

By: Lozano, Canales, Zerwas, Howard,
Davis of Harris, et al.

H.B. No. 16

A BILL TO BE ENTITLED

1 AN ACT
2 relating to sexual harassment, sexual assault, dating violence, and
3 stalking at public and private postsecondary educational
4 institutions.

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

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

8 SUBCHAPTER E-2. SEXUAL HARASSMENT, SEXUAL ASSAULT, DATING

9 VIOLENCE, AND STALKING

10 Sec. 51.251. DEFINITIONS. In this subchapter:

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

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

17 (3) "Postsecondary educational institution" means:

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

20 (B) a private or independent college or
21 university approved for purposes of the tuition equalization grant
22 program under Subchapter F, Chapter 61.

23 (4) "Sexual assault" means sexual contact or
24 intercourse with a person without the person's consent, including

1 sexual contact or intercourse against the person's will or in a
2 circumstance in which the person is incapable of consenting to the
3 contact or intercourse.

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

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

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

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

16 Sec. 51.252. POLICY ON SEXUAL HARASSMENT, SEXUAL ASSAULT,
17 DATING VIOLENCE, AND STALKING. (a) Each postsecondary educational
18 institution shall adopt a policy on campus sexual harassment,
19 sexual assault, dating violence, and stalking. The policy must:

20 (1) include:

21 (A) definitions of prohibited behavior;

22 (B) sanctions for violations;

23 (C) the protocol for reporting and responding to
24 reports of campus sexual harassment, sexual assault, dating
25 violence, and stalking;

26 (D) interim measures to protect victims of sexual
27 harassment, sexual assault, dating violence, or stalking during the

1 pendency of the institution's disciplinary process, including
2 protection from retaliation, and any other accommodations
3 available to those victims at the institution; and

4 (E) a statement emphasizing the importance of:

5 (i) a victim of sexual harassment, sexual
6 assault, dating violence, or stalking going to a hospital for
7 treatment and preservation of evidence, if applicable, as soon as
8 practicable after the incident; and

9 (ii) a victim of a crime reporting the crime
10 to law enforcement as soon as practicable after the commission of
11 the crime; and

12 (2) be approved by the institution's governing board
13 before final adoption by the institution.

14 (b) Each postsecondary educational institution shall make
15 the institution's campus sexual harassment, sexual assault, dating
16 violence, and stalking policy available to students, faculty, and
17 staff members by:

18 (1) including the policy in the institution's student
19 handbook and personnel handbook; and

20 (2) creating and maintaining a web page dedicated
21 solely to the policy that is easily accessible through a clearly
22 identifiable link on the institution's Internet website home page.

23 (c) Each postsecondary educational institution shall
24 require each entering freshman or undergraduate transfer student to
25 attend an orientation on the institution's campus sexual
26 harassment, sexual assault, dating violence, and stalking policy
27 before or during the first semester or term in which the student is

1 enrolled at the institution. The institution shall establish the
2 format and content of the orientation. The orientation:

3 (1) may be provided online; and

4 (2) must emphasize the importance of:

5 (A) a victim of sexual harassment, sexual
6 assault, dating violence, or stalking going to a hospital for
7 treatment and preservation of evidence, if applicable, as soon as
8 practicable after the incident; and

9 (B) criminal matters being handled primarily by
10 law enforcement.

11 (d) Each postsecondary educational institution shall
12 develop and implement a comprehensive prevention and outreach
13 program on campus sexual harassment, sexual assault, dating
14 violence, and stalking. The program must address a range of
15 strategies to prevent campus sexual harassment, sexual assault,
16 dating violence, and stalking, including a victim empowerment
17 program, a public awareness campaign, primary prevention,
18 bystander intervention, and risk reduction.

19 (e) Each biennium, each postsecondary educational
20 institution shall review the institution's campus sexual
21 harassment, sexual assault, dating violence, and stalking policy
22 and, with approval of the institution's governing board, revise the
23 policy as necessary.

