

1 AN ACT

2 relating to sexual harassment, sexual assault, dating violence, and
3 stalking at public and private postsecondary educational
4 institutions; providing an administrative penalty.

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-3 to read as follows:

8 SUBCHAPTER E-3. SEXUAL HARASSMENT, SEXUAL ASSAULT, DATING
9 VIOLENCE, AND STALKING

10 Sec. 51.281. DEFINITIONS. In this subchapter:

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

13 (2) "Dating violence," "sexual assault," and
14 "stalking" have the meanings assigned by the Jeanne Clery
15 Disclosure of Campus Security Policy and Campus Crime Statistics
16 Act (20 U.S.C. Section 1092(f)(6)(A)).

17 (3) "Postsecondary educational institution" means an
18 institution of higher education or a private or independent
19 institution of higher education, as those terms are defined by
20 Section 61.003.

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

23 (A) in the employment context, unreasonably
24 interferes with a person's work performance or creates an

1 intimidating, hostile, or offensive work environment; or

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

6 Sec. 51.282. POLICY ON SEXUAL HARASSMENT, SEXUAL ASSAULT,
7 DATING VIOLENCE, AND STALKING. (a) Each postsecondary educational
8 institution shall adopt a policy on sexual harassment, sexual
9 assault, dating violence, and stalking applicable to each student
10 enrolled at and each employee of the institution. The policy must:

11 (1) include:

12 (A) definitions of prohibited behavior;

13 (B) sanctions for violations;

14 (C) the protocol for reporting and responding to
15 reports of sexual harassment, sexual assault, dating violence, and
16 stalking;

17 (D) interim measures to protect victims of sexual
18 harassment, sexual assault, dating violence, or stalking during the
19 pendency of the institution's disciplinary process, including
20 protection from retaliation, and any other accommodations
21 available to those victims at the institution; and

22 (E) a statement regarding:

23 (i) the importance of a victim of sexual
24 harassment, sexual assault, dating violence, or stalking going to a
25 hospital for treatment and preservation of evidence, if applicable,
26 as soon as practicable after the incident;

27 (ii) the right of a victim of sexual

1 harassment, sexual assault, dating violence, or stalking to report
2 the incident to the institution and to receive a prompt and
3 equitable resolution of the report; and

4 (iii) the right of a victim of a crime to
5 choose whether to report the crime to law enforcement, to be
6 assisted by the institution in reporting the crime to law
7 enforcement, or to decline to report the crime to law enforcement;
8 and

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

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

15 (1) including the policy in the institution's student
16 handbook and personnel handbook; and

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

20 (c) Each postsecondary educational institution shall
21 require each entering freshman or undergraduate transfer student to
22 attend an orientation on the institution's sexual harassment,
23 sexual assault, dating violence, and stalking policy before or
24 during the first semester or term in which the student is enrolled
25 at the institution. The institution shall establish the format and
26 content of the orientation. The orientation:

27 (1) may be provided online; and

1 (2) must include the statements described by
2 Subsection (a)(1)(E).

3 (d) Each postsecondary educational institution shall
4 develop and implement a comprehensive prevention and outreach
5 program on sexual harassment, sexual assault, dating violence, and
6 stalking. The program must:

7 (1) address a range of strategies to prevent sexual
8 harassment, sexual assault, dating violence, and stalking,
9 including a victim empowerment program, a public awareness
10 campaign, primary prevention, bystander intervention, and risk
11 reduction; and

12 (2) include providing to students information
13 regarding the protocol for reporting incidents of sexual
14 harassment, sexual assault, dating violence, and stalking adopted
15 under Subsection (a), including the name, office location, and
16 contact information of the institution's Title IX coordinator, by:

17 (A) e-mailing the information to each student at
18 the beginning of each semester or other academic term; and

19 (B) including the information in the orientation
20 required under Subsection (c).

21 (e) As part of the protocol for responding to reports of
22 sexual harassment, sexual assault, dating violence, and stalking
23 adopted under Subsection (a), each postsecondary educational
24 institution shall:

25 (1) to the greatest extent practicable based on the
26 number of counselors employed by the institution, ensure that each
27 alleged victim or alleged perpetrator of an incident of sexual

1 harassment, sexual assault, dating violence, or stalking and any
2 other person who reports such an incident are offered counseling
3 provided by a counselor who does not provide counseling to any other
4 person involved in the incident; and

5 (2) notwithstanding any other law, allow an alleged
6 victim or alleged perpetrator of an incident of sexual harassment,
7 sexual assault, dating violence, or stalking to drop a course in
8 which both parties are enrolled without any academic penalty.

