

By: Howard

H.B. No. 1735

A BILL TO BE ENTITLED

AN ACT

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

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

SECTION 1. Chapter 51, Education Code, is amended by adding Subchapter E-3 to read as follows:

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

Sec. 51.281. 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) "Institution of higher education" and "private or independent institution of higher education" have the meanings assigned by Section 61.003.

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

(5) "Sexual assault" means sexual contact or

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

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

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

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

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

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

22 (1) include:

23 (A) definitions of prohibited behavior;

24 (B) sanctions for violations;

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

1           (D) interim measures to protect victims of sexual  
2 harassment, sexual assault, dating violence, or stalking during the  
3 pendency of the institution's disciplinary process, including  
4 protection from retaliation, and any other accommodations  
5 available to those victims at the institution; and

6           (E) a statement regarding:

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

11           (ii) the right of a victim of sexual  
12 harassment, sexual assault, dating violence, or stalking to report  
13 the incident to the institution and to receive a prompt and  
14 equitable resolution of the report; and

15           (iii) the right of a victim of a crime to  
16 choose whether to report the crime to law enforcement, to be  
17 assisted by the institution in reporting the crime to law  
18 enforcement, or to decline to report the crime to law enforcement;  
19 and

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

22           (b) Each postsecondary educational institution shall make  
23 the institution's sexual harassment, sexual assault, dating  
24 violence, and stalking policy available to students, faculty, and  
25 staff members by:

26           (1) including the policy in the institution's student  
27 handbook and personnel handbook; and

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

4           (c) Each postsecondary educational institution shall  
5 require each entering freshman or undergraduate transfer student to  
6 attend an orientation on the institution's sexual harassment,  
7 sexual assault, dating violence, and stalking policy before or  
8 during the first semester or term in which the student is enrolled  
9 at the institution. The institution shall establish the format and  
10 content of the orientation. The orientation:

11                   (1) may be provided online; and

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

14           (d) Each postsecondary educational institution shall  
15 develop and implement a comprehensive prevention and outreach  
16 program on sexual harassment, sexual assault, dating violence, and  
17 stalking. The program must:

18                   (1) address a range of strategies to prevent sexual  
19 harassment, sexual assault, dating violence, and stalking,  
20 including a victim empowerment program, a public awareness  
21 campaign, primary prevention, bystander intervention, and risk  
22 reduction; and

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

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

3           (B) including the information in the orientation  
4 required under Subsection (c).

5           (e) As part of the protocol for responding to reports of  
6 sexual harassment, sexual assault, dating violence, and stalking  
7 adopted under Subsection (a), each postsecondary educational  
8 institution shall:

9           (1) to the greatest extent practicable based on the  
10 number of counselors employed by the institution, ensure that each  
11 alleged victim or alleged perpetrator of an incident of sexual  
12 harassment, sexual assault, dating violence, or stalking and any  
13 other person who reports such an incident are offered counseling  
14 provided by a counselor who does not provide counseling to any other  
15 person involved in the incident; and

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

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

25           Sec. 51.285. VICTIM REQUEST NOT TO INVESTIGATE. (a) If an  
26 alleged victim of an incident of sexual harassment, sexual assault,  
27 dating violence, or stalking reported to a postsecondary

1 educational institution requests the institution not to  
2 investigate the alleged incident, the institution may investigate  
3 the alleged incident in a manner that complies with the  
4 confidentiality requirements under Section 51.291. In determining  
5 whether to investigate the alleged incident, the institution shall  
6 consider:

7 (1) the seriousness of the alleged incident;

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

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

13 (4) any other factors the institution determines  
14 relevant.

15 (b) If a postsecondary educational institution decides not  
16 to investigate an alleged incident of sexual harassment, sexual  
17 assault, dating violence, or stalking based on the alleged victim's  
18 request not to investigate, the institution shall take any steps  
19 the institution determines necessary to protect the health and  
20 safety of the institution's community in relation to the alleged  
21 incident.

