

1-1 By: Lozano, et al. (Senate Sponsor - Watson) H.B. No. 16  
1-2 (In the Senate - Received from the House May 3, 2017;  
1-3 May 3, 2017, read first time and referred to Committee on Higher  
1-4 Education; May 19, 2017, reported adversely, with favorable  
1-5 Committee Substitute by the following vote: Yeas 5, Nays 0;  
1-6 May 19, 2017, sent to printer.)

1-7 COMMITTEE VOTE

	Yea	Nay	Absent	PNV
1-8				
1-9	X			
1-10			X	
1-11			X	
1-12	X			
1-13	X			
1-14	X			
1-15	X			

1-16 COMMITTEE SUBSTITUTE FOR H.B. No. 16 By: Watson

1-17 A BILL TO BE ENTITLED  
1-18 AN ACT

1-19 relating to sexual harassment, sexual assault, dating violence, and  
1-20 stalking at public and private postsecondary educational  
1-21 institutions.

1-22 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-23 SECTION 1. Chapter 51, Education Code, is amended by adding  
1-24 Subchapter E-2 to read as follows:

1-25 SUBCHAPTER E-2. SEXUAL HARASSMENT, SEXUAL ASSAULT, DATING  
1-26 VIOLENCE, AND STALKING

1-27 Sec. 51.251. DEFINITIONS. In this subchapter:

1-28 (1) "Coordinating board" means the Texas Higher  
1-29 Education Coordinating Board.

1-30 (2) "Dating violence" means abuse or violence, or a  
1-31 threat of abuse or violence, against a person with whom the actor  
1-32 has or has had a social relationship of a romantic or intimate  
1-33 nature.

1-34 (3) "Postsecondary educational institution" means an  
1-35 institution of higher education or a private or independent  
1-36 institution of higher education, as those terms are defined by  
1-37 Section 61.003.

1-38 (4) "Sexual assault" means sexual contact or  
1-39 intercourse with a person without the person's consent, including  
1-40 sexual contact or intercourse against the person's will or in a  
1-41 circumstance in which the person is incapable of consenting to the  
1-42 contact or intercourse.

1-43 (5) "Sexual harassment" means unwelcome, sex-based  
1-44 verbal or physical conduct that:

1-45 (A) in the employment context, unreasonably  
1-46 interferes with a person's work performance or creates an  
1-47 intimidating, hostile, or offensive work environment; or

1-48 (B) in the education context, is sufficiently  
1-49 severe, persistent, or pervasive that the conduct interferes with a  
1-50 student's ability to participate in or benefit from educational  
1-51 programs or activities at a postsecondary educational institution.

1-52 (6) "Stalking" means a course of conduct directed at a  
1-53 person that would cause a reasonable person to fear for the person's  
1-54 safety or to suffer substantial emotional distress.

1-55 Sec. 51.252. POLICY ON SEXUAL HARASSMENT, SEXUAL ASSAULT,  
1-56 DATING VIOLENCE, AND STALKING. (a) Each postsecondary educational  
1-57 institution shall adopt a policy on campus sexual harassment,  
1-58 sexual assault, dating violence, and stalking. The policy must:

1-59 (1) include:

1-60 (A) definitions of prohibited behavior;