9 (f) Each biennium, each postsecondary educational
10 institution shall review the institution's sexual harassment,
11 sexual assault, dating violence, and stalking policy and, with
12 approval of the institution's governing board, revise the policy as
13 necessary.

14 Sec. 51.285. VICTIM REQUEST NOT TO INVESTIGATE. (a) If an
15 alleged victim of an incident of sexual harassment, sexual assault,
16 dating violence, or stalking reported to a postsecondary
17 educational institution requests the institution not to
18 investigate the alleged incident, the institution may investigate
19 the alleged incident in a manner that complies with the
20 confidentiality requirements under Section 51.291. In determining
21 whether to investigate the alleged incident, the institution shall
22 consider:

23 (1) the seriousness of the alleged incident;

24 (2) whether the institution has received other reports
25 of sexual harassment, sexual assault, dating violence, or stalking
26 committed by the alleged perpetrator or perpetrators;

27 (3) whether the alleged incident poses a risk of harm

1 to others; and

2 (4) any other factors the institution determines
3 relevant.

4 (b) If a postsecondary educational institution decides not
5 to investigate an alleged incident of sexual harassment, sexual
6 assault, dating violence, or stalking based on the alleged victim's
7 request not to investigate, the institution shall take any steps
8 the institution determines necessary to protect the health and
9 safety of the institution's community in relation to the alleged
10 incident.

11 (c) A postsecondary educational institution shall inform an
12 alleged victim of an incident of sexual harassment, sexual assault,
13 dating violence, or stalking who requests the institution not to
14 investigate the alleged incident of the institution's decision
15 whether to investigate the alleged incident.

16 Sec. 51.286. DISCIPLINARY PROCESS FOR CERTAIN VIOLATIONS.
17 A postsecondary educational institution that initiates a
18 disciplinary process concerning an allegation that a student
19 enrolled at the institution violated the institution's code of
20 conduct by committing sexual harassment, sexual assault, dating
21 violence, or stalking shall:

22 (1) provide to the student and the alleged victim a
23 prompt and equitable opportunity to present witnesses and other
24 evidence relevant to the alleged violation during the disciplinary
25 process;

26 (2) ensure that both the student and the alleged
27 victim have reasonable and equitable access to all evidence

1 relevant to the alleged violation in the institution's possession,
2 including any statements made by the alleged victim or by other
3 persons, information stored electronically, written or electronic
4 communications, social media posts, or physical evidence, redacted
5 as necessary to comply with any applicable federal or state law
6 regarding confidentiality; and

7 (3) take reasonable steps to protect the student and
8 the alleged victim from retaliation and harassment during the
9 pendency of the disciplinary process.

10 Sec. 51.287. STUDENT WITHDRAWAL OR GRADUATION PENDING
11 DISCIPLINARY CHARGES. (a) If a student withdraws or graduates from
12 a postsecondary educational institution pending a disciplinary
13 charge alleging that the student violated the institution's code of
14 conduct by committing sexual harassment, sexual assault, dating
15 violence, or stalking, the institution:

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

19 (2) shall expedite the institution's disciplinary
20 process as necessary to accommodate both the student's and the
21 alleged victim's interest in a speedy resolution.

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

1 stalking.

2 Sec. 51.288. TRAUMA-INFORMED INVESTIGATION TRAINING. Each
3 peace officer employed by a postsecondary educational institution
4 shall complete training on trauma-informed investigation into
5 allegations of sexual harassment, sexual assault, dating violence,
6 and stalking.

7 Sec. 51.289. MEMORANDA OF UNDERSTANDING REQUIRED. To
8 facilitate effective communication and coordination regarding
9 allegations of sexual harassment, sexual assault, dating violence,
10 and stalking at the institution, a postsecondary educational
11 institution shall enter into a memorandum of understanding with one
12 or more:

- 13 (1) local law enforcement agencies;
14 (2) sexual harassment, sexual assault, dating
15 violence, or stalking advocacy groups; and
16 (3) hospitals or other medical resource providers.

17 Sec. 51.290. RESPONSIBLE AND CONFIDENTIAL EMPLOYEE;
18 STUDENT ADVOCATE. (a) Each postsecondary educational institution
19 shall:

- 20 (1) designate:
21 (A) one or more employees to act as responsible
22 employees for purposes of Title IX of the Education Amendments of
23 1972 (20 U.S.C. Section 1681 et seq.); and

- 24 (B) one or more employees as persons to whom
25 students enrolled at the institution may speak confidentially
26 concerning sexual harassment, sexual assault, dating violence, and
27 stalking; and

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

4 (b) A postsecondary educational institution may designate
5 one or more students enrolled at the institution as student
6 advocates to whom other students enrolled at the institution may
7 speak confidentially concerning sexual harassment, sexual assault,
8 dating violence, and stalking. The institution shall notify each
9 student enrolled at the institution of the student advocates
10 designated under this subsection.

