

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) "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.

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

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

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

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

(1) include:

(A) definitions of prohibited behavior;

(B) sanctions for violations;

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

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

(E) a statement regarding:

(i) the importance of a victim of sexual harassment, sexual assault, dating violence, or stalking going to a hospital for treatment and preservation of evidence, if applicable, as soon as practicable after the incident;

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

(iii) the right of a victim of a crime to choose whether to report the crime to law enforcement, to be

assisted by the institution in reporting the crime to law enforcement, or to decline to report the crime to law enforcement; and

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

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

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

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

(c) Each postsecondary educational institution shall require each entering freshman or undergraduate transfer student to attend an orientation on the institution's sexual harassment, sexual assault, dating violence, and stalking policy before or during the first semester or term in which the student is enrolled at the institution. The institution shall establish the format and content of the orientation. The orientation:

(1) may be provided online; and

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

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

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

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

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

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

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

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

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

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

Sec. 51.285. VICTIM REQUEST NOT TO INVESTIGATE. (a) If an alleged victim of an incident of sexual harassment, sexual assault, dating violence, or stalking reported to a postsecondary

educational institution requests the institution not to investigate the alleged incident, the institution may investigate the alleged incident in a manner that complies with the confidentiality requirements under Section 51.291. In determining whether to investigate the alleged incident, the institution shall consider:

- (1) the seriousness of the alleged incident;
- (2) whether the institution has received other reports of sexual harassment, sexual assault, dating violence, or stalking committed by the alleged perpetrator or perpetrators;
- (3) whether the alleged incident poses a risk of harm to others; and
- (4) any other factors the institution determines relevant.

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

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

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

- (1) provide to the student and the alleged victim a prompt and equitable opportunity to present witnesses and other evidence relevant to the alleged violation during the disciplinary process;
- (2) ensure that both the student and the alleged victim have reasonable and equitable access to all evidence relevant to the alleged violation in the institution's possession, including any statements made by the alleged victim or by other persons, information stored electronically, written or electronic communications, social media posts, or physical evidence, redacted as necessary to comply with any applicable federal or state law regarding confidentiality; and
- (3) take reasonable steps to protect the student and the alleged victim from retaliation and harassment during the pendency of the disciplinary process.

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

- (1) may not end the disciplinary process or issue a transcript to the student until the institution makes a final determination of responsibility; and
- (2) shall expedite the institution's disciplinary process as necessary to accommodate both the student's and the alleged victim's interest in a speedy resolution.

(b) On request by another postsecondary educational institution, a postsecondary educational institution shall provide to the requesting institution information relating to a determination by the institution that a student enrolled at the institution violated the institution's code of conduct by committing sexual harassment, sexual assault, dating violence, or

stalking.

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

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

(1) local law enforcement agencies;

(2) sexual harassment, sexual assault, dating violence, or stalking advocacy groups; and

(3) hospitals or other medical resource providers.

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

(1) designate:

(A) one or more employees to act as responsible employees for purposes of Title IX of the Education Amendments of 1972 (20 U.S.C. Section 1681 et seq.); and

(B) one or more employees as persons to whom students enrolled at the institution may speak confidentially concerning sexual harassment, sexual assault, dating violence, and stalking; and

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

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

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

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

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

(2) a person who reports to a postsecondary educational institution an incident of sexual harassment, sexual assault, dating violence, or stalking, who sought guidance from the institution concerning such an incident, or who participated in the institution's investigation of such an incident; and

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

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

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

(2) may be disclosed only to:

(A) the postsecondary educational institution to

which the report described by Subsection (a) is made as necessary to conduct an investigation of the report;

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

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

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

.(d) Information regarding an incident of sexual harassment, sexual assault, dating violence, or stalking disclosed to a health care provider or other medical provider employed by a postsecondary educational institution is confidential and may be shared by the provider only with the victim's consent. The provider must provide aggregate data or other nonidentifying information regarding those incidents to the institution's Title IX coordinator.

Sec. 51.292. COMPLIANCE. (a) If the coordinating board determines that a postsecondary educational institution is not in substantial compliance with this subchapter, the coordinating board may assess an administrative penalty against the institution in an amount not to exceed \$2 million. In determining the amount of the penalty, the coordinating board shall consider the nature of the violation and the number of students enrolled at the institution.

.(b) If the coordinating board assesses an administrative penalty against a postsecondary educational institution under Subsection (a), the coordinating board shall provide to the institution written notice of the coordinating board's reasons for assessing the penalty.

.(c) A postsecondary educational institution assessed an administrative penalty under Subsection (a) may appeal the penalty in the manner provided by Chapter 2001, Government Code.

.(d) A postsecondary educational institution may not pay an administrative penalty assessed under Subsection (a) using state or federal money.

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

.(f) The coordinating board shall annually submit to the governor, the lieutenant governor, the speaker of the house of representatives, and the standing legislative committees with primary jurisdiction over legislation concerning sexual assault at postsecondary educational institutions a report regarding compliance with this subchapter, including a summary of the postsecondary educational institutions found not to be in substantial compliance as provided by this section and any penalties assessed under this section during the preceding year.

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

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

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

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

.(b) The advisory committee consists of nine members appointed by the commissioner of higher education. Each member

must be a chief executive officer of a postsecondary educational institution or a representative designated by that officer.

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

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

(1) define relevant terms; and

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

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

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

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

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

(1) enable a student or employee to report the alleged offense anonymously; and

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

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

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

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

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

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

(d) [~~(e)~~] Subsection (a) [~~(b)~~] does not apply to a student who reports the student's own commission or assistance in the commission of sexual harassment, sexual assault, dating violence, or stalking.

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

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

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

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

SECTION 6. Not later than September 1, 2021, the Texas Higher Education Coordinating Board shall submit its initial report required under Section 51.292(f), Education Code, as added by this Act.

SECTION 7. This Act takes effect September 1, 2019.

President of the Senate

Speaker of the House

I certify that H.B. No. 1735 was passed by the House on April 17, 2019, by the following vote: Yeas 113, Nays 29, 2 present, not voting; that the House refused to concur in Senate amendments to H.B. No. 1735 on May 23, 2019, and requested the appointment of a conference committee to consider the differences between the two houses; and that the House adopted the conference committee report on H.B. No. 1735 on May 26, 2019, by the following vote: Yeas 109, Nays 30, 1 present, not voting.

Chief Clerk of the House

I certify that H.B. No. 1735 was passed by the Senate, with amendments, on May 16, 2019, by the following vote: Yeas 31, Nays 0; at the request of the House, the Senate appointed a conference committee to consider the differences between the two houses; and that the Senate adopted the conference committee report on H.B. No. 1735 on May 26, 2019, by the following vote: Yeas 31, Nays 0.

Secretary of the Senate

APPROVED: _____
Date

Governor