2-1 (B) sanctions for violations;  
 2-2 (C) the protocol for reporting and responding to  
 2-3 reports of campus sexual harassment, sexual assault, dating  
 2-4 violence, and stalking;  
 2-5 (D) interim measures to protect victims of sexual  
 2-6 harassment, sexual assault, dating violence, or stalking during the  
 2-7 pendency of the institution's disciplinary process, including  
 2-8 protection from retaliation, and any other accommodations  
 2-9 available to those victims at the institution; and  
 2-10 (E) a statement regarding:  
 2-11 (i) the importance of a victim of sexual  
 2-12 harassment, sexual assault, dating violence, or stalking going to a  
 2-13 hospital for treatment and preservation of evidence, if applicable,  
 2-14 as soon as practicable after the incident;  
 2-15 (ii) the right of a victim of sexual  
 2-16 harassment, sexual assault, dating violence, or stalking to report  
 2-17 the incident to the institution and to receive a prompt and  
 2-18 equitable resolution of the report; and  
 2-19 (iii) the right of a victim of a crime to  
 2-20 choose whether to report the crime to law enforcement, to be  
 2-21 assisted by the institution in reporting the crime to law  
 2-22 enforcement, or to decline to report the crime to law enforcement;  
 2-23 and  
 2-24 (2) be approved by the institution's governing board  
 2-25 before final adoption by the institution.  
 2-26 (b) Each postsecondary educational institution shall make  
 2-27 the institution's campus sexual harassment, sexual assault, dating  
 2-28 violence, and stalking policy available to students, faculty, and  
 2-29 staff members by:  
 2-30 (1) including the policy in the institution's student  
 2-31 handbook and personnel handbook; and  
 2-32 (2) creating and maintaining a web page dedicated  
 2-33 solely to the policy that is easily accessible through a clearly  
 2-34 identifiable link on the institution's Internet website home page.  
 2-35 (c) Each postsecondary educational institution shall  
 2-36 require each entering freshman or undergraduate transfer student to  
 2-37 attend an orientation on the institution's campus sexual  
 2-38 harassment, sexual assault, dating violence, and stalking policy  
 2-39 before or during the first semester or term in which the student is  
 2-40 enrolled at the institution. The institution shall establish the  
 2-41 format and content of the orientation. The orientation:  
 2-42 (1) may be provided online; and  
 2-43 (2) must include the statements described by  
 2-44 Subsection (a)(1)(E).  
 2-45 (d) Each postsecondary educational institution shall  
 2-46 develop and implement a comprehensive prevention and outreach  
 2-47 program on campus sexual harassment, sexual assault, dating  
 2-48 violence, and stalking. The program must address a range of  
 2-49 strategies to prevent campus sexual harassment, sexual assault,  
 2-50 dating violence, and stalking, including a victim empowerment  
 2-51 program, a public awareness campaign, primary prevention,  
 2-52 bystander intervention, and risk reduction.  
 2-53 (e) Each biennium, each postsecondary educational  
 2-54 institution shall review the institution's campus sexual  
 2-55 harassment, sexual assault, dating violence, and stalking policy  
 2-56 and, with approval of the institution's governing board, revise the  
 2-57 policy as necessary.  
 2-58 Sec. 51.253. ONLINE REPORTING SYSTEM. (a) Each  
 2-59 postsecondary educational institution shall develop and establish  
 2-60 or contract with a third party to develop and establish an online  
 2-61 reporting system through which a student enrolled at or an employee  
 2-62 of the institution may report to the institution an allegation of  
 2-63 sexual harassment, sexual assault, dating violence, or stalking  
 2-64 committed against or witnessed by the student or employee,  
 2-65 regardless of the location at which the alleged incident occurred.  
 2-66 (b) The online reporting system must:  
 2-67 (1) enable a student or employee to report the alleged  
 2-68 incident anonymously; and  
 2-69 (2) be easily accessible through a clearly

3-1 identifiable link on the postsecondary educational institution's  
 3-2 Internet website home page.

3-3 (c) A protocol for reporting sexual harassment, sexual  
 3-4 assault, dating violence, or stalking adopted under Section 51.252  
 3-5 must comply with this section.

3-6 Sec. 51.254. AMNESTY FOR STUDENTS REPORTING CERTAIN  
 3-7 INCIDENTS. (a) A postsecondary educational institution may not  
 3-8 take any disciplinary action against a student enrolled at the  
 3-9 institution who in good faith reports to the institution being the  
 3-10 victim of, or a witness to, an incident of sexual harassment, sexual  
 3-11 assault, dating violence, or stalking for a violation by the  
 3-12 student of the institution's code of conduct occurring at or near  
 3-13 the time of the incident, regardless of the location at which the  
 3-14 incident occurred or the outcome of the institution's disciplinary  
 3-15 process regarding the incident, if any.

3-16 (b) A postsecondary educational institution may investigate  
 3-17 to determine whether a report of an incident of sexual harassment,  
 3-18 sexual assault, dating violence, or stalking was made in good  
 3-19 faith.

3-20 (c) A determination that a student is entitled to amnesty  
 3-21 under Subsection (a) is final and may not be revoked.

3-22 (d) Subsection (a) does not apply to a student who reports  
 3-23 the student's own commission or assistance in the commission of  
 3-24 sexual harassment, sexual assault, dating violence, or stalking.

3-25 (e) This section may not be construed to limit a  
 3-26 postsecondary educational institution's ability to provide amnesty  
 3-27 from application of the institution's policies in circumstances not  
 3-28 described by Subsection (a).

