

1-1 By: Kuempel (Senate Sponsor - Creighton) H.B. No. 2804  
 1-2 (In the Senate - Received from the House April 26, 2023;  
 1-3 May 2, 2023, read first time and referred to Subcommittee on Higher  
 1-4 Education; May 12, 2023, reported favorably from Committee on  
 1-5 Education by the following vote: Yeas 11, Nays 2; May 12, 2023,  
 1-6 sent to printer.)

1-7 COMMITTEE VOTE

	Yea	Nay	Absent	PNV
1-8	X			
1-9	X			
1-10	X			
1-11	X			
1-12		X		
1-13	X			
1-14	X			
1-15	X			
1-16	X			
1-17	X			
1-18	X			
1-19		X		
1-20	X			
1-21	X			

1-22 A BILL TO BE ENTITLED  
 1-23 AN ACT

1-24 relating to use of the name, image, or likeness of a student athlete  
 1-25 participating in an intercollegiate athletic program at an  
 1-26 institution of higher education.

1-27 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-28 SECTION 1. Section 51.9246, Education Code, is amended by  
 1-29 adding Subsections (a-1), (c-1), (g-1), (g-2), (l), (m), (n), (o),  
 1-30 and (p) and amending Subsections (g) and (i) to read as follows:

1-31 (a-1) For purposes of this section, official team  
 1-32 activities of an intercollegiate athletic program at an institution  
 1-33 to which this section applies include any activity the institution  
 1-34 designates as an official team activity.

1-35 (c-1) An athletic association, an athletic conference, or  
 1-36 any other group or organization with authority over an  
 1-37 intercollegiate athletic program at an institution to which this  
 1-38 section applies may not enforce a contract term, a rule, a  
 1-39 regulation, a standard, or any other requirement that prohibits the  
 1-40 institution from participating in intercollegiate athletics or  
 1-41 otherwise penalizes the institution or the institution's  
 1-42 intercollegiate athletic program for performing, participating in,  
 1-43 or allowing an activity required or authorized by this section.

1-44 (g) A student athlete participating in an intercollegiate  
 1-45 athletic program at an institution to which this section applies:

1-46 (1) shall, before entering into the contract, disclose  
 1-47 to the institution, in the manner prescribed by the institution,  
 1-48 any proposed contract the student athlete may sign for use of the  
 1-49 student athlete's name, image, or likeness;

1-50 (2) may not enter into a contract for the use of the  
 1-51 student athlete's name, image, or likeness if:

1-52 (A) any provision of the contract conflicts with  
 1-53 a provision of the student athlete's team contract, a provision of  
 1-54 an institutional contract of the institution, a policy of the  
 1-55 athletic department of the institution, or a provision of the honor  
 1-56 code of the institution;

1-57 (B) the compensation for the use of the student  
 1-58 athlete's name, image, or likeness is provided:

1-59 (i) in exchange for athletic performance or  
 1-60 accepting an offer of admission to attend ~~attendance at~~ the  
 1-61 institution;

2-1 (ii) by the institution;  
 2-2 (iii) in exchange for an act that occurs  
 2-3 while the athlete is engaged in an official team activity [~~property~~  
 2-4 ~~owned by the institution or for providing an endorsement while~~  
 2-5 ~~using intellectual property or other property owned by the~~  
 2-6 ~~institution~~]; or

2-7 (iv) in exchange for an endorsement of  
 2-8 alcohol, tobacco products, e-cigarettes or any other type of  
 2-9 nicotine delivery device, anabolic steroids, sports betting,  
 2-10 casino gambling, a firearm the student athlete cannot legally  
 2-11 purchase, or a sexually oriented business as defined in Section  
 2-12 243.002, Local Government Code; or

2-13 (C) the duration of the contract extends beyond  
 2-14 the student athlete's participation in the intercollegiate  
 2-15 athletic program;

2-16 (3) is not considered an employee of the institution  
 2-17 based on the student athlete's participation in the intercollegiate  
 2-18 athletic program; [~~and~~]

2-19 (4) may earn compensation from selling the student  
 2-20 athlete's autograph in a manner that does not otherwise conflict  
 2-21 with a provision of this section; and

2-22 (5) may not use an institution's facility, uniform,  
 2-23 registered trademark, copyright-protected product, or official  
 2-24 logo, mark, or other indicia in connection with a contract for the  
 2-25 use of the student athlete's name, image, or likeness unless the  
 2-26 student athlete obtains the institution's express permission.

2-27 (g-1) The following activities do not constitute  
 2-28 compensation provided by an institution to which this section  
 2-29 applies under Subsection (g)(2)(B)(ii):

2-30 (1) an activity authorized under Subsection (m); or

2-31 (2) recognition by an institution to which this  
 2-32 section applies of a third-party entity that compensates a student  
 2-33 athlete for the use of the student athlete's name, image, or  
 2-34 likeness, or the entity's donors, including the institution's  
 2-35 provision of priority status or other items of de minimis value  
 2-36 equivalent to status or items the institution provides to the  
 2-37 institution's donors.

