use in an amount consistent with market rates.

(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 course during [~~workshop at the beginning of~~] the student's first [~~and third~~] academic year [~~years~~] at the institution.  The course [~~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 course [~~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 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, 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 third-party entity acting on the institution's behalf, or employee of the institution or third-party entity:

(1)  may 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)  may not, in assisting a student athlete as described by Subdivision (1):

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

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

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

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

(n)  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, may compensate a student athlete for the use of the student athlete's name, image, or likeness.

(o)  An activity of a third-party entity that compensates a student athlete for the use of the student athlete's name, image, or likeness may not be 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)  This section may not be 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) Except as provided by Subsection (b) of this section, 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.

(b)  Section 51.9246(l), Education Code, as added by this Act, applies only to a request for information received on or after the effective date of this Act. A request for information 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 3.  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 for effect on that date, this Act takes effect September 1, 2023.

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