

1-1 By: Howard, et al. (Senate Sponsor - Watson) H.B. No. 1735
 1-2 (In the Senate - Received from the House April 23, 2019;
 1-3 April 29, 2019, read first time and referred to Committee on Higher
 1-4 Education; May 13, 2019, reported adversely, with favorable
 1-5 Committee Substitute by the following vote: Yeas 8, Nays 0;
 1-6 May 13, 2019, 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	X			
1-17	X			

1-18 COMMITTEE SUBSTITUTE FOR H.B. No. 1735 By: Watson

1-19 A BILL TO BE ENTITLED
 1-20 AN ACT

1-21 relating to sexual harassment, sexual assault, dating violence, and
 1-22 stalking at public and private postsecondary educational
 1-23 institutions; providing an administrative penalty.

1-24 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-25 SECTION 1. Chapter 51, Education Code, is amended by adding
 1-26 Subchapter E-3 to read as follows:

1-27 SUBCHAPTER E-3. SEXUAL HARASSMENT, SEXUAL ASSAULT, DATING
 1-28 VIOLENCE, AND STALKING

1-29 Sec. 51.281. DEFINITIONS. In this subchapter:

1-30 (1) "Coordinating board" means the Texas Higher
 1-31 Education Coordinating Board.

1-32 (2) "Dating violence," "sexual assault," and
 1-33 "stalking" have the meanings assigned by the Jeanne Clery
 1-34 Disclosure of Campus Security Policy and Campus Crime Statistics
 1-35 Act (20 U.S.C. Section 1092(f)(6)(A)).

1-36 (3) "Postsecondary educational institution" means an
 1-37 institution of higher education or a private or independent
 1-38 institution of higher education, as those terms are defined by
 1-39 Section 61.003.

1-40 (4) "Sexual harassment" means unwelcome, sex-based
 1-41 verbal or physical conduct that:

1-42 (A) in the employment context, unreasonably
 1-43 interferes with a person's work performance or creates an
 1-44 intimidating, hostile, or offensive work environment; or

1-45 (B) in the education context, is sufficiently
 1-46 severe, persistent, or pervasive that the conduct interferes with a
 1-47 student's ability to participate in or benefit from educational
 1-48 programs or activities at a postsecondary educational institution.

1-49 Sec. 51.282. POLICY ON SEXUAL HARASSMENT, SEXUAL ASSAULT,
 1-50 DATING VIOLENCE, AND STALKING. (a) Each postsecondary educational
 1-51 institution shall adopt a policy on sexual harassment, sexual
 1-52 assault, dating violence, and stalking applicable to each student
 1-53 enrolled at and each employee of the institution. The policy must:

1-54 (1) include:

1-55 (A) definitions of prohibited behavior;

1-56 (B) sanctions for violations;

1-57 (C) the protocol for reporting and responding to
 1-58 reports of sexual harassment, sexual assault, dating violence, and
 1-59 stalking;

