

# SENATE AMENDMENTS

2<sup>nd</sup> Printing

By: Howard, Stucky, Button, Lozano, et al.

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

(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 harassment" means unwelcome, sex-based

1 verbal or physical conduct that:

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

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

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

14 (1) include:

15 (A) definitions of prohibited behavior;

16 (B) sanctions for violations;

17 (C) the protocol for reporting and responding to  
18 reports of sexual harassment, sexual assault, dating violence, and  
19 stalking;

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

25 (E) a statement regarding:

26 (i) the importance of a victim of sexual  
27 harassment, sexual assault, dating violence, or stalking going to a

1 hospital for treatment and preservation of evidence, if applicable,  
2 as soon as practicable after the incident;

3 (ii) the right of a victim of sexual  
4 harassment, sexual assault, dating violence, or stalking to report  
5 the incident to the institution and to receive a prompt and  
6 equitable resolution of the report; and

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

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

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

18 (1) including the policy in the institution's student  
19 handbook and personnel handbook; and

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

23 (c) Each postsecondary educational institution shall  
24 require each entering freshman or undergraduate transfer student to  
25 attend an orientation on the institution's sexual harassment,  
26 sexual assault, dating violence, and stalking policy before or  
27 during the first semester or term in which the student is enrolled

1 at the institution. The institution shall establish the format and  
2 content of the orientation. The orientation:

3 (1) may be provided online; and

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

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

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

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

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

22 (B) including the information in the orientation  
23 required under Subsection (c).

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

1           (1) to the greatest extent practicable based on the  
2 number of counselors employed by the institution, ensure that each  
3 alleged victim or alleged perpetrator of an incident of sexual  
4 harassment, sexual assault, dating violence, or stalking and any  
5 other person who reports such an incident are offered counseling  
6 provided by a counselor who does not provide counseling to any other  
7 person involved in the incident; and

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

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

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

26           (1) the seriousness of the alleged incident;

27           (2) whether the institution has received other reports

1 of sexual harassment, sexual assault, dating violence, or stalking  
2 committed by the alleged perpetrator or perpetrators;

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

5 (4) any other factors the institution determines  
6 relevant.

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

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

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

25 (1) provide to the student and the alleged victim a  
26 prompt and equitable opportunity to present witnesses and other  
27 evidence relevant to the alleged violation during the disciplinary

1 process;

2 (2) ensure that both the student and the alleged  
3 victim have reasonable and equitable access to all evidence  
4 relevant to the alleged violation in the institution's possession,  
5 including any statements made by the alleged victim or by other  
6 persons, information stored electronically, written or electronic  
7 communications, social media posts, or physical evidence, redacted  
8 as necessary to comply with any applicable federal or state law  
9 regarding confidentiality; and

10 (3) take reasonable steps to protect the student and  
11 the alleged victim from retaliation and harassment during the  
12 pendency of the disciplinary process.

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

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

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

25 (b) On request by another postsecondary educational  
26 institution, a postsecondary educational institution shall provide  
27 to the requesting institution information relating to a

1 determination by the institution that a student enrolled at the  
2 institution violated the institution's code of conduct by  
3 committing sexual harassment, sexual assault, dating violence, or  
4 stalking.

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

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

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

20 Sec. 51.290. RESPONSIBLE AND CONFIDENTIAL EMPLOYEE;  
21 STUDENT ADVOCATE. (a) Each postsecondary educational institution  
22 shall:

- 23 (1) designate:  
24 (A) one or more employees to act as responsible  
25 employees for purposes of Title IX of the Education Amendments of  
26 1972 (20 U.S.C. Section 1681 et seq.); and  
27 (B) one or more employees as persons to whom



1 students enrolled at the institution may speak confidentially  
2 concerning sexual harassment, sexual assault, dating violence, and  
3 stalking; and

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

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

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

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

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

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

1 institution concerning such an incident, or who participated in the  
2 institution's investigation of such an incident; and

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

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

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

13 (2) may be disclosed only to:

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

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

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

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

24 (d) Information regarding an incident of sexual harassment,  
25 sexual assault, dating violence, or stalking disclosed to a health  
26 care provider or other medical provider employed by a postsecondary  
27 educational institution is confidential and may be shared by the

1 provider only with the victim's consent. The provider must provide  
2 aggregate data or other nonidentifying information regarding those  
3 incidents to the institution's Title IX coordinator.

