

By: Shaheen

H.B. No. 5127

A BILL TO BE ENTITLED

AN ACT

1
2 relating to public higher education reform; authorizing
3 administrative penalties.

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

5 SECTION 1. Section 51.352, Education Code, is amended by
6 amending Subsection (d) and adding Subsection (g) to read as
7 follows:

8 (d) In addition to powers and duties specifically granted by
9 this code or other law, each governing board shall:

10 (1) establish, for each institution under its control
11 and management, goals consistent with the role and mission of the
12 institution;

13 (2) appoint the chancellor or other chief executive
14 officer of the system, if the board governs a university system;

15 (3) appoint the president or other chief executive
16 officer of each institution under the board's control and
17 management and evaluate the chief executive officer of each
18 component institution and assist the officer in the achievement of
19 performance goals;

20 (4) restrict the membership of a search committee for
21 the position of president or other chief executive officer of an
22 institution under the board's control and management to members of
23 the governing board;

24 (5) approve or deny the hiring of a person for the

1 position of vice president, provost, associate or assistant
2 provost, dean, or associate or assistant dean or a similar position
3 by each institution under the board's control and management;

4 (6) set campus admission standards consistent with the
5 role and mission of the institution and considering the admission
6 standards of similar institutions nationwide having a similar role
7 and mission, as determined by the coordinating board;

8 (7) approve or deny each course in the core
9 curriculum, as that term is defined by Section 61.821, at each
10 institution under the board's control and management;

11 (8) approve or deny each posting or other
12 advertisement for a tenured faculty position at each institution
13 under the board's control and management; and

14 (9) [~~5~~] ensure that its formal position on matters
15 of importance to the institutions under its governance is made
16 clear to the coordinating board when such matters are under
17 consideration by the coordinating board.

18 (g) An institution of higher education may not spend money
19 appropriated to the institution for a state fiscal year until the
20 governing board of the institution submits to the legislature and
21 the Texas Higher Education Coordinating Board a report certifying
22 the board's compliance with Subsections (d)(2), (3), (5), (7), and
23 (8) during the preceding state fiscal year.

24 SECTION 2. Chapter 51, Education Code, is amended by adding
25 Subchapter L to read as follows:

26 SUBCHAPTER L. PROHIBITIONS REGARDING IDEOLOGICAL OATHS OR

27 STATEMENTS

1 Sec. 51.601. PURPOSE. The purpose of this subchapter is to
2 prohibit institutions of higher education from requiring or giving
3 preferential consideration for certain ideological oaths or
4 statements that undermine academic freedom and open inquiry and
5 impede the discovery, preservation, and transmission of knowledge.

6 Sec. 51.602. DEFINITIONS. In this subchapter:

7 (1) "Coordinating board" means the Texas Higher
8 Education Coordinating Board.

9 (2) "Institution of higher education" has the meaning
10 assigned by Section 61.003.

11 Sec. 51.603. PROHIBITIONS REGARDING IDEOLOGICAL OATHS OR
12 STATEMENTS. (a) An institution of higher education may not:

13 (1) compel, require, induce, or solicit a student
14 enrolled at the institution, an employee or contractor of the
15 institution, or an applicant for admission to or employment or
16 contracting at the institution to:

17 (A) endorse an ideology that promotes the
18 differential treatment of an individual or group of individuals
19 based on race, color, or ethnicity; or

20 (B) provide a statement of the person's:

21 (i) race, color, ethnicity, or national
22 origin, except to record any necessary demographic information;

23 (ii) views on, experience with, or past or
24 planned contributions to efforts involving diversity, equity, and
25 inclusion, marginalized groups, antiracism, social justice,
26 intersectionality, or related concepts; or

27 (iii) views on or experience with race,

1 color, ethnicity, national origin, or other immutable
2 characteristics; or

3 (2) provide preferential consideration to a student
4 enrolled at the institution, an employee or contractor of the
5 institution, or an applicant for admission to or employment or
6 contracting at the institution on the basis of the person's
7 unsolicited statement in support of an ideology described by
8 Subdivision (1)(A).

