

By: Huffman

S.B. No. 29

A BILL TO BE ENTITLED

AN ACT

relating to a reporting requirement for certain incidents of sexual harassment, sexual assault, dating violence, or stalking at certain public and private institutions of higher education; creating a criminal offense; authorizing administrative penalties.

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

SECTION 1. Chapter 51, Education Code, is amended by adding Subchapter E-2 to read as follows:

SUBCHAPTER E-2. REPORTING INCIDENTS OF SEXUAL HARASSMENT, SEXUAL ASSAULT, DATING VIOLENCE, AND STALKING

Sec. 51.251. DEFINITIONS. In this subchapter:

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

(2) "Dating violence" means abuse or violence, or a threat of abuse or violence, against a person with whom the actor has or has had a social relationship of a romantic or intimate nature.

(3) "Postsecondary educational institution" means:

(A) an institution of higher education, as defined by Section 61.003; and

(B) a private or independent institution of higher education.

(4) "Private or independent institution of higher education" has the meaning assigned by Section 61.003.

1 (5) "Sexual assault" means sexual contact or
2 intercourse with a person without the person's consent, including
3 sexual contact or intercourse against the person's will or in a
4 circumstance in which the person is incapable of consenting to the
5 contact or intercourse.

6 (6) "Sexual harassment" means unwelcome, sex-based
7 verbal or physical conduct that:

8 (A) in the employment context, unreasonably
9 interferes with a person's work performance or creates an
10 intimidating, hostile, or offensive work environment; or

11 (B) in the education context, is sufficiently
12 severe, persistent, or pervasive that the conduct interferes with a
13 student's ability to participate in or benefit from educational
14 programs or activities at a postsecondary educational institution.

15 (7) "Stalking" means a course of conduct directed at a
16 person that would cause a reasonable person to fear for the person's
17 safety or to suffer substantial emotional distress.

18 Sec. 51.252. REPORTING REQUIRED FOR CERTAIN INCIDENTS.

19 (a) An employee of a postsecondary educational institution, or,
20 subject to Subsection (b), an officer of a student organization
21 registered with a postsecondary educational institution, who
22 witnesses or receives information regarding the occurrence of an
23 incident of sexual harassment, sexual assault, dating violence, or
24 stalking alleged to have been committed by or against a person who
25 was a student enrolled at or an employee of the institution at the
26 time of the incident shall promptly report the incident to the
27 institution's Title IX coordinator or deputy Title IX coordinator.

1 (b) An officer of a student organization registered with a
2 postsecondary educational institution is required to report an
3 incident under Subsection (a) only if the officer witnessed or
4 received information regarding the occurrence of the incident while
5 acting in the officer's official capacity, including while on the
6 premises of property owned by the student organization or at an
7 event held or sponsored by the student organization.

8 (c) Except as provided by Subsection (d) or (e), the report
9 must include all information concerning the incident known to the
10 reporting person that is relevant to the investigation and, if
11 applicable, redress of the incident, including whether an alleged
12 victim has expressed a desire for confidentiality or anonymity in
13 reporting the incident.

14 (d) In making a report under this section, an employee of a
15 postsecondary educational institution designated by the
16 institution as a person with whom students may speak confidentially
17 concerning sexual harassment, sexual assault, dating violence, or
18 stalking shall state only the type of incident reported and may not
19 include any information that would violate a student's expectation
20 of privacy.

21 (e) In making a report under this section, a student
22 organization officer to whom the alleged victim has expressed a
23 desire for confidentiality or anonymity in reporting the incident
24 shall state only the type of incident reported and may not include
25 any information that would violate the alleged victim's expectation
26 of privacy.

27 (f) Notwithstanding Subsection (a), a person is not

1 required to make a report under this section concerning an incident
2 in which the person was a victim of sexual harassment, sexual
3 assault, dating violence, or stalking.

4 Sec. 51.253. ADMINISTRATIVE REPORTING REQUIREMENTS.

5 (a) Not less than once per month, the Title IX coordinator of a
6 postsecondary educational institution shall submit to the
7 institution's chief executive officer a written report on the
8 reports received under Section 51.252, including information
9 regarding:

- 10 (1) the investigation of those reports;
11 (2) the disposition, if any, of any disciplinary
12 processes arising from those reports; and
13 (3) the reports for which the institution determined
14 not to initiate a disciplinary process, if any.