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

10 (b) If the coordinating board determines that a private or  
11 independent institution of higher education is not in substantial  
12 compliance with this subchapter, the coordinating board may assess  
13 an administrative penalty against the institution in an amount not  
14 to exceed the amount of funding received by students enrolled at the  
15 institution from tuition equalization grants under Subchapter F,  
16 Chapter 61, for the preceding academic year or \$2 million,  
17 whichever is greater. 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 takes an action under  
21 Subsection (a) or (b) against a postsecondary educational  
22 institution, the coordinating board shall provide to the  
23 institution written notice of the coordinating board's reasons for  
24 taking the action.

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

1 Chapter 2001, Government Code.

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

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

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

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

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

21 (2) develop recommended training for responsible and  
22 confidential employees designated under Section 51.290 and for  
23 Title IX coordinators at postsecondary educational institutions.

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

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

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

7            (1) define relevant terms; and

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

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

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

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

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

27            (1) enable a student or employee to report the alleged

1 offense anonymously; and

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

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

7 SECTION 3. Sections 51.9366(b), (c), (d), (e), and (f),  
8 Education Code, are transferred to Subchapter E-3, Chapter 51,  
9 Education Code, as added by this Act, redesignated as Section  
10 51.284, Education Code, and amended to read as follows:

11 Sec. 51.284. AMNESTY FOR STUDENTS REPORTING CERTAIN  
12 INCIDENTS. (a) [~~(b)~~] A postsecondary educational institution may  
13 not take any disciplinary action against a student enrolled at the  
14 institution who in good faith reports to the institution being the  
15 victim of, or a witness to, an incident of sexual harassment, sexual  
16 assault, dating violence, or stalking for a violation by the  
17 student of the institution's code of conduct occurring at or near  
18 the time of the incident, regardless of the location at which the  
19 incident occurred or the outcome of the institution's disciplinary  
20 process regarding the incident, if any.

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

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

27 (d) [~~(e)~~] Subsection (a) [~~(b)~~] does not apply to a student

1 who reports the student's own commission or assistance in the  
2 commission of sexual harassment, sexual assault, dating violence,  
3 or stalking.

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

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

- 10 (1) Section 51.9363;
- 11 (2) the heading to Sections 51.9365 and 51.9366;
- 12 (3) Sections 51.9365(a) and (e); and
- 13 (4) Sections 51.9366(a) and (g).

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

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

**ADOPTED**

MAY 16 2019

*Leta Spaul*  
Secretary of the Senate

By: \_\_\_\_\_

H.B. No. 1735

Substitute the following for \_\_\_\_B. No. \_\_\_\_\_:

By: *Thurston*

C.S.H.B. No. 1735

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18 institution of higher education or a private or independent  
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22 verbal or physical conduct that:

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24 interferes with a person's work performance or creates an



1 intimidating, hostile, or offensive work environment; or

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25 hospital for treatment and preservation of evidence, if applicable,  
26 as soon as practicable after the incident;

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2 the incident to the institution and to receive a prompt and  
3 equitable resolution of the report; and

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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;  
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16 handbook and personnel handbook; and

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18 solely to the policy that is easily accessible through a clearly  
19 identifiable link on the institution's Internet website home page.

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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  
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13 regarding the protocol for reporting incidents of sexual  
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16 contact information of the institution's Title IX coordinator, by:

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18 the beginning of each semester or other academic term; and

19           (B) including the information in the orientation  
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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  
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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  
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26 committed by the alleged perpetrator or perpetrators;

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1 to others; and

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

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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.

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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) [~~e~~] 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.

