87R13990 KJE-F

By:  Schaefer H.B. No. 4271

A BILL TO BE ENTITLED

AN ACT

relating to the administration of public institutions of higher education, including certain restrictions on hiring and tenure decisions, curriculum, and involvement in litigation.

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

SECTION 1.  Section 51.942(c), Education Code, is amended to read as follows:

(c)  In addition to any other provisions adopted by the governing board, the rules shall include provisions providing that:

(1)  each faculty member tenured at the institution be subject to a comprehensive performance evaluation process conducted no more often than once every year, but no less often than once every six years, after the date the faculty member was granted tenure or received an academic promotion at the institution;

(2)  the evaluation be based on the professional responsibilities of the faculty member, in teaching, research, service, patient care, and administration, and include peer review of the faculty member;

(3)  the process be directed toward the professional development of the faculty member;

(4)  the process incorporate commonly recognized academic due process rights, including notice of the manner and scope of the evaluation, the opportunity to provide documentation during the evaluation process, and, before a faculty member may be subject to disciplinary action on the basis of an evaluation conducted pursuant to this section, notice of specific charges and an opportunity for hearing on those charges; and

(5)  a faculty member be subject to revocation of tenure or other appropriate disciplinary action if the governing board determines that:

(A)  the faculty member:

(i)  is incompetent;

(ii)  has failed to produce any work of scholarship since the preceding performance evaluation under this section;

(iii)  has not taught a course at the institution in any three consecutive academic years; or

(iv)  has engaged in [~~incompetency,~~] neglect of duty;[~~,~~] or

(B)  other good cause exists for the revocation or disciplinary action [~~is determined to be present~~].

SECTION 2.  Subchapter Z, Chapter 51, Education Code, is amended by adding Sections 51.9602, 51.982, and 51.983 to read as follows:

Sec. 51.9602.  DISCRIMINATION PROHIBITED IN FACULTY HIRING AND TENURE DECISIONS. (a) In this section:

(1)  "Faculty member" has the meaning assigned by Section 51.917.

(2)  "Institution of higher education" has the meaning assigned by Section 61.003.

(b)  An institution of higher education may not discriminate against or give preferential treatment to any person on the basis of race, color, religion, sex, national origin, or political, ideological, or religious beliefs in making hiring or tenure decisions for faculty members at the institution.

(c)  An institution of higher education shall require each person involved in making hiring or tenure decisions for faculty members at the institution to certify in writing and under oath whether the person:

(1)  has witnessed or engaged in discrimination or preferential treatment prohibited under Subsection (b) in connection with the decision; or

(2)  has reason to believe that the decision was affected by such discrimination or preferential treatment.

(d)  An institution of higher education shall maintain a copy of each certification required under Subsection (c) for not less than four years from the date the certification is made.

(e)  Any person who believes that an institution of higher education has violated this section may bring an action for injunctive relief to compel the institution to comply with this section or to recover compensatory damages, court costs, and reasonable attorney's fees. If the court finds that the institution has repeatedly violated this section, the court may order any equitable relief the court determines appropriate, including by issuing an injunction restraining future hiring or tenure decisions for faculty members at the institution without the court's determination that a particular hiring or tenure decision does not violate Subsection (b).

Sec. 51.982.  ABORTION INSTRUCTION PROHIBITED. (a) In this section:

(1)  "Abortion" has the meaning assigned by Section 245.002, Health and Safety Code.

(2)  "Abortion-inducing drug" has the meaning assigned by Section 171.061, Health and Safety Code.

(3)  "Institution of higher education" has the meaning assigned by Section 61.003.

(b)  An institution of higher education may not provide instruction on the performance of an abortion, including the administration of abortion-inducing drugs, or allow or assist another person to provide such instruction.

Sec. 51.983.  RESTRICTION ON PARTICIPATION IN CERTAIN LITIGATION. (a) In this section, "institution of higher education" has the meaning assigned by Section 61.003.

(b)  An institution of higher education, including any law school of the institution or legal clinic sponsored by or affiliated with the institution, may not participate in or assist with any litigation or other legal effort that seeks to:

(1)  prevent the enforcement of any law related to:

(A)  abortion;

(B)  the definition of marriage;

(C)  religious freedom;

(D)  immigration; or

(E)  capital punishment; or

(2)  prevent or delay the execution of a sentence of death imposed on a person convicted of capital murder.

SECTION 3.  Section 51.982, Education Code, as added by this Act, applies beginning with the 2021-2022 academic year.

SECTION 4.  Section 51.983, Education Code, as added by this Act, applies to litigation filed or pending on or after the effective date of this Act, regardless of whether the cause of action accrued before, on, or after the effective date of this Act.

SECTION 5.  (a) Except as provided by Subsection (b) of this section, this Act takes effect September 1, 2021.

(b)  Section 51.982, Education Code, as added by this Act, takes effect immediately if this Act receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, Section 51.982, Education Code, as added by this Act, takes effect September 1, 2021.