

SUBJECT: Allowing student athletes to be compensated for name, image, likeness

COMMITTEE: Higher Education — favorable, without amendment

VOTE: 8 ayes — Murphy, Pacheco, Frullo, Muñoz, Ortega, Parker, C. Turner, J. Turner

0 nays

3 absent — Cortez, P. King, Raney

SENATE VOTE: On final passage, April 22 — 28-2-1 (Hughes, Perry; Kolkhorst)

WITNESSES: For — None

Against — None

On — Janell Fitzgerald, Texas State University; Chris Del Conte, UT Athletics; (*Registered, but did not testify*: Ross Bjork, Texas A&M University)

DIGEST: SB 1385 would prohibit institutions of higher education from prohibiting student athletes from earning compensation from their name, image, or likeness, restrict schools' policies relating to student athletes, place restrictions on the type of contracts athletes could enter into, and establish requirements for a financial literacy and life skills workshop for student athletes.

The bill would apply to a general academic teaching institution or a private or independent institution of higher education.

**Restrictions on institutions.** Institutions could not adopt or enforce a policy, requirement, standard, or limitation that prohibited or prevented a student athlete participating in an intercollegiate athletic program from:

- earning compensation for the use of the student athlete's name,

- image, or likeness when not engaged in official team activities; or
- obtaining professional representation, including representation by an athlete agent or attorney, for contracts or other legal matters relating to the use of the student athlete's name, image, or likeness.

Institutions also could not provide or solicit a prospective student athlete with compensation in relation to the prospective student athlete's name, image, or likeness.

A scholarship, grant, or similar financial assistance that covered the student athlete's cost of attendance at the institution would not be considered compensation under these provisions. Student athletes could not be disqualified from eligibility for a scholarship, grant, or similar financial assistance awarded by the institution because the student athlete:

- earned compensation from the use of their name, image, or likeness when not engaged in official team activities; or
- obtained professional representation for contracts or other legal matters relating to use of their name, image, or likeness.

An institution could not prescribe a team contract for an intercollegiate athletic program that prohibited or prevented a student athlete from using their name, image, or likeness for a commercial purpose when the student athlete was not engaged in official team activities.

**Restrictions on contracts.** A student athlete would be required, before entering into a contract, to disclose to the institution any proposed contract for use of the student athlete's name, image, or likeness.

Student athletes could not enter into a contract for the use of their name, image, or likeness if the contract conflicted with a provision of the student athlete's team contract, a contract of the institution, an athletic department policy, or the institution's honor code.

Athletes also could not enter into a contract if the compensation for the use of the student athlete's name, image, or likeness was provided:

- in exchange for athletic performance or attendance at the institution;
- by the institution;
- in exchange for property owned by the institution or for providing an endorsement while using intellectual property or other property owned by the institution; or
- 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 could not legally purchase, or a sexually oriented business.

Students could not enter into contracts that extended beyond their participation in the athletic program and could not enter into a contract for representation by an athlete agent unless the athlete agent held a certificate of registration under the Occupations Code. Students would not be considered employees of the institution based on their participation in the intercollegiate athletic program.

Student athletes could sell their autographs in a manner that did not otherwise conflict with a provision of the bill.

The bill would establish procedures for when a student athlete's contract conflicted with contracts of the team or institution, an athletic department policy, or a school honor code and would require the student athlete to resolve the conflict with 10 days of disclosure.

**Financial literacy, life skills workshop.** Institutions would have to require student athletes to attend a financial literacy and life skills workshop at the beginning of the student's first and third academic years. The workshop would have to be at least five hours long and include information on financial aid, debt management, time management, budgeting, and available academic resources.

The institution would be prohibited during the workshop from allowing providers of financial products or services to market, advertise, or refer

the provider's services to a student athlete or to solicit a student athlete to use the provider's services.

Individuals, corporations, and other organizations would be prohibited from entering into any arrangement with a prospective student athlete about their name, image, or likeness prior to their enrollment in the school. Individuals, corporations, and organizations also would be prohibited from using inducements of future compensation arrangements to recruit a prospective student athlete to any institution of higher education.

**Legislative findings, effective date.** SB 1385 includes as legislative findings that the U.S. Congress has failed to act to provide uniform guidance to the states on the matter of intercollegiate athletes receiving compensation in exchange for the use of the athlete's name, image, or likeness, and that the U.S. Congress must act on this matter to ensure the competitive integrity of intercollegiate athletics.

The bill would take effect September 1, 2021, and would apply only to team contracts entered into, modified, or renewed on or after that date.

**SUPPORTERS  
SAY:**

SB 1385 would put college athletes in Texas and the state's higher education institutions on competitive footing with those in other states by allowing student athletes to earn compensation based on their name, image, and likeness. Current NCAA rules prevent this, but a wave of state legislation allowing it, discussions on the federal level, and proposals to change the NCAA's rules have brought the issue to the forefront. While the NCAA or the federal government consider action, it would be best for Texas to have legislation in place.

SB 1385 would help put Texas schools on equal footing with other universities in the approximately 10 other states that have passed similar legislation and the 30 or so considering legislation. If Texas waits to enact such legislation, it could be the only state in the SEC or Big 12 conferences whose athletes could not take advantage of these financial opportunities. Without the bill, Texas could lose student athletes to

colleges and universities in other states and could lose other students as well.

Student athletes in Texas deserve the opportunities that SB 1385 would allow. Universities profit from the presence of these athletes, but the athletes are restricted from profiting from their own name, image, and likeness. Not all student athletes have scholarships, and for those that do, the scholarships may not cover all expenses or even necessities like computers. The numerous hours these athletes devote to their sport for their schools and their academics can leave little time for jobs.

Other students can profit from their name, image, and likeness, and SB 1385 would treat student athletes like other students with skills or a marketable name. Under the bill, student athletes could obtain endorsement or marketing deals, get paid for autographs, or earn money by leveraging social media. For some, college might be the only time to profit from their athletic endeavors as most student athletes do not become professional athletes.

SB 1385 would open opportunities for all student athletes, not just those in popular sports or at large universities. The bill would apply to private as well as public institutions so that all Texas athletes would be treated fairly and because private schools compete within the NCAA and against public schools.

SB 1385 would establish a framework with numerous guardrails to protect athletes, schools, and amateur sports. Institutions would have to offer athletes a financial literacy and life skills workshop that would give athletes the tools to understand the business and financial side of their endorsements. The bill would prohibit inducements from being used as a recruitment tool, and endorsements could not be in exchange for athletic performance. SB 1385 would help protect schools by requiring contracts to be disclosed and monitored for potential conflicts with university contracts and by prohibiting endorsements that used property owned by the institution. The bill would impose reasonable restrictions on endorsements, including on endorsements for alcohol, tobacco, and

gambling.

SB 1385 would not change the amateur nature of college athletes or college sports but instead would recognize the changing landscape of college athletics to keep Texas competitive. Those competing in sports at an institution of higher education would be treated like other students regarding using their name and likeness and would continue their roles as both amateur athletes and students.

CRITICS  
SAY:

SB 1385 could erase the critical distinction that student-athletes on the college level are amateurs and should not be paid except for scholarships. Education should be the focus of all students at institutions of higher education. In addition, the bill could set up a system that resulted in discrepancies between earnings from names, images, and likenesses among Texas teammates and athletes at the same school and among those at larger, high profile schools and those at smaller schools.

OTHER  
CRITICS  
SAY:

Some provisions in SB 1385 would go too far, such as restricting the type of endorsements that student athletes can make and placing requirements on private institutions.