ADOPTED

MAY 16 2019

*Leta Spaul*  
Secretary of the Senate

FLOOR AMENDMENT NO. 1

BY: *Jeff Hoffman*

1 Amend C.S.H.B. 1735 (senate committee report) as follows:

2 (1) In the recital to SECTION 1 of the bill (page 1, line  
3 26), strike "Subchapter E-3" and substitute "Subchapters E-2 and  
4 E-3".

5 (2) On page 1, between lines 26 and 27, insert the  
6 following:

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

9 Sec. 51.251. DEFINITIONS. In this subchapter:

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

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

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

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

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

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

29 (B) in the education context, is sufficiently

1 severe, persistent, or pervasive that the conduct interferes with a  
2 student's ability to participate in or benefit from educational  
3 programs or activities at a postsecondary educational institution.

4 Sec. 51.252. REPORTING REQUIRED FOR CERTAIN INCIDENTS.

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

14 (b) Except as provided by Subsection (c), the report must  
15 include all information concerning the incident known to the  
16 reporting person that is relevant to the investigation and, if  
17 applicable, redress of the incident, including whether an alleged  
18 victim has expressed a desire for confidentiality in reporting the  
19 incident.

20 (c) An employee of a postsecondary educational institution  
21 designated by the institution as a person with whom students may  
22 speak confidentially concerning sexual harassment, sexual assault,  
23 dating violence, or stalking or who receives information regarding  
24 such an incident under circumstances that render the employee's  
25 communications confidential or privileged under other law shall, in  
26 making a report under this section, state only the type of incident  
27 reported and may not include any information that would violate a  
28 student's expectation of privacy. This subsection does not affect  
29 the employee's duty to report an incident under any other law.

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



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

3           (2) an incident of which the person received  
4 information due to a disclosure made at a sexual harassment, sexual  
5 assault, dating violence, or stalking public awareness event  
6 sponsored by a postsecondary educational institution or by a  
7 student organization affiliated with the institution.

8           Sec. 51.253. ADMINISTRATIVE REPORTING REQUIREMENTS.

9           (a) Not less than once every three months, the Title IX  
10 coordinator of a postsecondary educational institution shall  
11 submit to the institution's chief executive officer a written  
12 report on the reports received under Section 51.252, including  
13 information regarding:

14                   (1) the investigation of those reports;

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

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

19           (b) The Title IX coordinator or deputy Title IX coordinator  
20 of a postsecondary educational institution shall immediately  
21 report to the institution's chief executive officer an incident  
22 reported to the coordinator under Section 51.252 if the coordinator  
23 has cause to believe that the safety of any person is in imminent  
24 danger as a result of the incident.

25           (c) Subject to Subsection (d), at least once during each  
26 fall or spring semester, the chief executive officer of a  
27 postsecondary educational institution shall submit to the  
28 institution's governing body and post on the institution's Internet  
29 website a report concerning the reports received under Section  
30 51.252. The report:

31                   (1) may not identify any person; and

1           (2) must include:

2                   (A) the number of reports received under Section  
3 51.252;

4                   (B) the number of investigations conducted as a  
5 result of those reports;

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

8                   (D) the number of those reports for which the  
9 institution determined not to initiate a disciplinary process, if  
10 any; and

11                   (E) any disciplinary actions taken under Section  
12 51.255.

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

19           Sec. 51.254. IMMUNITIES. (a) A person acting in good  
20 faith who reports or assists in the investigation of a report of an  
21 incident described by Section 51.252(a) or who testifies or  
22 otherwise participates in a disciplinary process or judicial  
23 proceeding arising from a report of such an incident:

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

27                   (2) may not be subjected to any disciplinary action by  
28 the postsecondary educational institution at which the person is  
29 enrolled or employed for any violation by the person of the  
30 institution's code of conduct reasonably related to the incident  
31 for which suspension or expulsion from the institution is not a

1 possible punishment.

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

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

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

7 (1) is required to make a report under Section 51.252  
8 and knowingly fails to make the report; or

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

11 (b) An offense under Subsection (a) is a Class B  
12 misdemeanor, except that the offense is a Class A misdemeanor if it  
13 is shown on the trial of the offense that the actor intended to  
14 conceal the incident that the actor was required to report under  
15 Section 51.252.

