

1-1 By: Huffman S.B. No. 212
1-2 (In the Senate - Filed November 30, 2018; February 1, 2019,
1-3 read first time and referred to Committee on State Affairs;
1-4 March 7, 2019, reported adversely, with favorable Committee
1-5 Substitute by the following vote: Yeas 9, Nays 0; March 7, 2019,
1-6 sent to printer.)

1-7 COMMITTEE VOTE

	Yea	Nay	Absent	PNV
1-8				
1-9	Huffman	X		
1-10	Hughes	X		
1-11	Birdwell	X		
1-12	Creighton	X		
1-13	Fallon	X		
1-14	Hall	X		
1-15	Lucio	X		
1-16	Nelson	X		
1-17	Zaffirini	X		

1-18 COMMITTEE SUBSTITUTE FOR S.B. No. 212 By: Huffman

1-19 A BILL TO BE ENTITLED
1-20 AN ACT

1-21 relating to a reporting requirement for certain incidents of sexual
1-22 harassment, sexual assault, dating violence, or stalking at certain
1-23 public and private institutions of higher education; creating a
1-24 criminal offense; authorizing administrative penalties.

1-25 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-26 SECTION 1. Chapter 51, Education Code, is amended by adding
1-27 Subchapter E-2 to read as follows:

1-28 SUBCHAPTER E-2. REPORTING INCIDENTS OF SEXUAL HARASSMENT, SEXUAL
1-29 ASSAULT, DATING VIOLENCE, AND STALKING

1-30 Sec. 51.251. DEFINITIONS. In this subchapter:

1-31 (1) "Coordinating board" means the Texas Higher
1-32 Education Coordinating Board.

1-33 (2) "Dating violence," "sexual assault," and
1-34 "stalking" mean dating violence, sexual assault, or stalking, as
1-35 applicable, that an institution of higher education is required to
1-36 report under the Jeanne Clery Disclosure of Campus Security Policy
1-37 and Campus Crime Statistics Act (20 U.S.C. Section 1092(f)).

1-38 (3) "Employee of a postsecondary educational
1-39 institution" does not include a student enrolled at the
1-40 institution.

1-41 (4) "Postsecondary educational institution" means an
1-42 institution of higher education or a private or independent
1-43 institution of higher education, as those terms are defined by
1-44 Section 61.003.

1-45 (5) "Sexual harassment" means unwelcome, sex-based
1-46 verbal or physical conduct that:

1-47 (A) in the employment context, unreasonably
1-48 interferes with a person's work performance or creates an
1-49 intimidating, hostile, or offensive work environment; or

1-50 (B) in the education context, is sufficiently
1-51 severe, persistent, or pervasive that the conduct interferes with a
1-52 student's ability to participate in or benefit from educational
1-53 programs or activities at a postsecondary educational institution.

1-54 Sec. 51.252. REPORTING REQUIRED FOR CERTAIN INCIDENTS.

1-55 (a) An employee of a postsecondary educational institution who, in
1-56 the course and scope of employment, witnesses or receives
1-57 information regarding the occurrence of an incident that the
1-58 employee reasonably believes constitutes sexual harassment, sexual
1-59 assault, dating violence, or stalking and is alleged to have been
1-60 committed by or against a person who was a student enrolled at or an

2-1 employee of the institution at the time of the incident shall
 2-2 promptly report the incident to the institution's Title IX
 2-3 coordinator or deputy Title IX coordinator.

2-4 (b) Except as provided by Subsection (c), the report must
 2-5 include all information concerning the incident known to the
 2-6 reporting person that is relevant to the investigation and, if
 2-7 applicable, redress of the incident, including whether an alleged
 2-8 victim has expressed a desire for confidentiality in reporting the
 2-9 incident.

2-10 (c) An employee of a postsecondary educational institution
 2-11 designated by the institution as a person with whom students may
 2-12 speak confidentially concerning sexual harassment, sexual assault,
 2-13 dating violence, or stalking or who receives information regarding
 2-14 such an incident under circumstances that render the employee's
 2-15 communications confidential or privileged under other law shall, in
 2-16 making a report under this section, state only the type of incident
 2-17 reported and may not include any information that would violate a
 2-18 student's expectation of privacy. This subsection does not affect
 2-19 the employee's duty to report an incident under any other law.

