By:  Shaheen H.B. No. 5127

A BILL TO BE ENTITLED

AN ACT

relating to public higher education reform; authorizing administrative penalties.

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

SECTION 1.  Section 51.352, Education Code, is amended by amending Subsection (d) and adding Subsection (g) to read as follows:

(d)  In addition to powers and duties specifically granted by this code or other law, each governing board shall:

(1)  establish, for each institution under its control and management, goals consistent with the role and mission of the institution;

(2)  appoint the chancellor or other chief executive officer of the system, if the board governs a university system;

(3)  appoint the president or other chief executive officer of each institution under the board's control and management and evaluate the chief executive officer of each component institution and assist the officer in the achievement of performance goals;

(4)  restrict the membership of a search committee for the position of president or other chief executive officer of an institution under the board's control and management to members of the governing board;

(5)  approve or deny the hiring of a person for the position of vice president, provost, associate or assistant provost, dean, or associate or assistant dean or a similar position by each institution under the board's control and management;

(6)  set campus admission standards consistent with the role and mission of the institution and considering the admission standards of similar institutions nationwide having a similar role and mission, as determined by the coordinating board;

(7)  approve or deny each course in the core curriculum, as that term is defined by Section 61.821, at each institution under the board's control and management;

(8)  approve or deny each posting or other advertisement for a tenured faculty position at each institution under the board's control and management; and

(9) [~~(5)~~]  ensure that its formal position on matters of importance to the institutions under its governance is made clear to the coordinating board when such matters are under consideration by the coordinating board.

(g)  An institution of higher education may not spend money appropriated to the institution for a state fiscal year until the governing board of the institution submits to the legislature and the Texas Higher Education Coordinating Board a report certifying the board's compliance with Subsections (d)(2), (3), (5), (7), and (8) during the preceding state fiscal year.

SECTION 2.  Chapter 51, Education Code, is amended by adding Subchapter L to read as follows:

SUBCHAPTER L. PROHIBITIONS REGARDING IDEOLOGICAL OATHS OR STATEMENTS

Sec. 51.601.  PURPOSE. The purpose of this subchapter is to prohibit institutions of higher education from requiring or giving preferential consideration for certain ideological oaths or statements that undermine academic freedom and open inquiry and impede the discovery, preservation, and transmission of knowledge.

Sec. 51.602.  DEFINITIONS. In this subchapter:

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

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

Sec. 51.603.  PROHIBITIONS REGARDING IDEOLOGICAL OATHS OR STATEMENTS. (a) An institution of higher education may not:

(1)  compel, require, induce, or solicit a student enrolled at the institution, an employee or contractor of the institution, or an applicant for admission to or employment or contracting at the institution to:

(A)  endorse an ideology that promotes the differential treatment of an individual or group of individuals based on race, color, or ethnicity; or

(B)  provide a statement of the person's:

(i)  race, color, ethnicity, or national origin, except to record any necessary demographic information;

(ii)  views on, experience with, or past or planned contributions to efforts involving diversity, equity, and inclusion, marginalized groups, antiracism, social justice, intersectionality, or related concepts; or

(iii)  views on or experience with race, color, ethnicity, national origin, or other immutable characteristics; or

(2)  provide preferential consideration to a student enrolled at the institution, an employee or contractor of the institution, or an applicant for admission to or employment or contracting at the institution on the basis of the person's unsolicited statement in support of an ideology described by Subdivision (1)(A).

(b)  This section may not be construed to:

(1)  restrict academic research or coursework;

(2)  prevent a person from providing to an institution of higher education information described by Subsection (a) on the person's own initiative separate from any specific requirement or request from the institution; or

(3)  prevent an institution of higher education from requiring an applicant for admission to or employment or contracting at the institution to:

(A)  disclose or discuss the content of the applicant's research or artistic creations;

(B)  certify compliance with state and federal antidiscrimination law; or

(C)  discuss pedagogical approaches or experience with students with learning disabilities.

(c)  Not later than December 1 of each year, each institution of higher education shall submit to the lieutenant governor and the speaker of the house of representatives a report certifying the institution's compliance with this section.

SECTION 3.  Subchapter Z, Chapter 51, Education Code, is amended by adding Sections 51.9317, 51.9318, and 51.9319 to read as follows:

Sec. 51.9317.  DIVERSITY, EQUITY, AND INCLUSION OFFICES AND EMPLOYEES PROHIBITED. (a) In this section:

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

(2)  "Diversity, equity, and inclusion office" means an office, division, or other unit of an institution of higher education established for the purpose of:

(A)  influencing hiring or employment practices at the institution with respect to race, sex, color, or ethnicity, other than through the use of color-blind and sex-neutral hiring processes in accordance with any applicable state and federal antidiscrimination laws;

(B)  promoting differential treatment of or providing special benefits to individuals on the basis of race, color, or ethnicity;

(C)  promoting policies or procedures designed or implemented in reference to race, color, or ethnicity, other than policies or procedures approved in writing by the institution's general counsel and the office of the attorney general for the sole purpose of ensuring compliance with any applicable court order or state or federal law; or

(D)  conducting trainings, programs, or activities designed or implemented in reference to race, color, ethnicity, gender identity, or sexual orientation, other than trainings, programs, or activities developed by an attorney and approved in writing by the institution's general counsel and the office of the attorney general for the sole purpose of ensuring compliance with any applicable court order or state or federal law.