9 (b) This section may not be construed to:

10 (1) restrict academic research or coursework;

11 (2) prevent a person from providing to an institution
12 of higher education information described by Subsection (a) on the
13 person's own initiative separate from any specific requirement or
14 request from the institution; or

15 (3) prevent an institution of higher education from
16 requiring an applicant for admission to or employment or
17 contracting at the institution to:

18 (A) disclose or discuss the content of the
19 applicant's research or artistic creations;

20 (B) certify compliance with state and federal
21 antidiscrimination law; or

22 (C) discuss pedagogical approaches or experience
23 with students with learning disabilities.

24 (c) Not later than December 1 of each year, each institution
25 of higher education shall submit to the lieutenant governor and the
26 speaker of the house of representatives a report certifying the
27 institution's compliance with this section.

1 SECTION 3. Subchapter 2, Chapter 51, Education Code, is
2 amended by adding Sections 51.9317, 51.9318, and 51.9319 to read as
3 follows:

4 Sec. 51.9317. DIVERSITY, EQUITY, AND INCLUSION OFFICES AND
5 EMPLOYEES PROHIBITED. (a) In this section:

6 (1) "Coordinating board" means the Texas Higher
7 Education Coordinating Board.

8 (2) "Diversity, equity, and inclusion office" means an
9 office, division, or other unit of an institution of higher
10 education established for the purpose of:

11 (A) influencing hiring or employment practices
12 at the institution with respect to race, sex, color, or ethnicity,
13 other than through the use of color-blind and sex-neutral hiring
14 processes in accordance with any applicable state and federal
15 antidiscrimination laws;

16 (B) promoting differential treatment of or
17 providing special benefits to individuals on the basis of race,
18 color, or ethnicity;

19 (C) promoting policies or procedures designed or
20 implemented in reference to race, color, or ethnicity, other than
21 policies or procedures approved in writing by the institution's
22 general counsel and the office of the attorney general for the sole
23 purpose of ensuring compliance with any applicable court order or
24 state or federal law; or

25 (D) conducting trainings, programs, or
26 activities designed or implemented in reference to race, color,
27 ethnicity, gender identity, or sexual orientation, other than

1 trainings, programs, or activities developed by an attorney and
2 approved in writing by the institution's general counsel and the
3 office of the attorney general for the sole purpose of ensuring
4 compliance with any applicable court order or state or federal law.

5 (3) "Institution of higher education" has the meaning
6 assigned by Section 61.003.

7 (b) An institution of higher education may not establish or
8 maintain a diversity, equity, and inclusion office or hire or
9 assign an employee of the institution, or contract with a third
10 party, to perform the duties of a diversity, equity, and inclusion
11 office.

12 (c) Subsection (b) may not be construed to:

13 (1) restrict:

14 (A) academic course instruction;

15 (B) research or creative works by an institution
16 of higher education's students or faculty;

17 (C) the activities of student organizations
18 registered with or recognized by an institution of higher
19 education;

20 (D) the guest speakers or performers who may be
21 invited to speak or perform at an institution of higher education
22 for short-term engagements;

23 (E) health services provided by licensed
24 professionals at an institution of higher education;

25 (F) services provided by appropriate
26 professionals at an institution of higher education to veterans of
27 the armed forces of the United States or persons with a physical or

1 cognitive disability; or

2 (G) an institution of higher education's ability
3 to:

4 (i) respond to a request for information
5 from a grantmaking agency or athletic association; or

6 (ii) collect data; or

7 (2) prohibit an institution of higher education from:

8 (A) establishing or maintaining a legal office or
9 other unit, hiring or assigning an employee who is an attorney, or
10 contracting with a third-party attorney or law firm to ensure the
11 institution's compliance with any applicable court order or state
12 or federal law;

13 (B) establishing or maintaining an academic
14 department that does not establish policy or procedures for other
15 departments; or

16 (C) registering or recognizing student
17 organizations at the institution.

18 (d) Nothing in this section may be construed as prohibiting
19 bona fide qualifications based on sex that are reasonably necessary
20 to the normal operation of an institution of higher education.

21 (e) Any person may notify the attorney general of a
22 violation or potential violation of this section by an institution
23 of higher education. The attorney general may file suit for a writ
24 of mandamus compelling the institution to comply with this section.

25 (i) If an institution of higher education determines that an
26 employee of the institution has violated this section, the
27 institution shall:

1 (1) take the following action against the employee:

2 (A) for the first violation, place the employee
3 on unpaid leave for the next academic year; or

4 (B) for the second or a subsequent violation,
5 discharge the employee; and

6 (2) report the determination and the action taken by
7 the institution to the coordinating board.