2-20 (d) Notwithstanding Subsection (a), a person is not
 2-21 required to make a report under this section concerning:

2-22 (1) an incident in which the person was a victim of
 2-23 sexual harassment, sexual assault, dating violence, or stalking; or

2-24 (2) an incident of which the person received
 2-25 information due to a disclosure made at a sexual harassment, sexual
 2-26 assault, dating violence, or stalking public awareness event
 2-27 sponsored by a postsecondary educational institution or by a
 2-28 student organization affiliated with the institution.

2-29 Sec. 51.253. ADMINISTRATIVE REPORTING REQUIREMENTS.

2-30 (a) Not less than once every three months, the Title IX
 2-31 coordinator of a postsecondary educational institution shall
 2-32 submit to the institution's chief executive officer a written
 2-33 report on the reports received under Section 51.252, including
 2-34 information regarding:

2-35 (1) the investigation of those reports;

2-36 (2) the disposition, if any, of any disciplinary
 2-37 processes arising from those reports; and

2-38 (3) the reports for which the institution determined
 2-39 not to initiate a disciplinary process, if any.

2-40 (b) The Title IX coordinator or deputy Title IX coordinator
 2-41 of a postsecondary educational institution shall immediately
 2-42 report to the institution's chief executive officer an incident
 2-43 reported to the coordinator under Section 51.252 if the coordinator
 2-44 has cause to believe that the safety of any person is in imminent
 2-45 danger as a result of the incident.

2-46 (c) Subject to Subsection (d), at least once during each
 2-47 fall or spring semester, the chief executive officer of a
 2-48 postsecondary educational institution shall submit to the
 2-49 institution's governing body and post on the institution's Internet
 2-50 website a report concerning the reports received under Section
 2-51 51.252. The report:

2-52 (1) may not identify any person; and

2-53 (2) must include:

2-54 (A) the number of reports received under Section
 2-55 51.252;

2-56 (B) the number of investigations conducted as a
 2-57 result of those reports;

2-58 (C) the disposition, if any, of any disciplinary
 2-59 processes arising from those reports;

2-60 (D) the number of those reports for which the
 2-61 institution determined not to initiate a disciplinary process, if
 2-62 any; and

2-63 (E) any disciplinary actions taken under Section
 2-64 51.255.

2-65 (d) If for any semester a postsecondary educational
 2-66 institution has fewer than 1,500 enrolled students, the chief
 2-67 executive officer of the institution shall submit and post a report
 2-68 required under Subsection (c) for that semester only if more than
 2-69 five reports were received under Section 51.252 during that

3-1 semester.

3-2 Sec. 51.254. IMMUNITIES. (a) A person acting in good
 3-3 faith who reports or assists in the investigation of a report of an
 3-4 incident described by Section 51.252(a) or who testifies or
 3-5 otherwise participates in a disciplinary process or judicial
 3-6 proceeding arising from a report of such an incident:

3-7 (1) is immune from civil liability, and from criminal
 3-8 liability for offenses punishable by fine only, that might
 3-9 otherwise be incurred or imposed as a result of those actions; and

3-10 (2) may not be subjected to any disciplinary action by
 3-11 the postsecondary educational institution at which the person is
 3-12 enrolled or employed for any violation by the person of the
 3-13 institution's code of conduct reasonably related to the incident
 3-14 for which suspension or expulsion from the institution is not a
 3-15 possible punishment.

3-16 (b) Subsection (a) does not apply to a person who
 3-17 perpetrates or assists in the perpetration of the incident reported
 3-18 under Section 51.252.

3-19 Sec. 51.255. FAILURE TO REPORT OR FALSE REPORT; OFFENSES.

3-20 (a) A person commits an offense if the person:

3-21 (1) is required to make a report under Section 51.252
 3-22 and knowingly fails to make the report; or

3-23 (2) with the intent to harm or deceive, knowingly
 3-24 makes a report under Section 51.252 that is false.

