

By: Creighton, et al.

S.B. No. 17

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

1 position of vice president, provost, associate or assistant  
2 provost, dean, or associate or assistant dean or a similar position  
3 by each institution under the board's control and management;

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

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

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

14 (9) [~~5~~] ensure that its formal position on matters  
15 of importance to the institutions under its governance is made  
16 clear to the coordinating board when such matters are under  
17 consideration by the coordinating board.

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

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

26 SUBCHAPTER L. PROHIBITIONS REGARDING IDEOLOGICAL OATHS OR  
27 STATEMENTS

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

6       Sec. 51.602. DEFINITIONS. In this subchapter:

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

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

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

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

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

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

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

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

27                           (iii) views on or experience with race,

1 color, ethnicity, national origin, or other immutable  
2 characteristics; or

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

9 (b) This section may not be construed to:

10 (1) restrict academic research or coursework;

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

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

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

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

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

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

1 SECTION 3. Subchapter 2, Chapter 51, Education Code, is  
2 amended by adding Sections 51.9317, 51.9318, and 51.9319 to read as  
3 follows:

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

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

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

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

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

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

25 (D) conducting trainings, programs, or  
26 activities designed or implemented in reference to race, color,  
27 ethnicity, gender identity, or sexual orientation, other than

1 trainings, programs, or activities developed by an attorney and  
2 approved in writing by the institution's general counsel and the  
3 office of the attorney general for the sole purpose of ensuring  
4 compliance with any applicable court order or state or federal law.

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

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

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

13 (1) restrict:

14 (A) academic course instruction;

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

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

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

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

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

1 cognitive disability; or

2 (G) an institution of higher education's ability

3 to:

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

6 (ii) collect data; or

7 (2) prohibit an institution of higher education from:

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

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

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

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

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

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

1           (1) take the following action against the employee:

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

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

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

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

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

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

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

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

27           (m) An administrative penalty collected under Subsection



1 (1) may only be appropriated to an institution of higher education  
2 that the coordinating board has not determined to have violated  
3 this section during the two state fiscal years preceding the state  
4 fiscal year for which the appropriation is made.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

25           (3) "Training" includes a training, seminar,  
26 discussion group, workshop, or other instructional program,  
27 whether provided in person, online, or by any other means, with a

1 purpose of advising, counseling, influencing, or teaching  
2 participants. The term does not include:

3 (A) an academic course offered for credit; or

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

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

11 (1) admission to or enrollment at the institution;

12 (2) employment or promotion at the institution;

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

14 or

15 (4) graduating from the institution.

16 (c) This section may not be construed to:

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

20 (2) prohibit any training:

21 (A) that is:

22 (i) developed by an attorney; and

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

27 (B) for which the materials are made publicly

1 available on the institution of higher education's Internet  
2 website.

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

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

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

14 (1) take the following action against the employee:

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

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

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

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

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

27 (1) if the employee was placed on unpaid leave under

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

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

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

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

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

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

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

26 (b) Section 51.352(g), Education Code, as added by this Act,  
27 applies beginning with money appropriated to a public institution

1 of higher education for the state fiscal year beginning September  
2 1, 2024.

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

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

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

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

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

22 SECTION 8. This Act takes effect immediately if it receives  
23 a vote of two-thirds of all the members elected to each house, as  
24 provided by Section 39, Article III, Texas Constitution. If this  
25 Act does not receive the vote necessary for immediate effect, this  
26 Act takes effect September 1, 2023.