22 (c) A postsecondary educational institution shall inform an  
23 alleged victim of an incident of sexual harassment, sexual assault,  
24 dating violence, or stalking who requests the institution not to  
25 investigate the alleged incident of the institution's decision  
26 whether to investigate the alleged incident.

27 Sec. 51.286. DISCIPLINARY PROCESS FOR CERTAIN VIOLATIONS.

1 A postsecondary educational institution that initiates a  
2 disciplinary process concerning an allegation that a student  
3 enrolled at the institution violated the institution's code of  
4 conduct by committing sexual harassment, sexual assault, dating  
5 violence, or stalking shall:

6 (1) provide to the student and the alleged victim a  
7 prompt and equitable opportunity to present witnesses and other  
8 evidence relevant to the alleged violation during the disciplinary  
9 process;

10 (2) ensure that both the student and the alleged  
11 victim have reasonable and equitable access to all evidence  
12 relevant to the alleged violation in the institution's possession,  
13 including any statements made by the alleged victim or by other  
14 persons, information stored electronically, written or electronic  
15 communications, social media posts, or physical evidence, redacted  
16 as necessary to comply with any applicable federal or state law  
17 regarding confidentiality; and

18 (3) take reasonable steps to protect the student and  
19 the alleged victim from retaliation and harassment during the  
20 pendency of the disciplinary process.

21 Sec. 51.287. STUDENT WITHDRAWAL OR GRADUATION PENDING  
22 DISCIPLINARY CHARGES. (a) If a student withdraws or graduates from  
23 a postsecondary educational institution pending a disciplinary  
24 charge alleging that the student violated the institution's code of  
25 conduct by committing sexual harassment, sexual assault, dating  
26 violence, or stalking, the institution:

27 (1) may not end the disciplinary process or issue a

1 transcript to the student until the institution makes a final  
2 determination of responsibility; and

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

6 (b) On request by another postsecondary educational  
7 institution, a postsecondary educational institution shall provide  
8 to the requesting institution information relating to a  
9 determination by the institution that a student enrolled at the  
10 institution violated the institution's code of conduct by  
11 committing sexual harassment, sexual assault, dating violence, or  
12 stalking.

13 Sec. 51.288. TRAUMA-INFORMED INVESTIGATION TRAINING. Each  
14 peace officer employed by a postsecondary educational institution  
15 shall complete training on trauma-informed investigation into  
16 allegations of sexual harassment, sexual assault, dating violence,  
17 and stalking.

18 Sec. 51.289. MEMORANDA OF UNDERSTANDING REQUIRED. To  
19 facilitate effective communication and coordination regarding  
20 allegations of sexual harassment, sexual assault, dating violence,  
21 and stalking at the institution, a postsecondary educational  
22 institution shall enter into a memorandum of understanding with one  
23 or more:

24 (1) local law enforcement agencies;

25 (2) sexual harassment, sexual assault, dating  
26 violence, or stalking advocacy groups; and

27 (3) hospitals or other medical resource providers.



1        Sec. 51.290. RESPONSIBLE OR CONFIDENTIAL EMPLOYEE. (a)

2 Each postsecondary educational institution shall:

3            (1) designate:

4                    (A) one or more employees to act as responsible  
5 employees for purposes of Title IX of the Education Amendments of  
6 1972 (20 U.S.C. Section 1681 et seq.); and

7                    (B) one or more employees as persons to whom  
8 students enrolled at the institution may speak confidentially  
9 concerning sexual harassment, sexual assault, dating violence, and  
10 stalking; and

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

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

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

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

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

1 institution's investigation of such an incident; and

2 (3) a person who is alleged in a report made to a  
3 postsecondary educational institution to have committed or  
4 assisted in the commission of sexual harassment, sexual assault,  
5 dating violence, or stalking if, after completing an investigation,  
6 the institution determines the report to be unsubstantiated or  
7 without merit.

