

By: Huffman, et al.

S.B. No. 212

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," "sexual assault," and "stalking" mean dating violence, sexual assault, or stalking, as applicable, that an institution of higher education is required to report under the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act (20 U.S.C. Section 1092(f)).

(3) "Employee of a postsecondary educational institution" does not include a student enrolled at the institution.

(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

1 Section 61.003.

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

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

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

11 Sec. 51.252. REPORTING REQUIRED FOR CERTAIN INCIDENTS.

12 (a) An employee of a postsecondary educational institution who, in
13 the course and scope of employment, witnesses or receives
14 information regarding the occurrence of an incident that the
15 employee reasonably believes constitutes sexual harassment, sexual
16 assault, dating violence, or stalking and is alleged to have been
17 committed by or against a person who was a student enrolled at or an
18 employee of the institution at the time of the incident shall
19 promptly report the incident to the institution's Title IX
20 coordinator or deputy Title IX coordinator.

21 (b) Except as provided by Subsection (c), the report must
22 include all information concerning the incident known to the
23 reporting person that is relevant to the investigation and, if
24 applicable, redress of the incident, including whether an alleged
25 victim has expressed a desire for confidentiality in reporting the
26 incident.

27 (c) An employee of a postsecondary educational institution

1 designated by the institution as a person with whom students may
2 speak confidentially concerning sexual harassment, sexual assault,
3 dating violence, or stalking or who receives information regarding
4 such an incident under circumstances that render the employee's
5 communications confidential or privileged under other law shall, in
6 making a report under this section, state only the type of incident
7 reported and may not include any information that would violate a
8 student's expectation of privacy. This subsection does not affect
9 the employee's duty to report an incident under any other law.

10 (d) Notwithstanding Subsection (a), a person is not
11 required to make a report under this section concerning:

12 (1) an incident in which the person was a victim of
13 sexual harassment, sexual assault, dating violence, or stalking; or

14 (2) an incident of which the person received
15 information due to a disclosure made at a sexual harassment, sexual
16 assault, dating violence, or stalking public awareness event
17 sponsored by a postsecondary educational institution or by a
18 student organization affiliated with the institution.

19 Sec. 51.253. ADMINISTRATIVE REPORTING REQUIREMENTS.

20 (a) Not less than once every three months, the Title IX
21 coordinator of a postsecondary educational institution shall
22 submit to the institution's chief executive officer a written
23 report on the reports received under Section 51.252, including
24 information regarding:

25 (1) the investigation of those reports;

26 (2) the disposition, if any, of any disciplinary
27 processes arising from those reports; and

1 (3) the reports for which the institution determined
2 not to initiate a disciplinary process, if any.

3 (b) The Title IX coordinator or deputy Title IX coordinator
4 of a postsecondary educational institution shall immediately
5 report to the institution's chief executive officer an incident
6 reported to the coordinator under Section 51.252 if the coordinator
7 has cause to believe that the safety of any person is in imminent
8 danger as a result of the incident.

9 (c) Subject to Subsection (d), at least once during each
10 fall or spring semester, the chief executive officer of a
11 postsecondary educational institution shall submit to the
12 institution's governing body and post on the institution's Internet
13 website a report concerning the reports received under Section
14 51.252. The report:

15 (1) may not identify any person; and

16 (2) must include:

17 (A) the number of reports received under Section
18 51.252;

19 (B) the number of investigations conducted as a
20 result of those reports;

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

23 (D) the number of those reports for which the
24 institution determined not to initiate a disciplinary process, if
25 any; and

26 (E) any disciplinary actions taken under Section
27 51.255.

1 (d) If for any semester a postsecondary educational
2 institution has fewer than 1,500 enrolled students, the chief
3 executive officer of the institution shall submit and post a report
4 required under Subsection (c) for that semester only if more than
5 five reports were received under Section 51.252 during that
6 semester.

7 Sec. 51.254. IMMUNITIES. (a) A person acting in good
8 faith who reports or assists in the investigation of a report of an
9 incident described by Section 51.252(a) or who testifies or
10 otherwise participates in a disciplinary process or judicial
11 proceeding arising from a report of such an incident:

12 (1) is immune from civil liability, and from criminal
13 liability for offenses punishable by fine only, that might
14 otherwise be incurred or imposed as a result of those actions; and

15 (2) may not be subjected to any disciplinary action by
16 the postsecondary educational institution at which the person is
17 enrolled or employed for any violation by the person of the
18 institution's code of conduct reasonably related to the incident
19 for which suspension or expulsion from the institution is not a
20 possible punishment.

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

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

25 (a) A person commits an offense if the person:

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 (b) An offense under Subsection (a) 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 (c) A postsecondary educational institution shall terminate
9 the employment of an employee whom the institution determines in
10 accordance with the institution's disciplinary procedure to have
11 committed an offense under Subsection (a).

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

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

17 (2) may be disclosed only to:

18 (A) persons employed by or under contract with
19 the postsecondary educational institution to which the report is
20 made who are necessary to conduct an investigation of the report or
21 any related hearings;

22 (B) a law enforcement officer as necessary to
23 conduct a criminal investigation of the report;

24 (C) the person or persons alleged to have
25 perpetrated the incident, to the extent required by other law; or

26 (D) potential witnesses to the incident as
27 necessary to conduct an investigation of the report.

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

3 (c) Nothing in this section may be construed as prohibiting
4 a victim from making a report to a law enforcement agency using the
5 pseudonym form described by Article 57.02, Code of Criminal
6 Procedure.