1-60 (D) interim measures to protect victims of sexual

2-1 harassment, sexual assault, dating violence, or stalking during the
2-2 pendency of the institution's disciplinary process, including
2-3 protection from retaliation, and any other accommodations
2-4 available to those victims at the institution; and
2-5 (E) a statement regarding:
2-6 (i) the importance of a victim of sexual
2-7 harassment, sexual assault, dating violence, or stalking going to a
2-8 hospital for treatment and preservation of evidence, if applicable,
2-9 as soon as practicable after the incident;
2-10 (ii) the right of a victim of sexual
2-11 harassment, sexual assault, dating violence, or stalking to report
2-12 the incident to the institution and to receive a prompt and
2-13 equitable resolution of the report; and
2-14 (iii) the right of a victim of a crime to
2-15 choose whether to report the crime to law enforcement, to be
2-16 assisted by the institution in reporting the crime to law
2-17 enforcement, or to decline to report the crime to law enforcement;
2-18 and
2-19 (2) be approved by the institution's governing board
2-20 before final adoption by the institution.
2-21 (b) Each postsecondary educational institution shall make
2-22 the institution's sexual harassment, sexual assault, dating
2-23 violence, and stalking policy available to students, faculty, and
2-24 staff members by:
2-25 (1) including the policy in the institution's student
2-26 handbook and personnel handbook; and
2-27 (2) creating and maintaining a web page dedicated
2-28 solely to the policy that is easily accessible through a clearly
2-29 identifiable link on the institution's Internet website home page.
2-30 (c) Each postsecondary educational institution shall
2-31 require each entering freshman or undergraduate transfer student to
2-32 attend an orientation on the institution's sexual harassment,
2-33 sexual assault, dating violence, and stalking policy before or
2-34 during the first semester or term in which the student is enrolled
2-35 at the institution. The institution shall establish the format and
2-36 content of the orientation. The orientation:
2-37 (1) may be provided online; and
2-38 (2) must include the statements described by
2-39 Subsection (a)(1)(E).
2-40 (d) Each postsecondary educational institution shall
2-41 develop and implement a comprehensive prevention and outreach
2-42 program on sexual harassment, sexual assault, dating violence, and
2-43 stalking. The program must:
2-44 (1) address a range of strategies to prevent sexual
2-45 harassment, sexual assault, dating violence, and stalking,
2-46 including a victim empowerment program, a public awareness
2-47 campaign, primary prevention, bystander intervention, and risk
2-48 reduction; and
2-49 (2) include providing to students information
2-50 regarding the protocol for reporting incidents of sexual
2-51 harassment, sexual assault, dating violence, and stalking adopted
2-52 under Subsection (a), including the name, office location, and
2-53 contact information of the institution's Title IX coordinator, by:
2-54 (A) e-mailing the information to each student at
2-55 the beginning of each semester or other academic term; and
2-56 (B) including the information in the orientation
2-57 required under Subsection (c).
2-58 (e) As part of the protocol for responding to reports of
2-59 sexual harassment, sexual assault, dating violence, and stalking
2-60 adopted under Subsection (a), each postsecondary educational
2-61 institution shall:
2-62 (1) to the greatest extent practicable based on the
2-63 number of counselors employed by the institution, ensure that each
2-64 alleged victim or alleged perpetrator of an incident of sexual
2-65 harassment, sexual assault, dating violence, or stalking and any
2-66 other person who reports such an incident are offered counseling
2-67 provided by a counselor who does not provide counseling to any other
2-68 person involved in the incident; and
2-69 (2) notwithstanding any other law, allow an alleged

3-1 victim or alleged perpetrator of an incident of sexual harassment,
3-2 sexual assault, dating violence, or stalking to drop a course in
3-3 which both parties are enrolled without any academic penalty.

3-4 (f) Each biennium, each postsecondary educational
3-5 institution shall review the institution's sexual harassment,
3-6 sexual assault, dating violence, and stalking policy and, with
3-7 approval of the institution's governing board, revise the policy as
3-8 necessary.

3-9 Sec. 51.285. VICTIM REQUEST NOT TO INVESTIGATE. (a) If an
3-10 alleged victim of an incident of sexual harassment, sexual assault,
3-11 dating violence, or stalking reported to a postsecondary
3-12 educational institution requests the institution not to
3-13 investigate the alleged incident, the institution may investigate
3-14 the alleged incident in a manner that complies with the
3-15 confidentiality requirements under Section 51.291. In determining
3-16 whether to investigate the alleged incident, the institution shall
3-17 consider:

- 3-18 (1) the seriousness of the alleged incident;
- 3-19 (2) whether the institution has received other reports
3-20 of sexual harassment, sexual assault, dating violence, or stalking
3-21 committed by the alleged perpetrator or perpetrators;
- 3-22 (3) whether the alleged incident poses a risk of harm
3-23 to others; and
- 3-24 (4) any other factors the institution determines
3-25 relevant.

3-26 (b) If a postsecondary educational institution decides not
3-27 to investigate an alleged incident of sexual harassment, sexual
3-28 assault, dating violence, or stalking based on the alleged victim's
3-29 request not to investigate, the institution shall take any steps
3-30 the institution determines necessary to protect the health and
3-31 safety of the institution's community in relation to the alleged
3-32 incident.

