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JASON J. MONTGOMERY
KANSAS CITY:
816.983.8291
JASON.MONTGOMERY@
HUSCHBLACKWELL.COM

TARONDA RANDALL
KANSAS CITY:
816.983.8255
TARONDA.RANDALL@
HUSCHBLACKWELL.COM

Texas Name, Image, and Likeness Law Now Effective

Texas House Bill 2804 dealing with athletics-related Name, Image, and Likeness issues (NIL) became effective on July 1, 2023. The following provides a summary of the new legislation.

Anti-retaliation

Under the revised state law, an athletic conference or association, including presumably the NCAA, is not allowed to prohibit or penalize a Texas institution or the institution's athletic program in any way for participating in name, image, or likeness activity authorized by state law. Setting the stage for a potential conflict, this provision was greeted with disapproval in a memorandum issued by the NCAA which directed schools to "adhere to NCAA legislation (or policy) when it conflicts with permissive state laws."

Third parties and athlete compensation

The most significant practical development under HB2804 is that it makes plain that actions taken by a third-party entity that compensates a student-athlete for their name, image, or likeness cannot be represented as acts on behalf of an institution if (1) the third-party entity is a separate legal entity from the institution and (2) the institution does not own or control the third-party entity. This seemingly conflicts with informal guidance from the NCAA which has suggested its compensation prohibitions extend broadly to "entities acting on behalf of the institution."

Also in conflict with informal NCAA guidance, HB2804 notes that an institution can recognize a third-party NIL donor by providing the donor with things like priority status or other items of minimal value, like it would its own direct donors.

Additionally, the revisions to the state law allow a charitable organization designated as an exempt organization under 26 U.S.C. Section 501(c)(3) to compensate a student-athlete for use of their NIL. The deductibility of such donations for tax purposes was recently addressed by the Internal Revenue Service in a separate memorandum.

Additional involvement from institutional staff

Under the revised legislation, an institution, a third-party entity acting on the institution's behalf, or an employee of the institution or third-party entity is allowed to assist currently enrolled student-athletes with earning compensation from the use of their name, image, or likeness and can facilitate these opportunities for those students.

However, HB2804 prohibits an institution, a third-party entity acting on the institution's behalf, or an employee of the institution or third-party entity from:

acting as an athlete agent for the student-athlete;

being compensated by the student-athlete or third-party for their assistance;

attempting to influence the student-athlete's choice of professional representation;

or attempting to diminish opportunities from competing third parties.

Confidentiality of NIL-related information

HB2804 created a confidentiality provision that makes any information created, collected, or kept by an institution regarding student-athlete NIL contracts confidential and exempted from required public disclosure. An institution is now permitted to withhold this information without requesting a decision from the Attorney General.

Educational programming

Student-athletes will now be required to attend a financial literacy and life skills course during their first academic year, as opposed to the workshops previously required at the beginning of their first and third academic years. The course must be at least five hours long and must include information on financial aid, debt management, time management, budgeting, and available academic resources.

Use of institution-owned property

HB2804 removed the previous prohibition against the use of intellectual property or other property owned by an institution. Specifically, under the new NIL law, a student-athlete is now permitted to use an institution's facility, uniform, registered trademark, copyright-protected product, or official logo, mark, or other identifiers in connection with a NIL contract if the athlete has the institution's

express permission. An institution can only give express permission if it requires the student-athlete and the contracting party to comply with any requirements the institution establishes (such as licensing requirements) and compensate the institution consistent with market rates.

Contact us

If you have questions related to the implementation of Texas HB2804 or other state NIL laws, please contact Scott Schneider, Jason Montgomery, TaRonda Randall, or your Husch Blackwell attorney.