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

(b)  An institution of higher education may not establish or maintain a diversity, equity, and inclusion office or hire or assign an employee of the institution, or contract with a third party, to perform the duties of a diversity, equity, and inclusion office.

(c)  Subsection (b) may not be construed to:

(1)  restrict:

(A)  academic course instruction;

(B)  research or creative works by an institution of higher education's students or faculty;

(C)  the activities of student organizations registered with or recognized by an institution of higher education;

(D)  the guest speakers or performers who may be invited to speak or perform at an institution of higher education for short-term engagements;

(E)  health services provided by licensed professionals at an institution of higher education;

(F)  services provided by appropriate professionals at an institution of higher education to veterans of the armed forces of the United States or persons with a physical or cognitive disability; or

(G)  an institution of higher education's ability to:

(i)  respond to a request for information from a grantmaking agency or athletic association; or

(ii)  collect data; or

(2)  prohibit an institution of higher education from:

(A)  establishing or maintaining a legal office or other unit, hiring or assigning an employee who is an attorney, or contracting with a third-party attorney or law firm to ensure the institution's compliance with any applicable court order or state or federal law;

(B)  establishing or maintaining an academic department that does not establish policy or procedures for other departments; or

(C)  registering or recognizing student organizations at the institution.

(d)  Nothing in this section may be construed as prohibiting bona fide qualifications based on sex that are reasonably necessary to the normal operation of an institution of higher education.

(e)  Any person may notify the attorney general of a violation or potential violation of this section by an institution of higher education. The attorney general may file suit for a writ of mandamus compelling the institution to comply with this section.

(i)  If an institution of higher education determines that an employee of the institution has violated this section, the institution shall:

(1)  take the following action against the employee:

(A)  for the first violation, place the employee on unpaid leave for the next academic year; or

(B)  for the second or a subsequent violation, discharge the employee; and

(2)  report the determination and the action taken by the institution to the coordinating board.

(j)  The coordinating board shall maintain and provide to each institution of higher education a list of persons against whom action has been taken under Subsection (i).

(k)  An institution of higher education may not hire an employee who is included on the coordinating board's list maintained under Subsection (j) before:

(1)  if the employee was placed on unpaid leave under Subsection (i)(1)(A), the end of the academic year for which the employee is placed on unpaid leave; or

(2)  if the employee was discharged under Subsection (i)(1)(B), the fifth anniversary of the date on which the employee was discharged.

(l)  If the coordinating board determines that an institution of higher education has violated this section, the coordinating board shall assess an administrative penalty against the institution in an amount equal to the lesser of $1 million or one percent of the amount of the institution's operating expenses budgeted for the state fiscal year preceding the state fiscal year in which the violation occurred.

(m)  An administrative penalty collected under Subsection (l) may only be appropriated to an institution of higher education that the coordinating board has not determined to have violated this section during the two state fiscal years preceding the state fiscal year for which the appropriation is made.

Sec. 51.9318.  STATEMENTS REQUIRED TO BE INCLUDED IN MISSION STATEMENT, BYLAWS, FACULTY HANDBOOK, AND STUDENT HANDBOOK. (a) In this section, "institution of higher education" has the meaning assigned by Section 61.003.

(b)  Each institution of higher education shall adopt an institutional mission statement that includes, or incorporate into the institution's institutional mission statement if the institution has already adopted an institutional mission statement, the following statements in whole and without interruption:

(1)  "We affirm that (name of institution) will educate students by means of free, open, and rigorous intellectual inquiry to seek the truth.";

(2)  "We affirm our duty to equip students with the intellectual skills they need to reach their own informed conclusions on matters of social and political importance.";

(3)  "We affirm the value of viewpoint diversity in campus intellectual life, including in faculty recruitment and hiring.";

(4)  "We affirm our duty to ensure that no aspects of (name of institution) life, in or outside the classroom, require, favor, disfavor, or prohibit speech or action that supports any political, social, or religious belief.";

(5)  "We affirm our commitment to create a community dedicated to civil and free inquiry that respects the intellectual freedom of each member, supports individual capacities for growth, and tolerates the differences in opinion that naturally occur in a public university community.";

(6)  "We affirm the value of institutional neutrality: that institutions of higher education should not take collective positions on political and social controversies of the day."; and

(7)  "These values take priority over any other value we may also adopt."