3-29 Sec. 51.255. VICTIM REQUEST NOT TO INVESTIGATE. (a) If an  
 3-30 alleged victim of an incident of sexual harassment, sexual assault,  
 3-31 dating violence, or stalking reported to a postsecondary  
 3-32 educational institution requests the institution not to  
 3-33 investigate the alleged incident, the institution may investigate  
 3-34 the alleged incident in a manner that complies with the  
 3-35 confidentiality requirements under Section 51.261. In determining  
 3-36 whether to investigate the alleged incident, the institution shall  
 3-37 consider:

3-38 (1) the seriousness of the alleged incident;

3-39 (2) whether the institution has received other reports  
 3-40 of sexual harassment, sexual assault, dating violence, or stalking  
 3-41 committed by the alleged perpetrator or perpetrators;

3-42 (3) whether the alleged incident poses a risk of harm  
 3-43 to others; and

3-44 (4) any other factors the institution determines  
 3-45 relevant.

3-46 (b) If a postsecondary educational institution decides not  
 3-47 to investigate an alleged incident of sexual harassment, sexual  
 3-48 assault, dating violence, or stalking based on the alleged victim's  
 3-49 request not to investigate, the institution shall take any steps  
 3-50 the institution determines necessary to protect the health and  
 3-51 safety of the institution's community in relation to the alleged  
 3-52 incident.

3-53 (c) A postsecondary educational institution shall inform an  
 3-54 alleged victim of an incident of sexual harassment, sexual assault,  
 3-55 dating violence, or stalking who requests the institution not to  
 3-56 investigate the alleged incident of the institution's decision  
 3-57 whether to investigate the alleged incident.

3-58 Sec. 51.256. DISCIPLINARY PROCESS FOR CERTAIN VIOLATIONS.  
 3-59 A postsecondary educational institution that initiates a  
 3-60 disciplinary process concerning an allegation that a student  
 3-61 enrolled at the institution violated the institution's code of  
 3-62 conduct by committing sexual harassment, sexual assault, dating  
 3-63 violence, or stalking shall:

3-64 (1) provide to the student and the alleged victim a  
 3-65 prompt and equitable opportunity to present witnesses and other  
 3-66 evidence relevant to the alleged violation during the disciplinary  
 3-67 process;

3-68 (2) ensure that both the student and the alleged  
 3-69 victim have reasonable and equitable access to all evidence

4-1 relevant to the alleged violation in the institution's possession  
 4-2 not later than five days before the date on which the disciplinary  
 4-3 process begins, including any statements made by the alleged victim  
 4-4 or by other persons, information stored electronically, written or  
 4-5 electronic communications, social media posts, or physical  
 4-6 evidence, redacted as necessary to comply with any applicable  
 4-7 federal or state law regarding confidentiality;

4-8 (3) if the institution holds a formal disciplinary  
 4-9 hearing, permit both the student and the alleged victim to suggest  
 4-10 questions or areas of inquiry for a person conducting the hearing to  
 4-11 address with witnesses of the alleged violation in a safe and  
 4-12 appropriate manner, as determined by the institution, which may not  
 4-13 include the student and the alleged victim directly questioning  
 4-14 each other or any other witness; and

4-15 (4) take reasonable steps to protect the student and  
 4-16 the alleged victim from retaliation and harassment during the  
 4-17 pendency of the disciplinary process.

4-18 Sec. 51.257. STUDENT WITHDRAWAL OR GRADUATION PENDING  
 4-19 DISCIPLINARY CHARGES. (a) If a student withdraws or graduates from  
 4-20 a postsecondary educational institution pending a disciplinary  
 4-21 charge alleging that the student violated the institution's code of  
 4-22 conduct by committing sexual harassment, sexual assault, dating  
 4-23 violence, or stalking, the institution:

4-24 (1) may not end the disciplinary process or issue a  
 4-25 transcript to the student until the institution makes a final  
 4-26 determination of responsibility; and

4-27 (2) shall expedite the institution's disciplinary  
 4-28 process as necessary to accommodate both the student's and the  
 4-29 alleged victim's interest in a speedy resolution.

4-30 (b) On request by another postsecondary educational  
 4-31 institution, a postsecondary educational institution shall provide  
 4-32 to the requesting institution information relating to a  
 4-33 determination by the institution that a student enrolled at the  
 4-34 institution violated the institution's code of conduct by  
 4-35 committing sexual harassment, sexual assault, dating violence, or  
 4-36 stalking.