3-33 (c) A postsecondary educational institution shall inform an
3-34 alleged victim of an incident of sexual harassment, sexual assault,
3-35 dating violence, or stalking who requests the institution not to
3-36 investigate the alleged incident of the institution's decision
3-37 whether to investigate the alleged incident.

3-38 Sec. 51.286. DISCIPLINARY PROCESS FOR CERTAIN VIOLATIONS.
3-39 A postsecondary educational institution that initiates a
3-40 disciplinary process concerning an allegation that a student
3-41 enrolled at the institution violated the institution's code of
3-42 conduct by committing sexual harassment, sexual assault, dating
3-43 violence, or stalking shall:

- 3-44 (1) provide to the student and the alleged victim a
3-45 prompt and equitable opportunity to present witnesses and other
3-46 evidence relevant to the alleged violation during the disciplinary
3-47 process;
- 3-48 (2) ensure that both the student and the alleged
3-49 victim have reasonable and equitable access to all evidence
3-50 relevant to the alleged violation in the institution's possession,
3-51 including any statements made by the alleged victim or by other
3-52 persons, information stored electronically, written or electronic
3-53 communications, social media posts, or physical evidence, redacted
3-54 as necessary to comply with any applicable federal or state law
3-55 regarding confidentiality; and
- 3-56 (3) take reasonable steps to protect the student and
3-57 the alleged victim from retaliation and harassment during the
3-58 pendency of the disciplinary process.

3-59 Sec. 51.287. STUDENT WITHDRAWAL OR GRADUATION PENDING
3-60 DISCIPLINARY CHARGES. (a) If a student withdraws or graduates from
3-61 a postsecondary educational institution pending a disciplinary
3-62 charge alleging that the student violated the institution's code of
3-63 conduct by committing sexual harassment, sexual assault, dating
3-64 violence, or stalking, the institution:

- 3-65 (1) may not end the disciplinary process or issue a
3-66 transcript to the student until the institution makes a final
3-67 determination of responsibility; and
- 3-68 (2) shall expedite the institution's disciplinary
3-69 process as necessary to accommodate both the student's and the

4-1 alleged victim's interest in a speedy resolution.
4-2 (b) On request by another postsecondary educational
4-3 institution, a postsecondary educational institution shall provide
4-4 to the requesting institution information relating to a
4-5 determination by the institution that a student enrolled at the
4-6 institution violated the institution's code of conduct by
4-7 committing sexual harassment, sexual assault, dating violence, or
4-8 stalking.

4-9 Sec. 51.288. TRAUMA-INFORMED INVESTIGATION TRAINING. Each
4-10 peace officer employed by a postsecondary educational institution
4-11 shall complete training on trauma-informed investigation into
4-12 allegations of sexual harassment, sexual assault, dating violence,
4-13 and stalking.

4-14 Sec. 51.289. MEMORANDA OF UNDERSTANDING REQUIRED. To
4-15 facilitate effective communication and coordination regarding
4-16 allegations of sexual harassment, sexual assault, dating violence,
4-17 and stalking at the institution, a postsecondary educational
4-18 institution shall enter into a memorandum of understanding with one
4-19 or more:

- 4-20 (1) local law enforcement agencies;
- 4-21 (2) sexual harassment, sexual assault, dating
4-22 violence, or stalking advocacy groups; and
- 4-23 (3) hospitals or other medical resource providers.

4-24 Sec. 51.290. RESPONSIBLE AND CONFIDENTIAL EMPLOYEE;
4-25 STUDENT ADVOCATE. (a) Each postsecondary educational institution
4-26 shall:

- 4-27 (1) designate:
 - 4-28 (A) one or more employees to act as responsible
4-29 employees for purposes of Title IX of the Education Amendments of
4-30 1972 (20 U.S.C. Section 1681 et seq.); and
 - 4-31 (B) one or more employees as persons to whom
4-32 students enrolled at the institution may speak confidentially
4-33 concerning sexual harassment, sexual assault, dating violence, and
4-34 stalking; and

- 4-35 (2) inform each student enrolled at the institution of
4-36 the responsible and confidential employees designated under
4-37 Subdivision (1).

