

By: Huffman

S.B. No. 212

A BILL TO BE ENTITLED

AN ACT

1  
2 relating to a reporting requirement for certain incidents of sexual  
3 harassment, sexual assault, dating violence, or stalking at certain  
4 public and private institutions of higher education; creating a  
5 criminal offense; authorizing administrative penalties.

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

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

9 SUBCHAPTER E-2. REPORTING INCIDENTS OF SEXUAL HARASSMENT, SEXUAL  
10 ASSAULT, DATING VIOLENCE, AND STALKING

11 Sec. 51.251. DEFINITIONS. In this subchapter:

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

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

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

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

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

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

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

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

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

18           Sec. 51.252. REPORTING REQUIRED FOR CERTAIN INCIDENTS. (a)  
19 An employee of a postsecondary educational institution who  
20 witnesses or receives information regarding the occurrence of an  
21 incident of sexual harassment, sexual assault, dating violence, or  
22 stalking alleged to have been committed by or against a person who  
23 was a student enrolled at or an employee of the institution at the  
24 time of the incident shall promptly report the incident to the  
25 institution's Title IX coordinator or deputy Title IX coordinator.

26           (b) Except as provided by Subsection (c), the report must  
27 include all information concerning the incident known to the

1 reporting person that is relevant to the investigation and, if  
2 applicable, redress of the incident, including whether an alleged  
3 victim has expressed a desire for confidentiality or anonymity in  
4 reporting the incident.

5 (c) An employee of a postsecondary educational institution  
6 designated by the institution as a person with whom students may  
7 speak confidentially concerning sexual harassment, sexual assault,  
8 dating violence, or stalking shall, in making a report under this  
9 section, state only the type of incident reported and may not  
10 include any information that would violate a student's expectation  
11 of privacy. This subsection does not affect the employee's duty to  
12 report an incident under any other law.

13 (d) Notwithstanding Subsection (a), a person is not  
14 required to make a report under this section concerning an incident  
15 in which the person was a victim of sexual harassment, sexual  
16 assault, dating violence, or stalking.

17 Sec. 51.253. ADMINISTRATIVE REPORTING REQUIREMENTS. (a)  
18 Not less than once per month, the Title IX coordinator of a  
19 postsecondary educational institution shall submit to the  
20 institution's chief executive officer a written report on the  
21 reports received under Section 51.252, including information  
22 regarding:

23 (1) the investigation of those reports;

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

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

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

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

12               (1) may not identify any person; and

13               (2) must include:

14                       (A) the number of reports received under Section  
15 51.252;

16                       (B) the number of investigations conducted as a  
17 result of those reports;

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

20                       (D) the number of those reports for which the  
21 institution determined not to initiate a disciplinary process, if  
22 any; and

23                       (E) any disciplinary actions taken under Section  
24 51.255.

25       Sec. 51.254. IMMUNITIES. (a) A person acting in good faith  
26 who reports or assists in the investigation of a report of an  
27 incident described by Section 51.252(a) or who testifies or

1 otherwise participates in a disciplinary process or judicial  
2 proceeding arising from a report of such an incident:

3 (1) is immune from civil or criminal liability that  
4 might otherwise be incurred or imposed as a result of those actions;  
5 and

6 (2) may not be subjected to any disciplinary action by  
7 the postsecondary educational institution at which the person is  
8 enrolled or employed for any violation by the person of the  
9 institution's code of conduct occurring in relation to the  
10 incident.

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

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

15 (a) A postsecondary educational institution shall terminate the  
16 employment of an employee who:

17 (1) is required to make a report under Section 51.252  
18 and fails to promptly make the report without good cause, as  
19 determined by the institution; or

20 (2) with the intent to harm or deceive, knowingly  
21 makes a report under Section 51.252 that is false.

22 (b) A postsecondary educational institution shall terminate  
23 the employment of the institution's Title IX coordinator, deputy  
24 Title IX coordinator, or chief executive officer if the coordinator  
25 or officer fails to make a report as required under Section 51.253.

26 (c) A person commits an offense if the person:

27 (1) is required to make a report under Section 51.252

1 and knowingly fails to make the report; or

2 (2) with the intent to harm or deceive, knowingly  
3 makes a report under Section 51.252 that is false.

