A BILL TO BE ENTITLED
AN ACT
relating to a sexual assault policy at public and private institutions of higher education.

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

SECTION 1. Section 51.9363, Education Code, is amended to read as follows:

Sec. 51.9363. [CAMPUS] SEXUAL ASSAULT POLICY. (a) In this section, "postsecondary educational institution" means an [" institution of higher education or a private or independent institution of higher education, as those terms are defined [" has the meaning assigned] by Section 61.003.

(b) Each postsecondary educational institution [of higher education] shall adopt a policy on [campus] sexual assault applicable to any person employed by the institution and to each student enrolled in the institution. The policy must:

(1) incorporate an affirmative consent standard for determining consent to engage in sexual activity, including by reflecting the affirmative consent principles described by Subsection (b-1);

(2) include:

(A) definitions of prohibited behavior;

(B) sanctions for violations; and

(C) the protocol for reporting and responding to reports of [campus] sexual assault; and
be approved by the institution's governing board before final adoption by the institution.

(b-1) Each postsecondary educational institution shall ensure the institution's sexual assault policy reflects the following principles regarding affirmative consent to engage in sexual activity:

(1) affirmative consent requires words or actions that clearly demonstrate a knowing and voluntary agreement to engage in sexual activity;

(2) a person's silence or the absence of the words "no" or "stop" is not sufficient to establish affirmative consent to engage in sexual activity;

(3) the requirement to obtain affirmative consent to engage in sexual activity applies to each student enrolled at the institution regardless of whether the sexual activity occurs on or off campus;

(4) each participant is responsible for obtaining affirmative consent and ensuring that the affirmative consent continues throughout the duration of the sexual activity;

(5) affirmative consent to engage in a sexual act or prior consensual sexual activity with any person does not constitute affirmative consent to engage in any other sexual act;

(6) affirmative consent may be withdrawn at any time;

(7) a person cannot affirmatively consent to engage in sexual activity if it is the result of any coercion, intimidation, force or threat of harm;

(8) a person cannot affirmatively consent to engage in
sexual activity when the person is incapacitated or otherwise lacks
the ability to knowingly choose to engage in the activity,
regardless of whether the person is incapacitated due to any
physical or mental condition, lack of consciousness, being asleep,
being involuntarily restrained, being under the influence of drugs
or alcohol to the level of incapacitation, or for any other reason;
and

(9) an accused person will not be excused for
believing the complainant affirmatively consented to engage in
sexual activity if:

(A) the accused person knew or reasonably should
have known that the complainant was incapacitated as described by
Subdivision (7); or

(B) the accused believed that the complainant
affirmatively consented to engage in the sexual activity and the
belief is based upon:

   (i) the accused's intoxication; or

   (ii) the accused failing to take reasonable
steps to ascertain whether the complainant affirmatively consented
to engage in the sexual activity.

(c) Each postsecondary educational institution [of higher
education] shall make the institution's [campus] sexual assault
policy available to students, faculty, and staff members by:

   (1) including the policy in the institution's student
handbook and personnel handbook; [and]

   (2) creating and maintaining a web page on the
institution's Internet website dedicated solely to the policy[.]
(3) develop and implement a public awareness campaign informing students, staff, and faculty of the affirmative consent standard implemented by the institution, including that the affirmative consent standard shall be applied in alleged violations of the sexual assault policy of the institution.

(d) Each postsecondary educational institution [of higher education] shall require each entering freshman or undergraduate transfer student to attend an orientation on the institution's [campus] sexual assault policy before or during the first semester or term in which the student is enrolled at the institution. The institution shall establish the format and content of the orientation.

(e) Each biennium, each postsecondary educational institution [of higher education] shall review the institution's [campus] sexual assault policy and, with approval of the institution's governing board, revise the policy as necessary.

SECTION 2. Section 51.9363, Education Code, as amended by this Act, applies beginning with the 2017 fall semester.

SECTION 3. This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2017.