

By: Huffman, et al.

S.B. No. 576

A BILL TO BE ENTITLED
AN ACT

relating to a reporting requirement for certain incidents of sexual harassment, sexual assault, dating violence, or stalking at certain public and private institutions of higher education; creating a criminal offense; authorizing administrative penalties.

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. REPORTING INCIDENTS OF 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" means abuse or violence, or a threat of abuse or violence, against a person with whom the actor has or has had a social relationship of a romantic or intimate nature.

(3) "Postsecondary educational institution" means:

(A) an institution of higher education, as defined by Section 61.003; and

(B) a private or independent institution of higher education.

(4) "Private or independent institution of higher education" has the meaning assigned by Section 61.003.

(5) "Sexual assault" means sexual contact or intercourse with a person without the person's consent, including sexual contact or intercourse against the person's will or in a circumstance in which the person is incapable of consenting to the contact or intercourse.

(6) "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.

(7) "Stalking" means a course of conduct directed at a person that would cause a reasonable person to fear for the person's safety or to suffer substantial emotional distress.

Sec. 51.282. REPORTING REQUIRED FOR CERTAIN INCIDENTS.

(a) An employee of a postsecondary educational institution, or, subject to Subsection (b), an officer of a student organization registered with a postsecondary educational institution, who witnesses or receives information regarding the occurrence of an incident of sexual harassment, sexual assault, dating violence, or stalking alleged to have been committed by or against a person who was a student enrolled at or an employee of the institution at the time of the incident shall promptly report the incident to the institution's Title IX coordinator or deputy Title IX coordinator.

(b) An officer of a student organization registered with a postsecondary educational institution is required to report an incident under Subsection (a) only if the officer witnessed or received information regarding the occurrence of the incident while acting in the officer's official capacity, including while on the premises of property owned by the student organization or at an event held or sponsored by the student organization.

(c) Except as provided by Subsection (d), the report must

include all information concerning the incident known to the reporting person that is relevant to the investigation and, if applicable, redress of the incident, including whether an alleged victim has expressed a desire for confidentiality or anonymity in reporting the incident.

(d) An employee of a postsecondary educational institution designated by the institution as a person with whom students may speak confidentially concerning sexual harassment, sexual assault, dating violence, or stalking shall, in making a report under this section, state only the type of incident reported and may not include any information that would violate a student's expectation of privacy.

(e) Notwithstanding Subsection (a), a person is not required to make a report under this section concerning an incident in which the person was a victim of sexual harassment, sexual assault, dating violence, or stalking.

Sec. 51.283. ADMINISTRATIVE REPORTING REQUIREMENTS.

(a) Not less than once per month, the Title IX coordinator of a postsecondary educational institution shall submit to the institution's chief executive officer a written report on the reports received under Section 51.282, including information regarding:

(1) the investigation of those reports;

(2) the disposition, if any, of any disciplinary processes arising from those reports; and

(3) the reports for which the institution determined not to initiate a disciplinary process, if any.

(b) The Title IX coordinator of a postsecondary educational institution shall immediately report to the institution's chief executive officer an incident reported to the coordinator under Section 51.282 if the coordinator has cause to believe that the health or safety of any person is in imminent danger as a result of the incident.

(c) At least once during each fall or spring semester, the chief executive officer of a postsecondary educational institution shall submit to the institution's governing body a report concerning the reports received under Section 51.282. The report:

(1) may not identify any person; and

(2) must include:

(A) the number of reports received under Section 51.282;

(B) the number of investigations conducted as a result of those reports;

(C) the disposition, if any, of any disciplinary processes arising from those reports;

(D) the number of those reports for which the institution determined not to initiate a disciplinary process, if any; and

(E) any disciplinary actions taken under Section 51.285.

(d) A report submitted under Subsection (c) is public information subject to disclosure under Chapter 552, Government Code, and a private or independent institution of higher education is a governmental body with respect to such a report for purposes of that chapter.

Sec. 51.284. IMMUNITIES. (a) A person acting in good faith who reports or assists in the investigation of a report of an incident described by Section 51.282(a) or who testifies or otherwise participates in a disciplinary process or judicial proceeding arising from a report of such an incident:

(1) is immune from civil or criminal liability that might otherwise be incurred or imposed as a result of those actions; and

(2) may not be subjected to any disciplinary action by the postsecondary educational institution at which the person is

enrolled or employed for any violation by the person of the institution's code of conduct occurring in relation to the incident.

(b) Subsection (a) does not apply to a person who perpetrates or assists in the perpetration of the incident reported under Section 51.282.