4-37 Sec. 51.258. TRAUMA-INFORMED INVESTIGATION TRAINING. Each  
 4-38 peace officer employed by a postsecondary educational institution  
 4-39 shall complete training on trauma-informed investigation into  
 4-40 allegations of sexual harassment, sexual assault, dating violence,  
 4-41 and stalking.

4-42 Sec. 51.259. MEMORANDA OF UNDERSTANDING REQUIRED. To  
 4-43 facilitate effective communication and coordination regarding  
 4-44 allegations of sexual harassment, sexual assault, dating violence,  
 4-45 and stalking at the institution, a postsecondary educational  
 4-46 institution shall enter into a memorandum of understanding with one  
 4-47 or more:

4-48 (1) local law enforcement agencies;

4-49 (2) sexual harassment, sexual assault, dating  
 4-50 violence, or stalking advocacy groups; and

4-51 (3) hospitals or other medical resource providers.

4-52 Sec. 51.260. RESPONSIBLE OR CONFIDENTIAL EMPLOYEE. (a)  
 4-53 Each postsecondary educational institution shall:

4-54 (1) designate:

4-55 (A) one or more employees to act as responsible  
 4-56 employees for purposes of Title IX of the Education Amendments of  
 4-57 1972 (20 U.S.C. Section 1681 et seq.); and

4-58 (B) one or more employees as persons to whom  
 4-59 students enrolled at the institution may speak confidentially  
 4-60 concerning sexual harassment, sexual assault, dating violence, and  
 4-61 stalking; and

4-62 (2) inform each student enrolled at the institution of  
 4-63 the responsible and confidential employees designated under  
 4-64 Subdivision (1).

4-65 (b) A confidential employee designated under Subsection  
 4-66 (a)(1)(B) may not disclose any communication made by a student to  
 4-67 the employee unless the student consents to the disclosure or the  
 4-68 employee is required to make the disclosure under state or federal  
 4-69 law.

5-1 Sec. 51.261. CONFIDENTIALITY. (a) The protections  
 5-2 provided by this section apply to:

5-3 (1) an alleged victim of an incident of sexual  
 5-4 harassment, sexual assault, dating violence, or stalking reported  
 5-5 to a postsecondary educational institution;

5-6 (2) a person who reports to a postsecondary  
 5-7 educational institution an incident of sexual harassment, sexual  
 5-8 assault, dating violence, or stalking, who sought guidance from the  
 5-9 institution concerning such an incident, or who participated in the  
 5-10 institution's investigation of such an incident; and

5-11 (3) a person who is alleged in a report made to a  
 5-12 postsecondary educational institution to have committed or  
 5-13 assisted in the commission of sexual harassment, sexual assault,  
 5-14 dating violence, or stalking if, after completing an investigation,  
 5-15 the institution determines the report to be unsubstantiated or  
 5-16 without merit.

5-17 (b) Unless waived in writing by the person, the identity of  
 5-18 a person described by Subsection (a):

5-19 (1) is confidential and not subject to disclosure  
 5-20 under Chapter 552, Government Code; and

5-21 (2) may be disclosed only to:  
 5-22 (A) the postsecondary educational institution to  
 5-23 which the report described by Subsection (a) is made as necessary to  
 5-24 conduct an investigation of the report;

5-25 (B) a law enforcement officer as necessary to  
 5-26 conduct a criminal investigation of the report described by  
 5-27 Subsection (a); or

5-28 (C) a health care provider in an emergency  
 5-29 situation, as determined necessary by the institution.

5-30 (c) A disclosure under Subsection (b) is not a voluntary  
 5-31 disclosure for purposes of Section 552.007, Government Code.

5-32 (d) Information regarding an incident of sexual harassment,  
 5-33 sexual assault, dating violence, or stalking disclosed to a health  
 5-34 care provider or other medical provider employed by a postsecondary  
 5-35 educational institution is confidential and may be shared by the  
 5-36 provider only with the victim's consent. The provider must provide  
 5-37 aggregate data or other nonidentifying information regarding those  
 5-38 incidents to the institution's Title IX coordinator.

5-39 Sec. 51.262. REPORT. (a) Each postsecondary educational  
 5-40 institution shall annually submit to the institution's governing  
 5-41 body a report concerning any reports of sexual harassment, sexual  
 5-42 assault, dating violence, or stalking received by the institution  
 5-43 during the preceding academic year. The report:

5-44 (1) may not identify any person; and

5-45 (2) must include information regarding:

5-46 (A) the investigation of those reports;

5-47 (B) the disposition, if any, of any disciplinary  
 5-48 processes arising from those reports; and

5-49 (C) the reports for which the institution  
 5-50 determined not to initiate a disciplinary process, if any.

