

By: Schaefer

H.B. No. 4271

A BILL TO BE ENTITLED

1 AN ACT
2 relating to the administration of public institutions of higher
3 education, including certain restrictions on hiring and tenure
4 decisions, curriculum, and involvement in litigation.

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

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

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

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

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

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

21 (4) the process incorporate commonly recognized
22 academic due process rights, including notice of the manner and
23 scope of the evaluation, the opportunity to provide documentation
24 during the evaluation process, and, before a faculty member may be

1 subject to disciplinary action on the basis of an evaluation
2 conducted pursuant to this section, notice of specific charges and
3 an opportunity for hearing on those charges; and

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

7 (A) the faculty member:

8 (i) is incompetent;

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

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

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

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

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

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

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

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

27 (b) An institution of higher education may not discriminate

1 against or give preferential treatment to any person on the basis of
2 race, color, religion, sex, national origin, or political,
3 ideological, or religious beliefs in making hiring or tenure
4 decisions for faculty members at the institution.

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

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

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

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

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

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

3 (1) "Abortion" has the meaning assigned by Section
4 245.002, Health and Safety Code.

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

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

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

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

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

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

21 (A) abortion;

22 (B) the definition of marriage;

23 (C) religious freedom;

24 (D) immigration; or

25 (E) capital punishment; or

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

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

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

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

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