11 (c) A confidential employee designated under Subsection
12 (a)(1)(B) or a student advocate designated under Subsection (b) may
13 not disclose any communication made by a student to the employee or
14 advocate unless the student consents to the disclosure or the
15 employee or advocate is required to make the disclosure under state
16 or federal law.

17 Sec. 51.291. CONFIDENTIALITY. (a) The protections
18 provided by this section apply to:

19 (1) an alleged victim of an incident of sexual
20 harassment, sexual assault, dating violence, or stalking reported
21 to a postsecondary educational institution;

22 (2) a person who reports to a postsecondary
23 educational institution an incident of sexual harassment, sexual
24 assault, dating violence, or stalking, who sought guidance from the
25 institution concerning such an incident, or who participated in the
26 institution's investigation of such an incident; and

27 (3) a person who is alleged in a report made to a

1 postsecondary educational institution to have committed or
2 assisted in the commission of sexual harassment, sexual assault,
3 dating violence, or stalking if, after completing an investigation,
4 the institution determines the report to be unsubstantiated or
5 without merit.

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

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

10 (2) may be disclosed only to:

11 (A) the postsecondary educational institution to
12 which the report described by Subsection (a) is made as necessary to
13 conduct an investigation of the report;

14 (B) a law enforcement officer as necessary to
15 conduct a criminal investigation of the report described by
16 Subsection (a); or

17 (C) a health care provider in an emergency
18 situation, as determined necessary by the institution.

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

21 (d) Information regarding an incident of sexual harassment,
22 sexual assault, dating violence, or stalking disclosed to a health
23 care provider or other medical provider employed by a postsecondary
24 educational institution is confidential and may be shared by the
25 provider only with the victim's consent. The provider must provide
26 aggregate data or other nonidentifying information regarding those
27 incidents to the institution's Title IX coordinator.

1 Sec. 51.292. COMPLIANCE. (a) If the coordinating board
2 determines that a postsecondary educational institution is not in
3 substantial compliance with this subchapter, the coordinating
4 board may assess an administrative penalty against the institution
5 in an amount not to exceed \$2 million. In determining the amount of
6 the penalty, the coordinating board shall consider the nature of
7 the violation and the number of students enrolled at the
8 institution.

9 (b) If the coordinating board assesses an administrative
10 penalty against a postsecondary educational institution under
11 Subsection (a), the coordinating board shall provide to the
12 institution written notice of the coordinating board's reasons for
13 assessing the penalty.

14 (c) A postsecondary educational institution assessed an
15 administrative penalty under Subsection (a) may appeal the penalty
16 in the manner provided by Chapter 2001, Government Code.

17 (d) A postsecondary educational institution may not pay an
18 administrative penalty assessed under Subsection (a) using state or
19 federal money.

20 (e) An administrative penalty collected under this section
21 shall be deposited to the credit of the sexual assault program fund
22 established under Section 420.008, Government Code.

23 (f) The coordinating board shall annually submit to the
24 governor, the lieutenant governor, the speaker of the house of
25 representatives, and the standing legislative committees with
26 primary jurisdiction over legislation concerning sexual assault at
27 postsecondary educational institutions a report regarding

1 compliance with this subchapter, including a summary of the
2 postsecondary educational institutions found not to be in
3 substantial compliance as provided by this section and any
4 penalties assessed under this section during the preceding year.

5 Sec. 51.293. EQUAL ACCESS. In implementing the
6 requirements under this subchapter, a postsecondary educational
7 institution shall, to the greatest extent practicable, ensure equal
8 access for students enrolled at or employees of the institution who
9 are persons with disabilities. The institution shall make
10 reasonable efforts to consult with a disability services office of
11 the institution, advocacy groups for people with disabilities, and
12 other relevant stakeholders to assist the institution with
13 complying with the institution's duties under this section.

14 Sec. 51.294. ADVISORY COMMITTEE. (a) The commissioner of
15 higher education shall establish an advisory committee to:

16 (1) make recommendations to the coordinating board
17 regarding rules for adoption under Section 51.295; and

18 (2) develop recommended training for responsible and
19 confidential employees designated under Section 51.290 and for
20 Title IX coordinators at postsecondary educational institutions.

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

25 (c) The advisory committee shall annually review and, if
26 necessary, update the training recommended under Subsection
27 (a)(2).