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

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

12 (2) may be disclosed only to:

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

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

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

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

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

1 aggregate data or other nonidentifying information regarding those  
2 incidents to the institution's Title IX coordinator.

3 Sec. 51.292. COMPLIANCE. (a) If the coordinating board  
4 determines that an institution of higher education is not in  
5 substantial compliance with this subchapter, the coordinating  
6 board shall report that determination to the legislature for  
7 consideration of whether to reduce the allocation of state funding  
8 to the institution for the following academic year.

9 (b) If the coordinating board determines that a private or  
10 independent institution of higher education is not in substantial  
11 compliance with this subchapter, the coordinating board may assess  
12 an administrative penalty against the institution in an amount not  
13 to exceed the amount of funding received by students enrolled at the  
14 institution from tuition equalization grants under Subchapter F,  
15 Chapter 61, for the preceding academic year or \$2 million,  
16 whichever is greater. In determining the amount of the penalty, the  
17 coordinating board shall consider the nature of the violation and  
18 the number of students enrolled at the institution.

19 (c) If the coordinating board takes an action under  
20 Subsection (a) or (b) against a postsecondary educational  
21 institution, the coordinating board shall provide to the  
22 institution written notice of the coordinating board's reasons for  
23 taking the action.

24 (d) A postsecondary educational institution against which  
25 the coordinating board takes an action under Subsection (a) or (b),  
26 as applicable, may appeal the action taken in the manner provided by  
27 Chapter 2001, Government Code.

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

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

7       Sec. 51.293. ADVISORY COMMITTEE. (a) The commissioner of  
8 higher education shall establish an advisory committee to:

9           (1) make recommendations to the coordinating board  
10 regarding rules for adoption under Section 51.294; and

11           (2) develop recommended training for responsible and  
12 confidential employees designated under Section 51.290 and for  
13 Title IX coordinators at postsecondary educational institutions.

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

18       (c) The advisory committee shall annually review and, if  
19 necessary, update the training recommended under Subsection  
20 (a)(2).

21       Sec. 51.294. RULES. (a) The coordinating board shall adopt  
22 rules as necessary to implement and enforce this subchapter,  
23 including rules that:

24           (1) define relevant terms; and

25           (2) ensure implementation of this subchapter in a  
26 manner that complies with federal law regarding confidentiality of  
27 student educational information, including the Family Educational

1 Rights and Privacy Act of 1974 (20 U.S.C. Section 1232g).

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

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

8 Sec. 51.283. ELECTRONIC REPORTING OPTION. (a) [~~(b)~~] Each  
9 postsecondary educational institution shall provide an option for a  
10 student enrolled at or an employee of the institution to  
11 electronically report to the institution an allegation of sexual  
12 harassment, sexual assault, dating violence, or stalking committed  
13 against or witnessed by the student or employee, regardless of the  
14 location at which the alleged offense occurred.

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

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

19 (2) be easily accessible through a clearly  
20 identifiable link on the postsecondary educational institution's  
21 Internet website home page.

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

24 SECTION 3. Sections 51.9366(b), (c), (d), (e), and (f),  
25 Education Code, are transferred to Subchapter E-3, Chapter 51,  
26 Education Code, as added by this Act, redesignated as Section  
27 51.284, Education Code, and amended to read as follows:

Sec. 51.284. AMNESTY FOR STUDENTS REPORTING CERTAIN

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

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

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

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

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

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

- (1) Section [51.9363](#);

1           (2) the heading to Sections 51.9365 and 51.9366;

2           (3) Sections 51.9365(a) and (e); and

3           (4) Sections 51.9366(a) and (g).

4           SECTION 5. The changes in law made by this Act apply  
5 beginning January 1, 2020.

6           SECTION 6. This Act takes effect immediately if it receives  
7 a vote of two-thirds of all the members elected to each house, as  
8 provided by Section 39, Article III, Texas Constitution. If this  
9 Act does not receive the vote necessary for immediate effect, this  
10 Act takes effect September 1, 2019.