16 (c) A postsecondary educational institution shall terminate  
17 the employment of an employee whom the institution determines in  
18 accordance with the institution's disciplinary procedure to have  
19 committed an offense under Subsection (a).

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

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

25 (2) may be disclosed only to:

26 (A) persons employed by or under contract with  
27 the postsecondary educational institution to which the report is  
28 made who are necessary to conduct an investigation of the report or  
29 any related hearings;

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

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

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

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

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

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

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

15                 (2) cooperates with an investigation, a disciplinary  
16 process, or a judicial proceeding relating to a report made by the  
17 employee as required by Section 51.252.

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

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

21                 (2) cooperates with an investigation, a disciplinary  
22 process, or a judicial proceeding relating to an allegation that  
23 the employee perpetrated an incident described by Section  
24 51.252(a).

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

29           (b) If the coordinating board determines that a  
30 postsecondary educational institution is not in substantial  
31 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  
28 preceding the date of the report.

29 Sec. 51.259. RULES. The coordinating board shall adopt  
30 rules as necessary to implement and enforce this subchapter,  
31 including rules that ensure implementation of this subchapter in a

1 manner that complies with federal law regarding confidentiality of  
2 student educational information, including the Family Educational  
3 Rights and Privacy Act of 1974 (20 U.S.C. Section 1232g). In  
4 adopting those rules, the coordinating board shall use the  
5 negotiated rulemaking procedures under Chapter 2008, Government  
6 Code, and consult with relevant stakeholders.

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

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

15 (1) eight members who are a chief executive officer of  
16 a postsecondary educational institution or a representative  
17 designated by that officer; and

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

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

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

23 (3) Add the following appropriately numbered SECTIONS to  
24 the bill:

25 SECTION \_\_\_\_\_. Section 420.008(b), Government Code, is  
26 amended to read as follows:

27 (b) The fund consists of:

28 (1) fees collected under:

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

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

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

4                   (2) administrative penalties collected under Section  
5 51.258 or 51.292, Education Code.

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

10           (4) In SECTION 5 of the bill, adding transition language  
11 (page 6, line 69), strike "The" and substitute "(a) Except as  
12 provided by Subsection (b) of this section, the".

13           (5) On page 7, between lines 1 and 2, insert the following:

14           (b) Sections 51.251-51.259, Education Code, as added by  
15 this Act, apply beginning January 1, 2020.

16           (6) Strike SECTION 7 of the bill, providing an effective  
17 date for the bill (page 7, line 6) and substitute the following  
18 appropriately numbered SECTION:

19           SECTION \_\_\_\_\_. (a) Except as provided by Subsections (b) and  
20 (c) of this section, this Act takes effect September 1, 2019.

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

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

29           (7) Renumber SECTIONS of the bill accordingly.

**LEGISLATIVE BUDGET BOARD**  
**Austin, Texas**

**FISCAL NOTE, 86TH LEGISLATIVE REGULAR SESSION**

**May 17, 2019**

**TO:** Honorable Dennis Bonnen, Speaker of the House, House of Representatives

**FROM:** John McGeady, Assistant Director    Sarah Keyton, Assistant Director  
Legislative Budget Board

**IN RE: HB1735** by Howard (Relating to sexual harassment, sexual assault, dating violence, and stalking at public and private postsecondary educational institutions; providing an administrative penalty.), **As Passed 2nd House**

<p><b>No significant fiscal implication to the State is anticipated.</b></p>
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The bill would require public and private postsecondary educational institutions to adopt a policy on campus sexual harassment, sexual assault, dating violence and stalking. Under provisions of the bill, each peace officer employed by a postsecondary educational institution must complete training on trauma-informed investigation into allegations of sexual harassment, sexual assault, dating violence, and stalking. The bill would require each postsecondary educational institution to designate a Title IX Coordinator. Under provisions of the bill, as part of the protocol for responding to reports of sexual harassment, sexual assault, dating violence, and stalking, each institution shall, to the greatest extent practicable based on the number of counselors employed by the institution, offer counseling provide by a counselor who does not provide counseling to any other person involved in the incident. The bill creates two misdemeanor offenses for failing to report certain incidents. No significant impact to state correctional agencies is anticipated from these provisions of the bill.