3-25 (b) An offense under Subsection (a) is a Class B
 3-26 misdemeanor, except that the offense is a Class A misdemeanor if it
 3-27 is shown on the trial of the offense that the actor intended to
 3-28 conceal the incident that the actor was required to report under
 3-29 Section 51.252.

3-30 (c) A postsecondary educational institution shall terminate
 3-31 the employment of an employee whom the institution determines in
 3-32 accordance with the institution's disciplinary procedure to have
 3-33 committed an offense under Subsection (a).

3-34 Sec. 51.256. CONFIDENTIALITY. (a) Unless waived in
 3-35 writing by the alleged victim, the identity of an alleged victim of
 3-36 an incident reported under Section 51.252:

3-37 (1) is confidential and not subject to disclosure
 3-38 under Chapter 552, Government Code; and

3-39 (2) may be disclosed only to:

3-40 (A) employees of the postsecondary educational
 3-41 institution to which the report is made who are necessary to conduct
 3-42 an investigation of the report or any related hearings; or

3-43 (B) a law enforcement officer as necessary to
 3-44 conduct a criminal investigation of the report.

3-45 (b) A disclosure under Subsection (a) is not a voluntary
 3-46 disclosure for purposes of Section 552.007, Government Code.

3-47 (c) Nothing in this section may be construed as prohibiting
 3-48 a victim from making a report to a law enforcement agency using the
 3-49 pseudonym form described by Article 57.02, Code of Criminal
 3-50 Procedure.

3-51 Sec. 51.257. RETALIATION PROHIBITED. (a) A postsecondary
 3-52 educational institution may not discipline or otherwise
 3-53 discriminate against an employee who in good faith:

3-54 (1) makes a report as required by Section 51.252; or

3-55 (2) cooperates with an investigation, a disciplinary
 3-56 process, or a judicial proceeding relating to a report made by the
 3-57 employee as required by Section 51.252.

3-58 (b) Subsection (a) does not apply to an employee who:

3-59 (1) reports an incident described by Section 51.252(a)
 3-60 perpetrated by the employee; or

3-61 (2) cooperates with an investigation, a disciplinary
 3-62 process, or a judicial proceeding relating to an allegation that
 3-63 the employee perpetrated an incident described by Section
 3-64 51.252(a).

3-65 Sec. 51.258. COMPLIANCE. (a) The chief executive officer
 3-66 of each postsecondary educational institution shall annually
 3-67 certify in writing to the coordinating board that the institution
 3-68 is in substantial compliance with this subchapter.

3-69 (b) If the coordinating board determines that a

4-1 postsecondary educational institution is not in substantial
 4-2 compliance with this subchapter, the coordinating board may assess
 4-3 an administrative penalty against the institution in an amount not
 4-4 to exceed \$2 million. In determining the amount of the penalty, the
 4-5 coordinating board shall consider the nature of the violation and
 4-6 the number of students enrolled at the institution.

4-7 (c) If the coordinating board assesses an administrative
 4-8 penalty against a postsecondary educational institution under
 4-9 Subsection (b), the coordinating board shall provide to the
 4-10 institution written notice of the coordinating board's reasons for
 4-11 assessing the penalty.

4-12 (d) A postsecondary educational institution assessed an
 4-13 administrative penalty under Subsection (b) may appeal the penalty
 4-14 in the manner provided by Chapter 2001, Government Code.

4-15 (e) A postsecondary educational institution may not pay an
 4-16 administrative penalty assessed under Subsection (b) using state or
 4-17 federal money.

4-18 (f) An administrative penalty collected under this section
 4-19 shall be deposited to the credit of the sexual assault program fund
 4-20 established under Section 420.008, Government Code.

4-21 (g) The coordinating board shall annually submit to the
 4-22 governor, the lieutenant governor, the speaker of the house of
 4-23 representatives, and the standing legislative committees with
 4-24 primary jurisdiction over legislation concerning sexual assault at
 4-25 postsecondary educational institutions a report regarding
 4-26 compliance with this subchapter, including a summary of the
 4-27 postsecondary educational institutions found not to be in
 4-28 substantial compliance as provided by this section and any
 4-29 penalties assessed under this section during the calendar year
 4-30 preceding the date of the report.