24 Sec. 51.253. ONLINE REPORTING SYSTEM. (a) Each
25 postsecondary educational institution shall develop and establish
26 or contract with a third party to develop and establish an online
27 reporting system through which a student enrolled at or an employee

1 of the institution may report to the institution an allegation of
2 sexual harassment, sexual assault, dating violence, or stalking
3 committed against or witnessed by the student or employee,
4 regardless of the location at which the alleged incident occurred.

5 (b) The online reporting system must:

6 (1) enable a student or employee to report the alleged
7 incident anonymously; and

8 (2) be easily accessible through a clearly
9 identifiable link on the postsecondary educational institution's
10 Internet website home page.

11 (c) A protocol for reporting sexual harassment, sexual
12 assault, dating violence, or stalking adopted under Section 51.252
13 must comply with this section.

14 Sec. 51.254. AMNESTY FOR STUDENTS REPORTING CERTAIN
15 INCIDENTS. (a) A postsecondary educational institution may not
16 take any disciplinary action against a student enrolled at the
17 institution who in good faith reports to the institution being the
18 victim of, or a witness to, an incident of sexual harassment, sexual
19 assault, dating violence, or stalking for a minor violation by the
20 student of the institution's code of conduct occurring at or near
21 the time of the incident. For purposes of this subsection, a minor
22 violation of an institution's code of conduct is any violation for
23 which the permissible punishments do not include suspension or
24 expulsion from the institution.

25 (b) A postsecondary educational institution may investigate
26 to determine whether a report of an incident of sexual harassment,
27 sexual assault, dating violence, or stalking was made in good

1 faith.

2 (c) Subsection (a) does not apply to a student who reports
3 the student's own commission or assistance in the commission of
4 sexual harassment, sexual assault, dating violence, or stalking.

5 (d) This section may not be construed to limit a
6 postsecondary educational institution's ability to provide amnesty
7 from application of the institution's policies in circumstances not
8 described by Subsection (a).

9 Sec. 51.255. VICTIM REQUEST NOT TO INVESTIGATE. (a) If an
10 alleged victim of an incident of sexual harassment, sexual assault,
11 dating violence, or stalking reported to a postsecondary
12 educational institution requests the institution not to
13 investigate the alleged incident, the institution may investigate
14 the alleged incident in a manner that complies with the
15 confidentiality requirements under Section 51.261. In determining
16 whether to investigate the alleged incident, the institution shall
17 consider:

18 (1) the seriousness of the alleged incident;
19 (2) whether the institution has received other reports
20 of sexual harassment, sexual assault, dating violence, or stalking
21 committed by the alleged perpetrator or perpetrators;

22 (3) whether the alleged incident poses a risk of harm
23 to others; and

24 (4) any other factors the institution determines
25 relevant.

26 (b) If a postsecondary educational institution decides not
27 to investigate an alleged incident of sexual harassment, sexual

1 assault, dating violence, or stalking based on the alleged victim's
2 request not to investigate, the institution shall take any steps
3 the institution determines necessary to protect the health and
4 safety of the institution's community in relation to the alleged
5 incident.

6 (c) A postsecondary educational institution shall inform an
7 alleged victim of an incident of sexual harassment, sexual assault,
8 dating violence, or stalking who requests the institution not to
9 investigate the alleged incident of the institution's decision
10 whether to investigate the alleged incident.

11 Sec. 51.256. DISCIPLINARY PROCESS FOR CERTAIN VIOLATIONS.

12 A postsecondary educational institution that initiates a
13 disciplinary process against a student enrolled at the institution
14 for violating the institution's code of conduct by committing
15 sexual harassment, sexual assault, dating violence, or stalking
16 shall:

17 (1) provide to the student a meaningful opportunity to
18 admit or contest the alleged violation at a disciplinary
19 proceeding, whether formal or informal;

20 (2) permit both the student and the alleged victim to
21 be represented by an attorney in the disciplinary process,
22 including at any disciplinary proceeding, and inform both the
23 student and the alleged victim of that right;

24 (3) ensure that both the student and the alleged
25 victim have reasonable and complete access to all evidence related
26 to the alleged violation not later than five days before the date on
27 which the disciplinary process begins, including any statements

1 made by the alleged victim or by other persons, information stored
2 electronically, written or electronic communications, social media
3 posts, or physical evidence; and

4 (4) permit both the student and the alleged victim to
5 safely question witnesses of the alleged violation in an
6 appropriate manner, as determined by the institution.