The bill would require an employee of a postsecondary education institution who, in the course and scope of employment, witnesses or receives information regarding the occurrence of an incident that the employee reasonably believes constitutes sexual harassment, sexual assault, dating violence, or stalking and is alleged to have been committed by or against a person who was a student enrolled at or an employee of the institution at the time of the incident must report the incident to the institution's Title IX or deputy Title IX coordinator. Under provisions of the bill, the institution must designate an employee with whom students may speak confidentially without violating a student's expectation of privacy.

The bill would authorize the Higher Education Coordinating Board to assess an administrative penalty of up to \$2.0 million against an institution that failed to substantially comply with provisions of the bill. Under provisions of the bill, a postsecondary educational institution may not pay an administrative penalty using state or federal money. The bill would require the commissioner of higher education to establish an advisory committee.

The bill includes provisions regarding the termination of employees, who were required to report incidents and failed to do so, and for employees that made false reports regarding incidents.



Failure to make a report or intentionally making a false report would be a Class B misdemeanor. Such an offense would be a Class A misdemeanor if it was shown at trial that the employee knowingly intended to conceal the incident.

This analysis assumes that any costs for institutions of higher education and the Higher Education Coordinating Board to implement the provisions of the bill could be absorbed within current resources. The bill creates two misdemeanor offenses for failing to report certain incidents. This analysis assumes the provisions of the bill addressing sanctions for criminal offenses would not result in a significant impact on state correctional agencies.

The legislation would do one or more of the following: create or recreate a dedicated account in the General Revenue Fund, create or recreate a special or trust fund either with or outside of the Treasury, or create a dedicated revenue source. The fund, account, or revenue dedication included in this bill would be subject to funds consolidation review by the current Legislature.

### **Local Government Impact**

A Class B misdemeanor is punishable by a fine of not more than \$2,000, confinement in jail for a term not to exceed 180 days, or both. A Class A misdemeanor is punishable by a fine of not more than \$4,000, confinement in jail for a term not to exceed one year, or both. Costs associated with enforcement, prosecution and confinement could likely be absorbed within existing resources. Revenue gain from fines imposed and collected is not anticipated to have a significant fiscal implication.

**Source Agencies:** 710 Texas A&M University System Administrative and General Offices, 768 Texas Tech University System Administration, 769 University of North Texas System Administration, 783 University of Houston System Administration, 985 Tyler Junior College, 720 The University of Texas System Administration, 758 Texas State University System, 781 Higher Education Coordinating Board, 996 Lone Star College System

**LBB Staff:** WP, JGAn, DEH, GO, AF, JPo

**LEGISLATIVE BUDGET BOARD**  
**Austin, Texas**

**FISCAL NOTE, 86TH LEGISLATIVE REGULAR SESSION**

**May 10, 2019**

**TO:** Honorable Brandon Creighton, Chair, Senate Committee on Higher Education

**FROM:** John McGeady, Assistant Director    Sarah Keyton, Assistant Director  
Legislative Budget Board

**IN RE:** **HB1735** by Howard (relating to sexual harassment, sexual assault, dating violence, and stalking at public and private postsecondary educational institutions; providing an administrative penalty.), **Committee Report 2nd House, Substituted**

<b>No significant fiscal implication to the State is anticipated.</b>
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The bill would require public and private postsecondary educational institutions to adopt a policy on campus sexual harassment, sexual assault, dating violence and stalking. Under provisions of the bill, each peace officer employed by a postsecondary educational institution must complete training on trauma-informed investigation into allegations of sexual harassment, sexual assault, dating violence, and stalking. The bill would require each postsecondary educational institution to designate a Title IX Coordinator. Under provisions of the bill, as part of the protocol for responding to reports of sexual harassment, sexual assault, dating violence, and stalking, each institution shall, to the greatest extent practicable based on the number of counselors employed by the institution, offer counseling provide by a counselor who does not provide counseling to any other person involved in the incident.