7 Sec. 51.257. RETALIATION PROHIBITED. (a) A postsecondary
8 educational institution may not discipline or otherwise
9 discriminate against an employee who in good faith:

10 (1) makes a report as required by Section 51.252; or
11 (2) cooperates with an investigation, a disciplinary
12 process, or a judicial proceeding relating to a report made by the
13 employee as required by Section 51.252.

14 (b) Subsection (a) does not apply to an employee who:

15 (1) reports an incident described by Section 51.252(a)
16 perpetrated by the employee; or

17 (2) cooperates with an investigation, a disciplinary
18 process, or a judicial proceeding relating to an allegation that
19 the employee perpetrated an incident described by Section
20 51.252(a).

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

25 (b) If the coordinating board determines that a
26 postsecondary educational institution is not in substantial
27 compliance with this subchapter, the coordinating board may assess

1 an administrative penalty against the institution in an amount not
2 to exceed \$2 million. In determining the amount of the penalty, the
3 coordinating board shall consider the nature of the violation and
4 the number of students enrolled at the institution.

5 (c) If the coordinating board assesses an administrative
6 penalty against a postsecondary educational institution under
7 Subsection (b), the coordinating board shall provide to the
8 institution written notice of the coordinating board's reasons for
9 assessing the penalty.

10 (d) A postsecondary educational institution assessed an
11 administrative penalty under Subsection (b) may appeal the penalty
12 in the manner provided by Chapter 2001, Government Code.

13 (e) A postsecondary educational institution may not pay an
14 administrative penalty assessed under Subsection (b) using state or
15 federal money.

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

19 (g) The coordinating board shall annually submit to the
20 governor, the lieutenant governor, the speaker of the house of
21 representatives, and the standing legislative committees with
22 primary jurisdiction over legislation concerning sexual assault at
23 postsecondary educational institutions a report regarding
24 compliance with this subchapter, including a summary of the
25 postsecondary educational institutions found not to be in
26 substantial compliance as provided by this section and any
27 penalties assessed under this section during the calendar year

1 preceding the date of the report.

2 Sec. 51.259. RULES. The coordinating board shall adopt
3 rules as necessary to implement and enforce this subchapter,
4 including rules that ensure implementation of this subchapter in a
5 manner that complies with federal law regarding confidentiality of
6 student educational information, including the Family Educational
7 Rights and Privacy Act of 1974 (20 U.S.C. Section 1232g). In
8 adopting those rules, the coordinating board shall use the
9 negotiated rulemaking procedures under Chapter 2008, Government
10 Code, and consult with relevant stakeholders.

11 Sec. 51.260. TRAINING ADVISORY COMMITTEE. (a) The
12 commissioner of higher education shall establish an advisory
13 committee to develop recommended training for persons required to
14 report certain incidents under Section 51.252 and for Title IX
15 coordinators and deputy Title IX coordinators at postsecondary
16 educational institutions.

17 (b) The advisory committee consists of nine members
18 appointed by the commissioner of higher education as follows:

19 (1) eight members who are a chief executive officer of
20 a postsecondary educational institution or a representative
21 designated by that officer; and

22 (2) one member who is a representative of an advocacy
23 organization for victims of sexual assault or family violence.

24 (c) Not later than December 1, 2019, the advisory committee
25 shall develop the recommended training under Subsection (a).

26 (d) This section expires September 1, 2020.

27 SECTION 2. Section 61.0331, Education Code, is amended to

1 read as follows:

2 Sec. 61.0331. NEGOTIATED RULEMAKING REQUIRED. The board
3 shall engage institutions of higher education in a negotiated
4 rulemaking process as described by Chapter 2008, Government Code,
5 when adopting a policy, procedure, or rule relating to:

6 (1) an admission policy regarding the common admission
7 application under Section 51.762, a uniform admission policy under
8 Section 51.807, graduate and professional admissions under Section
9 51.843, or the transfer of credit under Section 61.827;

10 (2) the allocation or distribution of funds, including
11 financial aid or other trusteed funds under Section 61.07761;

12 (3) the reevaluation of data requests under Section
13 51.406; ~~[or]~~

14 (4) compliance monitoring under Section 61.035; or

15 (5) the reporting of certain incidents of sexual
16 harassment, sexual assault, dating violence, or stalking under
17 Subchapter E-2, Chapter 51.

18 SECTION 3. Section 420.008(b), Government Code, is amended
19 to read as follows:

20 (b) The fund consists of:

21 (1) fees collected under:

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

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

25 (C) [~~(3)~~] Subchapter B, Chapter 102, Business &
26 Commerce Code, and deposited under Section 102.054 of that code;
27 and

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

3 SECTION 4. Sections 51.251-51.259, Education Code, as added
4 by this Act, and Section 61.0331, Education Code, as amended by this
5 Act, apply beginning January 1, 2020.

6 SECTION 5. Not later than January 1, 2021, the Texas Higher
7 Education Coordinating Board shall submit its initial report
8 required under Section 51.258(g), Education Code, as added by this
9 Act.

10 SECTION 6. (a) Except as provided by Subsections (b) and
11 (c) of this section, this Act takes effect September 1, 2019.

12 (b) Section 51.260, Education Code, as added by this Act,
13 takes effect immediately if this Act receives a vote of two-thirds
14 of all the members elected to each house, as provided by Section 39,
15 Article III, Texas Constitution. If this Act does not receive the
16 vote necessary for immediate effect, Section 51.260, Education
17 Code, as added by this Act, takes effect September 1, 2019.

18 (c) Section 51.255(a), Education Code, as added by this Act,
19 takes effect January 1, 2020.