7 Sec. 51.257. STUDENT WITHDRAWAL OR GRADUATION PENDING
8 DISCIPLINARY CHARGES. (a) If a student withdraws or graduates from
9 a postsecondary educational institution pending a disciplinary
10 charge alleging that the student violated the institution's code of
11 conduct by committing sexual harassment, sexual assault, dating
12 violence, or stalking, the institution:

13 (1) may not end the disciplinary process or issue a
14 transcript to the student until the institution makes a final
15 determination of responsibility; and

16 (2) shall expedite the institution's disciplinary
17 process as necessary to accommodate the student's interest in a
18 speedy resolution.

19 (b) On request by another postsecondary educational
20 institution, a postsecondary educational institution shall provide
21 to the requesting institution information relating to a
22 determination by the institution that a student enrolled at the
23 institution violated the institution's code of conduct by
24 committing sexual harassment, sexual assault, dating violence, or
25 stalking.

26 Sec. 51.258. TRAUMA-INFORMED INVESTIGATION TRAINING. Each
27 peace officer employed by a postsecondary educational institution

1 shall complete training on trauma-informed investigation into
2 allegations of sexual harassment, sexual assault, dating violence,
3 and stalking.

4 Sec. 51.259. MEMORANDA OF UNDERSTANDING REQUIRED. To
5 facilitate effective communication and coordination regarding
6 allegations of sexual harassment, sexual assault, dating violence,
7 and stalking at the institution, a postsecondary educational
8 institution shall enter into a memorandum of understanding with one
9 or more:

10 (1) local law enforcement agencies;

11 (2) sexual harassment, sexual assault, dating
12 violence, or stalking advocacy groups; and

13 (3) hospitals or other medical resource providers.

14 Sec. 51.260. RESPONSIBLE OR CONFIDENTIAL EMPLOYEE. Each
15 postsecondary educational institution shall:

16 (1) designate:

17 (A) one or more employees to act as responsible
18 employees for purposes of Title IX of the Education Amendments of
19 1972 (20 U.S.C. Section 1681 et seq.); and

20 (B) one or more employees as persons to whom
21 students enrolled at the institution may speak confidentially
22 concerning sexual harassment, sexual assault, dating violence, and
23 stalking; and

24 (2) inform each student enrolled at the institution of
25 the responsible and confidential employees designated under
26 Subdivision (1).

27 Sec. 51.261. CONFIDENTIALITY. (a) The protections

1 provided by this section apply to:

2 (1) an alleged victim of an incident of sexual
3 harassment, sexual assault, dating violence, or stalking reported
4 to a postsecondary educational institution;

5 (2) a person who reports to a postsecondary
6 educational institution an incident of sexual harassment, sexual
7 assault, dating violence, or stalking, who sought guidance from the
8 institution concerning such an incident, or who participated in the
9 institution's investigation of such an incident; and

10 (3) a person who is alleged in a report made to a
11 postsecondary educational institution to have committed or
12 assisted in the commission of sexual harassment, sexual assault,
13 dating violence, or stalking if, after completing an investigation,
14 the institution determines the report to be unsubstantiated or
15 without merit.

16 (b) Unless waived in writing by the person, the identity of
17 a person described by Subsection (a):

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

20 (2) may be disclosed only to:

21 (A) the postsecondary educational institution to
22 which the report described by Subsection (a) is made as necessary to
23 conduct an investigation of the report;

24 (B) a law enforcement officer as necessary to
25 conduct a criminal investigation of the report described by
26 Subsection (a); or

27 (C) a health care provider in an emergency

1 situation, as determined necessary by the institution.