8 (j) The coordinating board shall maintain and provide to
9 each institution of higher education a list of persons against whom
10 action has been taken under Subsection (i).

11 (k) An institution of higher education may not hire an
12 employee who is included on the coordinating board's list
13 maintained under Subsection (j) before:

14 (1) if the employee was placed on unpaid leave under
15 Subsection (i)(1)(A), the end of the academic year for which the
16 employee is placed on unpaid leave; or

17 (2) if the employee was discharged under Subsection
18 (i)(1)(B), the fifth anniversary of the date on which the employee
19 was discharged.

20 (l) If the coordinating board determines that an
21 institution of higher education has violated this section, the
22 coordinating board shall assess an administrative penalty against
23 the institution in an amount equal to the lesser of \$1 million or
24 one percent of the amount of the institution's operating expenses
25 budgeted for the state fiscal year preceding the state fiscal year
26 in which the violation occurred.

27 (m) An administrative penalty collected under Subsection

1 (1) may only be appropriated to an institution of higher education
2 that the coordinating board has not determined to have violated
3 this section during the two state fiscal years preceding the state
4 fiscal year for which the appropriation is made.

5 Sec. 51.9318. STATEMENTS REQUIRED TO BE INCLUDED IN MISSION
6 STATEMENT, BYLAWS, FACULTY HANDBOOK, AND STUDENT HANDBOOK. (a) In
7 this section, "institution of higher education" has the meaning
8 assigned by Section 61.003.

9 (b) Each institution of higher education shall adopt an
10 institutional mission statement that includes, or incorporate into
11 the institution's institutional mission statement if the
12 institution has already adopted an institutional mission
13 statement, the following statements in whole and without
14 interruption:

15 (1) "We affirm that (name of institution) will educate
16 students by means of free, open, and rigorous intellectual inquiry
17 to seek the truth.";

18 (2) "We affirm our duty to equip students with the
19 intellectual skills they need to reach their own informed
20 conclusions on matters of social and political importance.";

21 (3) "We affirm the value of viewpoint diversity in
22 campus intellectual life, including in faculty recruitment and
23 hiring.";

24 (4) "We affirm our duty to ensure that no aspects of
25 (name of institution) life, in or outside the classroom, require,
26 favor, disfavor, or prohibit speech or action that supports any
27 political, social, or religious belief.";

1 (5) "We affirm our commitment to create a community
2 dedicated to civil and free inquiry that respects the intellectual
3 freedom of each member, supports individual capacities for growth,
4 and tolerates the differences in opinion that naturally occur in a
5 public university community.";

6 (6) "We affirm the value of institutional neutrality:
7 that institutions of higher education should not take collective
8 positions on political and social controversies of the day."; and

9 (7) "These values take priority over any other value
10 we may also adopt."

11 (c) Each institution of higher education shall incorporate
12 into the institution's bylaws, faculty handbook, and student
13 handbook the substance of the following reports issued by the
14 University of Chicago:

15 (1) the Report of the Committee on Freedom of
16 Expression; and

17 (2) the Kalven Committee Report on the University's
18 Role in Political and Social Action.

19 Sec. 51.9319. CERTAIN MANDATORY TRAINING PROHIBITED. (a)
20 In this section:

21 (1) "Coordinating board" means the Texas Higher
22 Education Coordinating Board.

23 (2) "Institution of higher education" has the meaning
24 assigned by Section 61.003.

25 (3) "Training" includes a training, seminar,
26 discussion group, workshop, or other instructional program,
27 whether provided in person, online, or by any other means, with a

1 purpose of advising, counseling, influencing, or teaching
2 participants. The term does not include:

- 3 (A) an academic course offered for credit; or
4 (B) an activity of a student organization
5 registered with or recognized by an institution of higher education
6 that affects only the organization's members.

7 (b) An institution of higher education may not require a
8 student, employee, or applicant for employment at the institution
9 to participate in training on diversity, equity, inclusion, bias,
10 oppression, gender identity, or related concepts as a condition of:

- 11 (1) admission to or enrollment at the institution;
12 (2) employment or promotion at the institution;
13 (3) participating in any function of the institution;

14 or

- 15 (4) graduating from the institution.