The bill would authorize the Higher Education Coordinating Board to assess an administrative penalty of up to \$2.0 million against an institution that failed to substantially comply with provisions of the bill. Under provisions of the bill, a postsecondary educational institution may not pay an administrative penalty using state or federal money. The bill would require the commissioner of higher education to establish an advisory committee.

Based on an analysis of responses from institutions of higher education and the Higher Education Coordinating Board, it is assumed duties and responsibilities associated with implementing provisions of the bill could be accomplished utilizing existing resources

**Local Government Impact**

No significant fiscal implication to units of local government is anticipated.

**Source Agencies:**    710 Texas A&M University System Administrative and General Offices, 768 Texas Tech University System Administration, 769 University of North Texas System Administration, 783 University of Houston System Administration, 985 Tyler Junior College, 720 The University of Texas System Administration, 758 Texas State University System, 781 Higher

Education Coordinating Board, 996 Lone Star College System

**LBB Staff:** WP, GO, JGAn, DEH

**LEGISLATIVE BUDGET BOARD**  
**Austin, Texas**

**FISCAL NOTE, 86TH LEGISLATIVE REGULAR SESSION**

**April 30, 2019**

**TO:** Honorable Brandon Creighton, Chair, Senate Committee on Higher Education

**FROM:** John McGeady, Assistant Director    Sarah Keyton, Assistant Director  
Legislative Budget Board

**IN RE: HB1735** by Howard (Relating to sexual harassment, sexual assault, dating violence, and stalking at public and private postsecondary educational institutions; providing an administrative penalty.), **As Engrossed**

<p><b>No significant fiscal implication to the State is anticipated.</b></p>
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The bill would require public and private postsecondary educational institutions to adopt a policy on campus sexual harassment, sexual assault, dating violence and stalking. Under provisions of the bill, each peace officer employed by a postsecondary educational institution must complete training on trauma-informed investigation into allegations of sexual harassment, sexual assault, dating violence, and stalking. The bill would require each postsecondary educational institution to designate a Title IX Coordinator. Under provisions of the bill, as part of the protocol for responding to reports of sexual harassment, sexual assault, dating violence, and stalking, each institution shall, to the greatest extent practicable based on the number of counselors employed by the institution, offer counseling provide by a counselor who does not provide counseling to any other person involved in the incident.

The bill would authorize the Higher Education Coordinating Board to assess an administrative penalty of up to \$2.0 million against an institution that failed to substantially comply with provisions of the bill. Under provisions of the bill, a private or independent college or university may not pay an administrative penalty using state or federal money. The bill would require the commissioner of higher education to establish a training advisory committee.

Based on an analysis of responses from institutions of higher education and the Higher Education Coordinating Board, it is assumed duties and responsibilities associated with implementing provisions of the bill could be accomplished utilizing existing resources

**Local Government Impact**

No significant fiscal implication to units of local government is anticipated.

**Source Agencies:**        710 Texas A&M University System Administrative and General Offices,  
720 The University of Texas System Administration, 758 Texas State  
University System, 768 Texas Tech University System Administration,  
769 University of North Texas System Administration, 781 Higher  
Education Coordinating Board, 783 University of Houston System

Administration, 996 Lone Star College System

**LBB Staff:** WP, JGAn, DEH, GO

**LEGISLATIVE BUDGET BOARD**  
**Austin, Texas**

**FISCAL NOTE, 86TH LEGISLATIVE REGULAR SESSION**

**March 27, 2019**

**TO:** Honorable Chris Turner, Chair, House Committee on Higher Education

**FROM:** John McGeady, Assistant Director    Sarah Keyton, Assistant Director  
Legislative Budget Board

**IN RE: HB1735** by Howard (relating to sexual harassment, sexual assault, dating violence, and stalking at public and private postsecondary educational institutions; providing an administrative penalty.), **Committee Report 1st House, Substituted**