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

4 (d) Information regarding an incident of sexual harassment,
5 sexual assault, dating violence, or stalking disclosed to a health
6 care provider or other medical provider employed by a postsecondary
7 educational institution is confidential and may be shared by the
8 provider only with the victim's consent. The provider must provide
9 aggregate data or other nonidentifying information regarding those
10 incidents to the institution's Title IX coordinator.

11 Sec. 51.262. REPORT. (a) Each postsecondary educational
12 institution shall annually submit to the institution's governing
13 body a report concerning any reports of sexual harassment, sexual
14 assault, dating violence, or stalking received by the institution
15 during the preceding academic year. The report may not identify any
16 person.

17 (b) A report submitted under Subsection (a) is public
18 information subject to disclosure under Chapter 552, Government
19 Code, and a private or independent college or university approved
20 for purposes of the tuition equalization grant program under
21 Subchapter F, Chapter 61, is a governmental body with respect to
22 such a report for purposes of Chapter 552, Government Code.

23 Sec. 51.263. COMPLIANCE. (a) If the coordinating board
24 determines that an institution of higher education is not in
25 substantial compliance with this subchapter, the coordinating
26 board may reduce the allocation of state funding to the institution
27 for the following academic year in an amount determined by the

1 coordinating board.

2 (b) If the coordinating board determines that a private or
3 independent college or university is not in substantial compliance
4 with this subchapter, the coordinating board may:

5 (1) assess an administrative penalty against the
6 college or university in an amount not to exceed \$2 million; or

7 (2) declare students enrolled at the college or
8 university ineligible for tuition equalization grants under
9 Subchapter F, Chapter 61.

10 (c) In determining the amount of a penalty under Subsection
11 (a) or (b)(1), the coordinating board shall consider the
12 seriousness of the violation.

13 (d) If the coordinating board takes an action under
14 Subsection (a) or (b) against an institution of higher education or
15 a private or independent college or university, as applicable, the
16 coordinating board shall provide to the institution or college or
17 university written notice of the coordinating board's reasons for
18 taking the action.

19 (e) An institution of higher education or a private or
20 independent college or university against which the coordinating
21 board takes an action under Subsection (a) or (b), as applicable,
22 may appeal the action taken in the manner provided by Chapter 2001,
23 Government Code.

24 (f) A private or independent college or university may not
25 pay an administrative penalty assessed under Subsection (b)(1)
26 using state or federal money.

27 Sec. 51.265. TRAINING ADVISORY COMMITTEE. (a) The

1 commissioner of higher education shall establish an advisory
2 committee to develop recommended training for responsible and
3 confidential employees designated under Section 51.260 and for
4 Title IX coordinators at postsecondary educational institutions.

5 (b) Each member of the advisory committee is appointed by
6 the commissioner of higher education and must be a chief executive
7 officer of a postsecondary educational institution or a
8 representative designated by that officer.

9 (c) The advisory committee shall annually review and, if
10 necessary, update the recommended training.

11 Sec. 51.266. RULES. The coordinating board shall adopt
12 rules as necessary to implement and enforce this subchapter,
13 including rules that:

14 (1) define relevant terms; and

15 (2) ensure implementation of this subchapter in a
16 manner that complies with federal law regarding confidentiality of
17 student educational information, including the Family Educational
18 Rights and Privacy Act of 1974 (20 U.S.C. Section 1232g).

19 SECTION 2. Section 51.9363, Education Code, is repealed.

20 SECTION 3. The changes in law made by this Act apply
21 beginning with the 2017-2018 academic year.

22 SECTION 4. Not later than January 1, 2018, each public or
23 private postsecondary educational institution shall develop and
24 establish the online reporting system required under Section
25 51.253, Education Code, as added by this Act.

26 SECTION 5. This Act takes effect immediately if it receives
27 a vote of two-thirds of all the members elected to each house, as

H.B. No. 16

1 provided by Section 39, Article III, Texas Constitution. If this
2 Act does not receive the vote necessary for immediate effect, this
3 Act takes effect September 1, 2017.