16 (c) This section may not be construed to:

17 (1) limit the academic freedom of any individual
18 faculty member to direct the instruction of a course taught by the
19 faculty member; or

20 (2) prohibit any training:

21 (A) that is:

22 (i) developed by an attorney; and

23 (ii) approved in writing by the
24 institution's general counsel and the office of the attorney
25 general as being required to comply with any applicable court order
26 or state or federal law; and

27 (B) for which the materials are made publicly

1 available on the institution of higher education's Internet
2 website.

3 (d) Any person may notify the attorney general of a
4 violation or potential violation of this section by an institution
5 of higher education. The attorney general may file suit for a writ
6 of mandamus compelling the institution to comply with this section.

7 (e) A student or employee of an institution of higher
8 education who is required to participate in training in violation
9 of this section may bring an action against the institution for
10 injunctive or declaratory relief.

11 (h) If an institution of higher education determines that an
12 employee of the institution has violated this section, the
13 institution shall:

14 (1) take the following action against the employee:

15 (A) for the first violation, place the employee
16 on unpaid leave for the next academic year; or

17 (B) for the second or a subsequent violation,
18 discharge the employee; and

19 (2) report the determination and the action taken by
20 the institution to the coordinating board.

21 (i) The coordinating board shall maintain and provide to
22 each institution of higher education a list of persons against whom
23 action has been taken under Subsection (h).

24 (j) An institution of higher education may not hire an
25 employee who is included on the coordinating board's list
26 maintained under Subsection (i) before:

27 (1) if the employee was placed on unpaid leave under

1 Subsection (h)(1)(A), the end of the academic year for which the
2 employee is placed on unpaid leave; or

3 (2) if the employee was discharged under Subsection
4 (h)(1)(B), the fifth anniversary of the date on which the employee
5 was discharged.

6 (k) If the coordinating board determines that an
7 institution of higher education has violated this section, the
8 coordinating board shall assess an administrative penalty against
9 the institution in an amount equal to the lesser of \$1 million or
10 one percent of the amount of the institution's operating expenses
11 budgeted for the state fiscal year preceding the state fiscal year
12 in which the violation occurred.

13 (l) An administrative penalty collected under Subsection
14 (k) may only be appropriated to an institution of higher education
15 that the coordinating board has not determined to have violated
16 this section during the two state fiscal years preceding the state
17 fiscal year for which the appropriation is made.

18 SECTION 4. Section 51.942, Education Code, is amended by
19 adding Subsection (c-1) to read as follows:

20 (c-1) For purposes of Subsection (c)(5), good cause for
21 revoking the tenure of a faculty member includes the faculty
22 member's violation of Section 51.9317 or 51.9319.

23 SECTION 5. (a) Section 51.352(d), Education Code, as
24 amended by this Act, applies beginning with the 2023-2024 academic
25 year.

26 (b) Section 51.352(g), Education Code, as added by this Act,
27 applies beginning with money appropriated to a public institution

1 of higher education for the state fiscal year beginning September
2 1, 2024.

3 SECTION 6. (a) Except as provided by Subsection (b) of this
4 section, Subchapter L, Chapter 51, and Sections 51.9317, 51.9318,
5 and 51.9319, Education Code, as added by this Act, apply beginning
6 with the 2023-2024 academic year.

7 (b) Sections 51.9317(i) and 51.9319(h), Education Code, as
8 added by this Act, apply only to a person who enters into or renews
9 an employment contract at a public institution of higher education
10 on or after the effective date of this Act.

11 SECTION 7. A public institution of higher education may not
12 spend money appropriated by the legislature for the state fiscal
13 biennium beginning September 1, 2025, until the institution's
14 governing board has filed with the Texas Higher Education
15 Coordinating Board and posted on the institution's Internet website
16 a report that:

17 (1) states the steps taken by the institution to
18 comply with Section 51.9317, Education Code, as added by this Act;
19 and

20 (2) certifies the institution's compliance with
21 Section 51.9317, Education Code, as added by this Act.

22 SECTION 8. This Act takes effect immediately if it receives
23 a vote of two-thirds of all the members elected to each house, as
24 provided by Section 39, Article III, Texas Constitution. If this
25 Act does not receive the vote necessary for immediate effect, this
26 Act takes effect September 1, 2023.