15 (b) The Title IX coordinator of a postsecondary educational
16 institution shall immediately report to the institution's chief
17 executive officer an incident reported to the coordinator under
18 Section 51.252 if the coordinator has cause to believe that the
19 health or safety of any person is in imminent danger as a result of
20 the incident.

21 (c) At least once during each fall or spring semester, the
22 chief executive officer of a postsecondary educational institution
23 shall submit to the institution's governing body a report
24 concerning the reports received under Section 51.252. The report:

- 25 (1) may not identify any person; and
26 (2) must include:
27 (A) the number of reports received under Section

1 51.252;

2 (B) the number of investigations conducted as a
3 result of those reports;

4 (C) the disposition, if any, of any disciplinary
5 processes arising from those reports;

6 (D) the number of those reports for which the
7 institution determined not to initiate a disciplinary process, if
8 any; and

9 (E) any disciplinary actions taken under Section
10 51.255.

11 (d) A report submitted under Subsection (c) is public
12 information subject to disclosure under Chapter 552, Government
13 Code, and a private or independent institution of higher education
14 is a governmental body with respect to such a report for purposes of
15 that chapter.

16 Sec. 51.254. IMMUNITIES. (a) A person acting in good
17 faith who reports or assists in the investigation of a report of an
18 incident described by Section 51.252(a) or who testifies or
19 otherwise participates in a disciplinary process or judicial
20 proceeding arising from a report of such an incident:

21 (1) is immune from civil or criminal liability that
22 might otherwise be incurred or imposed as a result of those actions;
23 and

24 (2) may not be subjected to any disciplinary action by
25 the postsecondary educational institution at which the person is
26 enrolled or employed for any violation by the person of the
27 institution's code of conduct occurring in relation to the

1 incident.

2 (b) Subsection (a) does not apply to a person who
3 perpetrates or assists in the perpetration of the incident reported
4 under Section 51.252.

5 Sec. 51.255. FAILURE TO REPORT OR FALSE REPORT; OFFENSES.

6 (a) A postsecondary educational institution shall terminate the
7 employment of an employee who:

8 (1) is required to make a report under Section 51.252
9 and fails to promptly make the report without good cause, as
10 determined by the institution; or

11 (2) with the intent to harm or deceive, knowingly
12 makes a report under Section 51.252 that is false.

13 (b) A postsecondary educational institution shall terminate
14 the employment of the institution's Title IX coordinator or chief
15 executive officer if the coordinator or officer fails to make a
16 report as required under Section 51.253.

17 (c) A postsecondary educational institution shall suspend
18 for at least one year or expel a student who:

19 (1) is required to make a report under Section 51.252
20 and fails to promptly make the report without good cause, as
21 determined by the institution; or

22 (2) with the intent to harm or deceive, knowingly
23 makes a report under Section 51.252 that is false.

24 (d) A person commits an offense if the person is an employee
25 of a postsecondary educational institution and:

26 (1) is required to make a report under Section 51.252
27 and knowingly fails to make the report; or

1 (2) with the intent to harm or deceive, knowingly
2 makes a report under Section 51.252 that is false.

3 (e) An offense under Subsection (d) is a Class B
4 misdemeanor, except that the offense is a Class A misdemeanor if it
5 is shown on the trial of the offense that the actor intended to
6 conceal the incident that the actor was required to report under
7 Section 51.252.

8 Sec. 51.256. CONFIDENTIALITY. (a) Unless waived in
9 writing by the alleged victim, the identity of an alleged victim of
10 an incident reported under Section 51.252:

11 (1) is confidential and not subject to disclosure
12 under Chapter 552, Government Code; and

13 (2) may be disclosed only to:

14 (A) the postsecondary educational institution to
15 which the report is made as necessary to conduct an investigation of
16 the report; or

17 (B) a law enforcement officer as necessary to
18 conduct a criminal investigation of the report.

19 (b) A disclosure under Subsection (a) is not a voluntary
20 disclosure for purposes of Section 552.007, Government Code.

21 Sec. 51.257. RETALIATION PROHIBITED. (a) A postsecondary
22 educational institution may not discipline or otherwise
23 discriminate against a student or an employee who in good faith:

24 (1) makes a report as required by Section 51.252; or

25 (2) cooperates with an investigation, a disciplinary
26 process, or a judicial proceeding relating to a report made by the
27 student or employee as required by Section 51.252.