1 Sec. 51.295. RULES. (a) The coordinating board shall adopt
2 rules as necessary to implement and enforce this subchapter,
3 including rules that:

4 (1) define relevant terms; and

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

9 (b) In adopting rules under this section, the coordinating
10 board shall consult with relevant stakeholders.

11 SECTION 2. Sections 51.9365(b), (c), and (d), Education
12 Code, are transferred to Subchapter E-3, Chapter 51, Education
13 Code, as added by this Act, redesignated as Section 51.283,
14 Education Code, and amended to read as follows:

15 Sec. 51.283. ELECTRONIC REPORTING OPTION. (a) [~~(b)~~] Each
16 postsecondary educational institution shall provide an option for a
17 student enrolled at or an employee of the institution to
18 electronically report to the institution an allegation of sexual
19 harassment, sexual assault, dating violence, or stalking committed
20 against or witnessed by the student or employee, regardless of the
21 location at which the alleged offense occurred.

22 (b) [~~(c)~~] The electronic reporting option provided under
23 Subsection (a) [~~(b)~~] must:

24 (1) enable a student or employee to report the alleged
25 offense anonymously; and

26 (2) be easily accessible through a clearly
27 identifiable link on the postsecondary educational institution's

1 Internet website home page.

2 (c) [~~(d)~~] A protocol for reporting sexual assault adopted
3 under Section 51.282 [~~51.9363~~] must comply with this section.

4 SECTION 3. Sections 51.9366(b), (c), (d), (e), and (f),
5 Education Code, are transferred to Subchapter E-3, Chapter 51,
6 Education Code, as added by this Act, redesignated as Section
7 51.284, Education Code, and amended to read as follows:

8 Sec. 51.284. AMNESTY FOR STUDENTS REPORTING CERTAIN

9 INCIDENTS. (a) [~~(b)~~] A postsecondary educational institution may
10 not take any disciplinary action against a student enrolled at the
11 institution who in good faith reports to the institution being the
12 victim of, or a witness to, an incident of sexual harassment, sexual
13 assault, dating violence, or stalking for a violation by the
14 student of the institution's code of conduct occurring at or near
15 the time of the incident, regardless of the location at which the
16 incident occurred or the outcome of the institution's disciplinary
17 process regarding the incident, if any.

18 (b) [~~(c)~~] A postsecondary educational institution may
19 investigate to determine whether a report of an incident of sexual
20 harassment, sexual assault, dating violence, or stalking was made
21 in good faith.

22 (c) [~~(d)~~] A determination that a student is entitled to
23 amnesty under Subsection (a) [~~(b)~~] is final and may not be revoked.

24 (d) [~~(e)~~] Subsection (a) [~~(b)~~] does not apply to a student
25 who reports the student's own commission or assistance in the
26 commission of sexual harassment, sexual assault, dating violence,
27 or stalking.

1 (e) [~~(f)~~] This section may not be construed to limit a
2 postsecondary educational institution's ability to provide amnesty
3 from application of the institution's policies in circumstances not
4 described by Subsection (a) [~~(b)~~].

5 SECTION 4. The following provisions of the Education Code
6 are repealed:

- 7 (1) Section 51.9363;
- 8 (2) the heading to Sections 51.9365 and 51.9366;
- 9 (3) Sections 51.9365(a) and (e); and
- 10 (4) Sections 51.9366(a) and (g).

11 SECTION 5. The changes in law made by this Act apply
12 beginning August 1, 2020.

13 SECTION 6. Not later than September 1, 2021, the Texas
14 Higher Education Coordinating Board shall submit its initial report
15 required under Section 51.292(f), Education Code, as added by this
16 Act.

17 SECTION 7. This Act takes effect September 1, 2019.

President of the Senate

Speaker of the House

I certify that H.B. No. 1735 was passed by the House on April 17, 2019, by the following vote: Yeas 113, Nays 29, 2 present, not voting; that the House refused to concur in Senate amendments to H.B. No. 1735 on May 23, 2019, and requested the appointment of a conference committee to consider the differences between the two houses; and that the House adopted the conference committee report on H.B. No. 1735 on May 26, 2019, by the following vote: Yeas 109, Nays 30, 1 present, not voting.

Chief Clerk of the House

H.B. No. 1735

I certify that H.B. No. 1735 was passed by the Senate, with amendments, on May 16, 2019, by the following vote: Yeas 31, Nays 0; at the request of the House, the Senate appointed a conference committee to consider the differences between the two houses; and that the Senate adopted the conference committee report on H.B. No. 1735 on May 26, 2019, by the following vote: Yeas 31, Nays 0.

Secretary of the Senate

APPROVED: _____

Date

Governor