5-51 (b) A report submitted under Subsection (a) is public  
 5-52 information subject to disclosure under Chapter 552, Government  
 5-53 Code, and a private or independent institution of higher education  
 5-54 is a governmental body with respect to such a report for purposes of  
 5-55 that chapter.

5-56 Sec. 51.263. COMPLIANCE. (a) If the coordinating board  
 5-57 determines that an institution of higher education is not in  
 5-58 substantial compliance with this subchapter, the coordinating  
 5-59 board shall report that determination to the legislature for  
 5-60 consideration of whether to reduce the allocation of state funding  
 5-61 to the institution for the following academic year.

5-62 (b) If the coordinating board determines that a private or  
 5-63 independent institution of higher education is not in substantial  
 5-64 compliance with this subchapter, the coordinating board may assess  
 5-65 an administrative penalty against the institution in an amount not  
 5-66 to exceed the amount of funding received by students enrolled at the  
 5-67 institution from tuition equalization grants under Subchapter F,  
 5-68 Chapter 61, for the preceding academic year or \$2 million,  
 5-69 whichever is greater. In determining the amount of the penalty, the

6-1 coordinating board shall consider the nature of the violation and  
6-2 the number of students enrolled at the institution.

6-3 (c) If the coordinating board takes an action under  
6-4 Subsection (a) or (b) against a postsecondary educational  
6-5 institution, the coordinating board shall provide to the  
6-6 institution written notice of the coordinating board's reasons for  
6-7 taking the action.

6-8 (d) A postsecondary educational institution against which  
6-9 the coordinating board takes an action under Subsection (a) or (b),  
6-10 as applicable, may appeal the action taken in the manner provided by  
6-11 Chapter 2001, Government Code.

6-12 (e) A private or independent institution of higher  
6-13 education may not pay an administrative penalty assessed under  
6-14 Subsection (b) using state or federal money.

6-15 (f) An administrative penalty collected under this section  
6-16 shall be deposited to the credit of the sexual assault program fund  
6-17 established under Section 420.008, Government Code.

6-18 Sec. 51.264. ADVISORY COMMITTEE. (a) The commissioner of  
6-19 higher education shall establish an advisory committee to:

6-20 (1) make recommendations to the coordinating board  
6-21 regarding rules for adoption under Section 51.265; and

6-22 (2) develop recommended training for responsible and  
6-23 confidential employees designated under Section 51.260 and for  
6-24 Title IX coordinators at postsecondary educational institutions.

6-25 (b) The advisory committee consists of nine members  
6-26 appointed by the commissioner of higher education. Each member  
6-27 must be a chief executive officer of a postsecondary educational  
6-28 institution or a representative designated by that officer.

6-29 (c) The advisory committee shall annually review and, if  
6-30 necessary, update the training recommended under Subsection  
6-31 (a)(2).

6-32 Sec. 51.265. RULES. (a) The coordinating board shall adopt  
6-33 rules as necessary to implement and enforce this subchapter,  
6-34 including rules that:

6-35 (1) define relevant terms; and

6-36 (2) ensure implementation of this subchapter in a  
6-37 manner that complies with federal law regarding confidentiality of  
6-38 student educational information, including the Family Educational  
6-39 Rights and Privacy Act of 1974 (20 U.S.C. Section 1232g).

6-40 (b) In adopting rules under this section, the coordinating  
6-41 board shall consult with relevant stakeholders.

6-42 SECTION 2. Section 51.9363, Education Code, is repealed.

6-43 SECTION 3. The changes in law made by this Act apply  
6-44 beginning January 1, 2018.

6-45 SECTION 4. Not later than January 1, 2018, each public or  
6-46 private postsecondary educational institution shall develop and  
6-47 establish the online reporting system required under Section  
6-48 51.253, Education Code, as added by this Act.

6-49 SECTION 5. This Act takes effect immediately if it receives  
6-50 a vote of two-thirds of all the members elected to each house, as  
6-51 provided by Section 39, Article III, Texas Constitution. If this  
6-52 Act does not receive the vote necessary for immediate effect, this  
6-53 Act takes effect September 1, 2017.

6-54 \* \* \* \* \*