(c)  Each institution of higher education shall incorporate into the institution's bylaws, faculty handbook, and student handbook the substance of the following reports issued by the University of Chicago:

(1)  the Report of the Committee on Freedom of Expression; and

(2)  the Kalven Committee Report on the University's Role in Political and Social Action.

Sec. 51.9319.  CERTAIN MANDATORY TRAINING PROHIBITED. (a) In this section:

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

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

(3)  "Training" includes a training, seminar, discussion group, workshop, or other instructional program, whether provided in person, online, or by any other means, with a purpose of advising, counseling, influencing, or teaching participants. The term does not include:

(A)  an academic course offered for credit; or

(B)  an activity of a student organization registered with or recognized by an institution of higher education that affects only the organization's members.

(b)  An institution of higher education may not require a student, employee, or applicant for employment at the institution to participate in training on diversity, equity, inclusion, bias, oppression, gender identity, or related concepts as a condition of:

(1)  admission to or enrollment at the institution;

(2)  employment or promotion at the institution;

(3)  participating in any function of the institution; or

(4)  graduating from the institution.

(c)  This section may not be construed to:

(1)  limit the academic freedom of any individual faculty member to direct the instruction of a course taught by the faculty member; or

(2)  prohibit any training:

(A)  that is:

(i)  developed by an attorney; and

(ii)  approved in writing by the institution's general counsel and the office of the attorney general as being required to comply with any applicable court order or state or federal law; and

(B)  for which the materials are made publicly available on the institution of higher education's Internet website.

(d)  Any person may notify the attorney general of a violation or potential violation of this section by an institution of higher education. The attorney general may file suit for a writ of mandamus compelling the institution to comply with this section.

(e)  A student or employee of an institution of higher education who is required to participate in training in violation of this section may bring an action against the institution for injunctive or declaratory relief.

(h)  If an institution of higher education determines that an employee of the institution has violated this section, the institution shall:

(1)  take the following action against the employee:

(A)  for the first violation, place the employee on unpaid leave for the next academic year; or

(B)  for the second or a subsequent violation, discharge the employee; and

(2)  report the determination and the action taken by the institution to the coordinating board.

(i)  The coordinating board shall maintain and provide to each institution of higher education a list of persons against whom action has been taken under Subsection (h).

(j)  An institution of higher education may not hire an employee who is included on the coordinating board's list maintained under Subsection (i) before:

(1)  if the employee was placed on unpaid leave under Subsection (h)(1)(A), the end of the academic year for which the employee is placed on unpaid leave; or

(2)  if the employee was discharged under Subsection (h)(1)(B), the fifth anniversary of the date on which the employee was discharged.

(k)  If the coordinating board determines that an institution of higher education has violated this section, the coordinating board shall assess an administrative penalty against the institution in an amount equal to the lesser of $1 million or one percent of the amount of the institution's operating expenses budgeted for the state fiscal year preceding the state fiscal year in which the violation occurred.

(l)  An administrative penalty collected under Subsection (k) may only be appropriated to an institution of higher education that the coordinating board has not determined to have violated this section during the two state fiscal years preceding the state fiscal year for which the appropriation is made.

SECTION 4.  Section 51.942, Education Code, is amended by adding Subsection (c-1) to read as follows:

(c-1)  For purposes of Subsection (c)(5), good cause for revoking the tenure of a faculty member includes the faculty member's violation of Section 51.9317 or 51.9319.

SECTION 5.  (a) Section 51.352(d), Education Code, as amended by this Act, applies beginning with the 2023-2024 academic year.

(b)  Section 51.352(g), Education Code, as added by this Act, applies beginning with money appropriated to a public institution of higher education for the state fiscal year beginning September 1, 2024.

SECTION 6.  (a) Except as provided by Subsection (b) of this section, Subchapter L, Chapter 51, and Sections 51.9317, 51.9318, and 51.9319, Education Code, as added by this Act, apply beginning with the 2023-2024 academic year.

(b)  Sections 51.9317(i) and 51.9319(h), Education Code, as added by this Act, apply only to a person who enters into or renews an employment contract at a public institution of higher education on or after the effective date of this Act.

SECTION 7.  A public institution of higher education may not spend money appropriated by the legislature for the state fiscal biennium beginning September 1, 2025, until the institution's governing board has filed with the Texas Higher Education Coordinating Board and posted on the institution's Internet website a report that:

(1)  states the steps taken by the institution to comply with Section 51.9317, Education Code, as added by this Act; and

(2)  certifies the institution's compliance with Section 51.9317, Education Code, as added by this Act.

SECTION 8.  This Act takes effect immediately if it 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, this Act takes effect September 1, 2023.