2-38 (g-2) An institution may not authorize a use described by  
 2-39 Subsection (g)(5) unless the institution requires that:

2-40 (1) the student athlete and the person contracting for  
 2-41 the use of the student athlete's name, image, or likeness comply  
 2-42 with any requirements the institution establishes, including  
 2-43 requirements related to licensing; and

2-44 (2) the institution is compensated for the use in an  
 2-45 amount consistent with market rates.

2-46 (i) An institution to which this section applies shall  
 2-47 require a student athlete participating in an intercollegiate  
 2-48 athletic program at the institution to attend a financial literacy  
 2-49 and life skills course during [~~workshop at the beginning of~~] the  
 2-50 student's first [~~and third~~] academic year [~~years~~] at the  
 2-51 institution. The course [~~workshop~~] must be at least five hours in  
 2-52 duration and include information on financial aid, debt management,  
 2-53 time management, budgeting, and academic resources available to the  
 2-54 student athlete. The institution may not during the course  
 2-55 [workshop] allow any provider of financial products or services to:

2-56 (1) market, advertise, or refer the provider's  
 2-57 services to a student athlete; or

2-58 (2) solicit a student athlete to use the provider's  
 2-59 services.

2-60 (1) Information written, produced, collected, assembled, or  
 2-61 maintained by an institution to which this section applies that  
 2-62 includes or reveals any term of a contract or proposed contract for  
 2-63 the use of the student athlete's name, image, or likeness is  
 2-64 confidential and excepted from required public disclosure in  
 2-65 accordance with Chapter 552, Government Code. An institution to  
 2-66 which this section applies may withhold information described by  
 2-67 this subsection without requesting a decision from the attorney  
 2-68 general under Subchapter G, Chapter 552, Government Code.

2-69 (m) An institution to which this section applies or

3-1 third-party entity acting on the institution's behalf, or employee  
3-2 of the institution or third-party entity:  
3-3 (1) may identify, create, facilitate, or otherwise  
3-4 assist with opportunities for a currently enrolled student athlete  
3-5 to earn compensation from a third party for the use of the student  
3-6 athlete's name, image, or likeness; and  
3-7 (2) may not, in assisting a student athlete as  
3-8 described by Subdivision (1):  
3-9 (A) act as an athlete agent for the student  
3-10 athlete;  
3-11 (B) be compensated by the student athlete or  
3-12 third party for providing the assistance;  
3-13 (C) attempt to influence the student athlete's  
3-14 choice of professional representation in connection with an  
3-15 opportunity; or  
3-16 (D) attempt to diminish the student athlete's  
3-17 opportunities from competing third parties.  
3-18 (n) A charitable organization exempt from taxation under  
3-19 Section 501(a), Internal Revenue Code of 1986, as an organization  
3-20 described by Section 501(c)(3) of that code, may compensate a  
3-21 student athlete for the use of the student athlete's name, image, or  
3-22 likeness.  
3-23 (o) An activity of a third-party entity that compensates a  
3-24 student athlete for the use of the student athlete's name, image, or  
3-25 likeness may not be construed as an act on behalf of an institution  
3-26 to which this section applies, provided that:  
3-27 (1) the entity is a separate legal entity from the  
3-28 institution; and  
3-29 (2) the institution does not own or control the  
3-30 entity.  
3-31 (p) This section may not be construed as creating a cause of  
3-32 action against an institution or an institution's officers or  
3-33 employees relating to a student athlete's name, image, or likeness.  
3-34 SECTION 2. (a) Except as provided by Subsection (b) of this  
3-35 section, the changes in law made by this Act apply only to a  
3-36 contract for the use of a student athlete's name, image, or likeness  
3-37 entered into on or after the effective date of this Act. A contract  
3-38 for the use of a student athlete's name, image, or likeness entered  
3-39 into before the effective date of this Act is governed by the law as  
3-40 it existed immediately before the effective date of this Act, and  
3-41 that law is continued in effect for that purpose.  
3-42 (b) Section 51.9246(1), Education Code, as added by this  
3-43 Act, applies only to a request for information received on or after  
3-44 the effective date of this Act. A request for information received  
3-45 before the effective date of this Act is governed by the law in  
3-46 effect on the date the request was received, and the former law is  
3-47 continued in effect for that purpose.  
3-48 SECTION 3. This Act takes effect July 1, 2023, if it  
3-49 receives a vote of two-thirds of all the members elected to each  
3-50 house, as provided by Section 39, Article III, Texas Constitution.  
3-51 If this Act does not receive the vote necessary for effect on that  
3-52 date, this Act takes effect September 1, 2023.

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