Sec. 51.285. FAILURE TO REPORT OR FALSE REPORT; OFFENSES.
(a) A postsecondary educational institution shall terminate the employment of an employee who:

(1) is required to make a report under Section 51.282 and fails to promptly make the report without good cause, as determined by the institution; or

(2) with the intent to harm or deceive, knowingly makes a report under Section 51.282 that is false.

(b) A postsecondary educational institution shall terminate the employment of the institution's Title IX coordinator or chief executive officer if the coordinator or officer fails to make a report as required under Section 51.283.

(c) A postsecondary educational institution shall suspend for at least one year or expel a student who:

(1) is required to make a report under Section 51.282 and fails to promptly make the report without good cause, as determined by the institution; or

(2) with the intent to harm or deceive, knowingly makes a report under Section 51.282 that is false.

(d) A person commits an offense if the person is an employee of a postsecondary educational institution and:

(1) is required to make a report under Section 51.282 and knowingly fails to make the report; or

(2) with the intent to harm or deceive, knowingly makes a report under Section 51.282 that is false.

(e) An offense under Subsection (d) is a Class B misdemeanor, except that the offense is a Class A misdemeanor if it is shown on the trial of the offense that the actor intended to conceal the incident that the actor was required to report under Section 51.282.

Sec. 51.286. CONFIDENTIALITY. (a) Unless waived in writing by the alleged victim, the identity of an alleged victim of an incident reported under Section 51.282:

(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 is made as necessary to conduct an investigation of the report; or

(B) a law enforcement officer as necessary to conduct a criminal investigation of the report.

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

Sec. 51.287. RETALIATION PROHIBITED. (a) A postsecondary educational institution may not discipline or otherwise discriminate against a student or an employee who in good faith:

(1) makes a report as required by Section 51.282; or
(2) cooperates with an investigation, a disciplinary process, or a judicial proceeding relating to a report made by the student or employee as required by Section 51.282.

(b) Subsection (a) does not apply to a student or an employee who:

(1) reports an incident described by Section 51.282(a) perpetrated by the student or employee; or

(2) cooperates with an investigation, a disciplinary process, or a judicial proceeding relating to an allegation that the student or employee perpetrated an incident described by Section 51.282(a).

Sec. 51.288. COMPLIANCE. (a) The chief executive officer

of each postsecondary educational institution shall annually certify in writing to the coordinating board that the institution is in substantial compliance with this subchapter.

(b) If the coordinating board determines that a private or independent institution of higher education 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.

(c) If the coordinating board assesses an administrative penalty against a private or independent institution of higher education under Subsection (b), the coordinating board shall provide to the institution written notice of the coordinating board's reasons for assessing the penalty.

(d) A private or independent institution of higher education assessed an administrative penalty under Subsection (b) may appeal the penalty in the manner provided by Chapter 2001, Government Code.

(e) A private or independent institution of higher education may not pay an administrative penalty assessed under Subsection (b) using state or federal money.

(f) 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.

(g) 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 during the calendar year preceding the date of the report.

Sec. 51.289. RULES. The coordinating board shall adopt rules as necessary to implement and enforce this subchapter, including rules that 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).

Sec. 51.290. TRAINING ADVISORY COMMITTEE. (a) The commissioner of higher education shall establish an advisory committee to develop recommended training for persons required to report certain incidents under Section 51.282 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) Not later than December 1, 2017, the advisory committee shall develop the recommended training under Subsection (a).

(d) This section expires September 1, 2018.

SECTION 2. Section 420.008(b), Government Code, is amended to read as follows:

(b) The fund consists of:

(1) fees collected under:

(A) ~~[(1)]~~ Article 42A.653(a), Code of Criminal Procedure;

(B) ~~[(2)]~~ Section 508.189, Government Code; and

(C) ~~[(3)]~~ Subchapter B, Chapter 102, Business & Commerce Code, and deposited under Section 102.054; and

(2) administrative penalties collected under Section 51.288, Education Code.

SECTION 3. Sections 51.281-51.289, Education Code, as added by this Act, apply beginning January 1, 2018.

SECTION 4. Not later than January 1, 2019, the Texas Higher Education Coordinating Board shall submit its initial report required under Section 51.288(g), Education Code, as added by this Act.

SECTION 5. (a) Except as provided by Subsections (b) and (c) of this section, this Act takes effect September 1, 2017.

(b) Section 51.290, 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 51.290, Education Code, as added by this Act, takes effect September 1, 2017.

(c) Section 51.285(d), Education Code, as added by this Act, takes effect January 1, 2018.