

BILL ANALYSIS

C.S.H.B. 4189
By: Rose
Higher Education
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Compliance programs help identify weaknesses in internal systems and management and provide a method for employees to report potential problems, particularly for identifying and preventing criminal or unethical conduct. The success of a compliance program depends on the level of willingness of employees to raise issues and participate in the investigation and evaluation of those issues. For this reason, the compliance program *Guidelines Manual* of the U.S. Sentencing Commission expressly recommends that a compliance program include "mechanisms that allow for anonymity or confidentiality" of persons reporting or seeking guidance regarding potential or actual criminal conduct.

Although the Texas public information law provides exceptions for investigative records of law enforcement and for the identity of school district informants, Texas law does not provide an exception for compliance reports and investigative records of a compliance investigation. As a result, under current law, an institution of higher education that operates a compliance program and maintains a compliance hotline is unable to promise the anonymity and confidentiality that is key to employee participation.

C.S.H.B. 4189 authorizes an institution of higher education that maintains a compliance program to establish procedures to permit private access to the compliance program office and to preserve the confidentiality of communications and the anonymity of a person making a compliance report or participating in a compliance investigation. The bill makes confidential the identity of an individual who reports a compliance issue, asks a compliance question, or participates in a compliance investigation, as well as information of a completed compliance investigation when the compliance office of an institution of higher education finds the report to be unsubstantiated or without merit. The bill provides an exception to public disclosure of information related to an ongoing compliance investigation.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

C.S.H.B. 4189 amends the Education Code to define "compliance program" to mean a process to assess and ensure compliance by the officers and employees of an institution of higher education with applicable laws, rules, regulations, and policies, including in matters of financial reporting, internal accounting controls, auditing, ethics, and standards of conduct. The bill authorizes an institution of higher education that maintains a compliance program to establish procedures to permit private access to the compliance program office to preserve the confidentiality of communications and the anonymity of a person making a compliance report or participating in a compliance investigation. The bill establishes the confidentiality of information that directly or indirectly reveals the identity of an individual who made a report to the compliance program office of an institution of higher education, sought guidance from the office, participated in an

investigation conducted under the compliance program and a person who is alleged to have or may have planned, initiated, or participated in activities that are the subject of such a compliance report if, after completing an investigation, the compliance office determines the report to be unsubstantiated or without merit. The bill exempts from the confidentiality provisions an individual who consents to disclosure of the information. The bill exempts from disclosure under open records provisions information produced in a compliance program investigation the release of which would interfere with an ongoing compliance investigation. The bill authorizes information made confidential or excepted from disclosure by the bill's provisions to be made available to a law enforcement agency or prosecutor. The bill defines "institution of higher education."

EFFECTIVE DATE

On passage, or, if the act does not receive the necessary vote, the act takes effect September 1, 2009.

COMPARISON OF ORIGINAL AND SUBSTITUTE

C.S.H.B. 4189 differs from the original in nonsubstantive ways by conforming to certain bill drafting conventions.