1 (b) Subsection (a) does not apply to a student or an
2 employee who:

3 (1) reports an incident described by Section 51.252(a)
4 perpetrated by the student or employee; or

5 (2) cooperates with an investigation, a disciplinary
6 process, or a judicial proceeding relating to an allegation that
7 the student or employee perpetrated an incident described by
8 Section 51.252(a).

9 Sec. 51.258. COMPLIANCE. (a) The chief executive officer
10 of each postsecondary educational institution shall annually
11 certify in writing to the coordinating board that the institution
12 is in substantial compliance with this subchapter.

13 (b) If the coordinating board determines that a private or
14 independent institution of higher education is not in substantial
15 compliance with this subchapter, the coordinating board may assess
16 an administrative penalty against the institution in an amount not
17 to exceed \$2 million. In determining the amount of the penalty, the
18 coordinating board shall consider the nature of the violation and
19 the number of students enrolled at the institution.

20 (c) If the coordinating board assesses an administrative
21 penalty against a private or independent institution of higher
22 education under Subsection (b), the coordinating board shall
23 provide to the institution written notice of the coordinating
24 board's reasons for assessing the penalty.

25 (d) A private or independent institution of higher
26 education assessed an administrative penalty under Subsection (b)
27 may appeal the penalty in the manner provided by Chapter 2001,

1 Government Code.

2 (e) A private or independent institution of higher
3 education may not pay an administrative penalty assessed under
4 Subsection (b) using state or federal money.

5 (f) An administrative penalty collected under this section
6 shall be deposited to the credit of the sexual assault program fund
7 established under Section 420.008, Government Code.

8 (g) The coordinating board shall annually submit to the
9 governor, the lieutenant governor, the speaker of the house of
10 representatives, and the standing legislative committees with
11 primary jurisdiction over legislation concerning sexual assault at
12 postsecondary educational institutions a report regarding
13 compliance with this subchapter, including a summary of the
14 postsecondary educational institutions found not to be in
15 substantial compliance as provided by this section during the
16 calendar year preceding the date of the report.

17 Sec. 51.259. RULES. The coordinating board shall adopt
18 rules as necessary to implement and enforce this subchapter,
19 including rules that ensure implementation of this subchapter in a
20 manner that complies with federal law regarding confidentiality of
21 student educational information, including the Family Educational
22 Rights and Privacy Act of 1974 (20 U.S.C. Section 1232g).

23 Sec. 51.260. TRAINING ADVISORY COMMITTEE. (a) The
24 commissioner of higher education shall establish an advisory
25 committee to develop recommended training for persons required to
26 report certain incidents under Section 51.252 and for Title IX
27 coordinators at postsecondary educational institutions.

1 (b) The advisory committee consists of nine members
2 appointed by the commissioner of higher education. Each member
3 must be a chief executive officer of a postsecondary educational
4 institution or a representative designated by that officer.

5 (c) Not later than December 1, 2017, the advisory committee
6 shall develop the recommended training under Subsection (a).

7 (d) This section expires September 1, 2018.

8 SECTION 2. Section 420.008(b), Government Code, is amended
9 to read as follows:

10 (b) The fund consists of:

11 (1) fees collected under:

12 (A) [~~(1)~~] Article 42A.653(a), Code of Criminal
13 Procedure;

14 (B) [~~(2)~~] Section 508.189, Government Code; and

15 (C) [~~(3)~~] Subchapter B, Chapter 102, Business &
16 Commerce Code, and deposited under Section 102.054; and

17 (2) administrative penalties collected under Section
18 51.258, Education Code.

19 SECTION 3. Sections 51.251-51.259, Education Code, as added
20 by this Act, apply beginning January 1, 2018.

21 SECTION 4. Not later than January 1, 2019, the Texas Higher
22 Education Coordinating Board shall submit its initial report
23 required under Section 51.258(g), Education Code, as added by this
24 Act.

25 SECTION 5. This Act takes effect immediately if it receives
26 a vote of two-thirds of all the members elected to each house, as
27 provided by Section 39, Article III, Texas Constitution. If this

S.B. No. 29

1 Act does not receive the vote necessary for immediate effect, this
2 Act takes effect on the 91st day after the last day of the
3 legislative session.