4 (d) An offense under Subsection (c) is a Class B  
5 misdemeanor, except that the offense is a Class A misdemeanor if it  
6 is shown on the trial of the offense that the actor intended to  
7 conceal the incident that the actor was required to report under  
8 Section 51.252.

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

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

14 (2) may be disclosed only to:

15 (A) the postsecondary educational institution to  
16 which the report is made as necessary to conduct an investigation of  
17 the report; or

18 (B) a law enforcement officer as necessary to  
19 conduct a criminal investigation of the report.

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

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

25 (1) makes a report as required by Section 51.252; or

26 (2) cooperates with an investigation, a disciplinary  
27 process, or a judicial proceeding relating to a report made by the

1 employee as required by Section 51.252.

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

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

5 (2) cooperates with an investigation, a disciplinary  
6 process, or a judicial proceeding relating to an allegation that  
7 the employee perpetrated an incident described by Section  
8 51.252(a).

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

13 (b) If the coordinating board determines that a  
14 postsecondary educational institution is not in substantial  
15 compliance with this subchapter, the coordinating board may assess  
16 an administrative penalty against the institution in an amount not  
17 to exceed \$2 million. In determining the amount of the penalty, the  
18 coordinating board shall consider the nature of the violation and  
19 the number of students enrolled at the institution.

20 (c) If the coordinating board assesses an administrative  
21 penalty against a postsecondary educational institution under  
22 Subsection (b), the coordinating board shall provide to the  
23 institution written notice of the coordinating board's reasons for  
24 assessing the penalty.

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

1       (e) A postsecondary educational institution may not pay an  
2 administrative penalty assessed under Subsection (b) using state or  
3 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       (g) The coordinating board shall annually submit to the  
8 governor, the lieutenant governor, the speaker of the house of  
9 representatives, and the standing legislative committees with  
10 primary jurisdiction over legislation concerning sexual assault at  
11 postsecondary educational institutions a report regarding  
12 compliance with this subchapter, including a summary of the  
13 postsecondary educational institutions found not to be in  
14 substantial compliance as provided by this section and any  
15 penalties assessed under this section during the calendar year  
16 preceding the date of the report.

17       Sec. 51.259. RULES. The coordinating board shall adopt  
18 rules as necessary to implement and enforce this subchapter,  
19 including rules that ensure implementation of this subchapter in a  
20 manner that complies with federal law regarding confidentiality of  
21 student educational information, including the Family Educational  
22 Rights and Privacy Act of 1974 (20 U.S.C. Section 1232g). In  
23 adopting those rules, the coordinating board shall use the  
24 negotiated rulemaking procedures under Chapter 2008, Government  
25 Code, and consult with relevant stakeholders.

26       Sec. 51.260. TRAINING ADVISORY COMMITTEE. (a) The  
27 commissioner of higher education shall establish an advisory



1 committee to develop recommended training for persons required to  
2 report certain incidents under Section 51.252 and for Title IX  
3 coordinators and deputy Title IX coordinators at postsecondary  
4 educational institutions.

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

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

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

12 SECTION 2. Section 61.0331, Education Code, is amended to  
13 read as follows:

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

18 (1) an admission policy regarding the common admission  
19 application under Section 51.762, a uniform admission policy under  
20 Section 51.807, graduate and professional admissions under Section  
21 51.843, or the transfer of credit under Section 61.827;

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

24 (3) the reevaluation of data requests under Section  
25 51.406; ~~or~~

26 (4) compliance monitoring under Section 61.035; or

27 (5) the reporting of certain incidents of sexual

1 harassment, sexual assault, dating violence, or stalking under  
2 Subchapter E-2, Chapter 51.

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

5 (b) The fund consists of:

6 (1) fees collected under:

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

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

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

13 (2) administrative penalties collected under Section  
14 51.258, Education Code.

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

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

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

24 (b) Section 51.260, Education Code, as added by this Act,  
25 takes effect immediately if this Act receives a vote of two-thirds  
26 of all the members elected to each house, as provided by Section 39,  
27 Article III, Texas Constitution. If this Act does not receive the

1 vote necessary for immediate effect, Section 51.260, Education  
2 Code, as added by this Act, takes effect September 1, 2019.

3 (c) Section 51.255(c), Education Code, as added by this Act,  
4 takes effect January 1, 2020.