<b>No significant fiscal implication to the State is anticipated.</b>
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The bill would require public and private postsecondary educational institutions to adopt a policy on campus sexual harassment, sexual assault, dating violence and stalking. Under provisions of the bill, each peace officer employed by a postsecondary educational institution must complete training on trauma-informed investigation into allegations of sexual harassment, sexual assault, dating violence, and stalking. The bill would require each postsecondary educational institution to designate a Title IX Coordinator. Under provisions of the bill, as part of the protocol for responding to reports of sexual harassment, sexual assault, dating violence, and stalking, each institution shall, to the greatest extent practicable based on the number of counselors employed by the institution, offer counseling provide by a counselor who does not provide counseling to any other person involved in the incident.

The bill would authorize the Higher Education Coordinating Board to assess an administrative penalty of up to \$2.0 million against an institution that failed to substantially comply with provisions of the bill. Under provisions of the bill, a private or independent college or university may not pay an administrative penalty using state or federal money. The bill would require the commissioner of higher education to establish a training advisory committee.

Based on an analysis of responses from institutions of higher education and the Higher Education Coordinating Board, it is assumed duties and responsibilities associated with implementing provisions of the bill could be accomplished utilizing existing resources

**Local Government Impact**

No significant fiscal implication to units of local government is anticipated.

**Source Agencies:**    710 Texas A&M University System Administrative and General Offices,  
720 The University of Texas System Administration, 758 Texas State  
University System, 768 Texas Tech University System Administration,  
769 University of North Texas System Administration, 781 Higher  
Education Coordinating Board, 783 University of Houston System

Administration, 996 Lone Star College System

**LBB Staff:** WP, JGAn, DEH, GO

**LEGISLATIVE BUDGET BOARD**

**Austin, Texas**

**FISCAL NOTE, 86TH LEGISLATIVE REGULAR SESSION**

**March 11, 2019**

**TO:** Honorable Chris Turner, Chair, House Committee on Higher Education

**FROM:** John McGeady, Assistant Director    Sarah Keyton, Assistant Director  
Legislative Budget Board

**IN RE: HB1735** by Howard (Relating to sexual harassment, sexual assault, dating violence, and stalking at public and private postsecondary educational institutions; providing an administrative penalty.), **As Introduced**

**No significant fiscal implication to the State is anticipated.**

The bill would require public and private postsecondary educational institutions to adopt a policy on campus sexual harassment, sexual assault, dating violence and stalking. Under provisions of the bill, each peace officer employed by a postsecondary educational institution must complete training on trauma-informed investigation into allegations of sexual harassment, sexual assault, dating violence, and stalking. The bill would require each postsecondary educational institution to designate a Title IX Coordinator. Under provisions of the bill, as part of the protocol for responding to reports of sexual harassment, sexual assault, dating violence, and stalking, each institution shall, to the greatest extent practicable based on the number of counselors employed by the institution, offer counseling provide by a counselor who does not provide counseling to any other person involved in the incident.

The bill would authorize the Higher Education Coordinating Board to assess an administrative penalty of up to \$2.0 million against an institution that failed to substantially comply with provisions of the bill. Under provisions of the bill, a private or independent college or university may not pay an administrative penalty using state or federal money. The bill would require the commissioner of higher education to establish a training advisory committee.

Based on an analysis of responses from institutions of higher education and the Higher Education Coordinating Board, it is assumed duties and responsibilities associated with implementing provisions of the bill could be accomplished utilizing existing resources

**Local Government Impact**

No significant fiscal implication to units of local government is anticipated.

**Source Agencies:** 710 Texas A&M University System Administrative and General Offices, 720 The University of Texas System Administration, 758 Texas State University System, 768 Texas Tech University System Administration, 769 University of North Texas System Administration, 781 Higher Education Coordinating Board, 783 University of Houston System



Administration, 980 Southwest Texas Junior College, 985 Tyler Junior  
College

**LBB Staff:** WP, JGAn, DEH, GO