4-31 Sec. 51.259. RULES. The coordinating board shall adopt
 4-32 rules as necessary to implement and enforce this subchapter,
 4-33 including rules that ensure implementation of this subchapter in a
 4-34 manner that complies with federal law regarding confidentiality of
 4-35 student educational information, including the Family Educational
 4-36 Rights and Privacy Act of 1974 (20 U.S.C. Section 1232g). In
 4-37 adopting those rules, the coordinating board shall use the
 4-38 negotiated rulemaking procedures under Chapter 2008, Government
 4-39 Code, and consult with relevant stakeholders.

4-40 Sec. 51.260. TRAINING ADVISORY COMMITTEE. (a) The
 4-41 commissioner of higher education shall establish an advisory
 4-42 committee to develop recommended training for persons required to
 4-43 report certain incidents under Section 51.252 and for Title IX
 4-44 coordinators and deputy Title IX coordinators at postsecondary
 4-45 educational institutions.

4-46 (b) The advisory committee consists of nine members
 4-47 appointed by the commissioner of higher education as follows:

4-48 (1) eight members who are a chief executive officer of
 4-49 a postsecondary educational institution or a representative
 4-50 designated by that officer; and

4-51 (2) one member who is a representative of an advocacy
 4-52 organization for victims of sexual assault or family violence.

4-53 (c) Not later than December 1, 2019, the advisory committee
 4-54 shall develop the recommended training under Subsection (a).

4-55 (d) This section expires September 1, 2020.

4-56 SECTION 2. Section 61.0331, Education Code, is amended to
 4-57 read as follows:

4-58 Sec. 61.0331. NEGOTIATED RULEMAKING REQUIRED. The board
 4-59 shall engage institutions of higher education in a negotiated
 4-60 rulemaking process as described by Chapter 2008, Government Code,
 4-61 when adopting a policy, procedure, or rule relating to:

4-62 (1) an admission policy regarding the common admission
 4-63 application under Section 51.762, a uniform admission policy under
 4-64 Section 51.807, graduate and professional admissions under Section
 4-65 51.843, or the transfer of credit under Section 61.827;

4-66 (2) the allocation or distribution of funds, including
 4-67 financial aid or other trusteed funds under Section 61.07761;

4-68 (3) the reevaluation of data requests under Section
 4-69 51.406; [~~or~~]

5-1 (4) compliance monitoring under Section 61.035; or
5-2 (5) the reporting of certain incidents of sexual
5-3 harassment, sexual assault, dating violence, or stalking under
5-4 Subchapter E-2, Chapter 51.

5-5 SECTION 3. Section 420.008(b), Government Code, is amended
5-6 to read as follows:

5-7 (b) The fund consists of:

5-8 (1) fees collected under:

5-9 (A) [~~1~~] Article 42A.653(a), Code of Criminal
5-10 Procedure;

5-11 (B) [~~2~~] Section 508.189, Government Code; and

5-12 (C) [~~3~~] Subchapter B, Chapter 102, Business &
5-13 Commerce Code, and deposited under Section 102.054 of that code;
5-14 and

5-15 (2) administrative penalties collected under Section
5-16 51.258, Education Code.

5-17 SECTION 4. Sections 51.251-51.259, Education Code, as added
5-18 by this Act, and Section 61.0331, Education Code, as amended by this
5-19 Act, apply beginning January 1, 2020.

5-20 SECTION 5. Not later than January 1, 2021, the Texas Higher
5-21 Education Coordinating Board shall submit its initial report
5-22 required under Section 51.258(g), Education Code, as added by this
5-23 Act.

5-24 SECTION 6. (a) Except as provided by Subsections (b) and
5-25 (c) of this section, this Act takes effect September 1, 2019.

5-26 (b) Section 51.260, Education Code, as added by this Act,
5-27 takes effect immediately if this Act receives a vote of two-thirds
5-28 of all the members elected to each house, as provided by Section 39,
5-29 Article III, Texas Constitution. If this Act does not receive the
5-30 vote necessary for immediate effect, Section 51.260, Education
5-31 Code, as added by this Act, takes effect September 1, 2019.

5-32 (c) Section 51.255(a), Education Code, as added by this Act,
5-33 takes effect January 1, 2020.

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5-34