4-38 (b) A postsecondary educational institution may designate
4-39 one or more students enrolled at the institution as student
4-40 advocates to whom other students enrolled at the institution may
4-41 speak confidentially concerning sexual harassment, sexual assault,
4-42 dating violence, and stalking. The institution shall notify each
4-43 student enrolled at the institution of the student advocates
4-44 designated under this subsection.

4-45 (c) A confidential employee designated under Subsection
4-46 (a)(1)(B) or a student advocate designated under Subsection (b) may
4-47 not disclose any communication made by a student to the employee or
4-48 advocate unless the student consents to the disclosure or the
4-49 employee or advocate is required to make the disclosure under state
4-50 or federal law.

4-51 Sec. 51.291. CONFIDENTIALITY. (a) The protections
4-52 provided by this section apply to:

4-53 (1) an alleged victim of an incident of sexual
4-54 harassment, sexual assault, dating violence, or stalking reported
4-55 to a postsecondary educational institution;

4-56 (2) a person who reports to a postsecondary
4-57 educational institution an incident of sexual harassment, sexual
4-58 assault, dating violence, or stalking, who sought guidance from the
4-59 institution concerning such an incident, or who participated in the
4-60 institution's investigation of such an incident; and

4-61 (3) a person who is alleged in a report made to a
4-62 postsecondary educational institution to have committed or
4-63 assisted in the commission of sexual harassment, sexual assault,
4-64 dating violence, or stalking if, after completing an investigation,
4-65 the institution determines the report to be unsubstantiated or
4-66 without merit.

4-67 (b) Unless waived in writing by the person, the identity of
4-68 a person described by Subsection (a):

- 4-69 (1) is confidential and not subject to disclosure

5-1 under Chapter 552, Government Code; and

5-2 (2) may be disclosed only to:

5-3 (A) the postsecondary educational institution to
5-4 which the report described by Subsection (a) is made as necessary to
5-5 conduct an investigation of the report;

5-6 (B) a law enforcement officer as necessary to
5-7 conduct a criminal investigation of the report described by
5-8 Subsection (a); or

5-9 (C) a health care provider in an emergency
5-10 situation, as determined necessary by the institution.

5-11 (c) A disclosure under Subsection (b) is not a voluntary
5-12 disclosure for purposes of Section 552.007, Government Code.

5-13 (d) Information regarding an incident of sexual harassment,
5-14 sexual assault, dating violence, or stalking disclosed to a health
5-15 care provider or other medical provider employed by a postsecondary
5-16 educational institution is confidential and may be shared by the
5-17 provider only with the victim's consent. The provider must provide
5-18 aggregate data or other nonidentifying information regarding those
5-19 incidents to the institution's Title IX coordinator.

5-20 Sec. 51.292. COMPLIANCE. (a) If the coordinating board
5-21 determines that a postsecondary educational institution is not in
5-22 substantial compliance with this subchapter, the coordinating
5-23 board may assess an administrative penalty against the institution
5-24 in an amount not to exceed \$2 million. In determining the amount of
5-25 the penalty, the coordinating board shall consider the nature of
5-26 the violation and the number of students enrolled at the
5-27 institution.

5-28 (b) If the coordinating board assesses an administrative
5-29 penalty against a postsecondary educational institution under
5-30 Subsection (a), the coordinating board shall provide to the
5-31 institution written notice of the coordinating board's reasons for
5-32 assessing the penalty.

5-33 (c) A postsecondary educational institution assessed an
5-34 administrative penalty under Subsection (a) may appeal the penalty
5-35 in the manner provided by Chapter 2001, Government Code.

5-36 (d) A postsecondary educational institution may not pay an
5-37 administrative penalty assessed under Subsection (a) using state or
5-38 federal money.

5-39 (e) An administrative penalty collected under this section
5-40 shall be deposited to the credit of the sexual assault program fund
5-41 established under Section 420.008, Government Code.

5-42 (f) The coordinating board shall annually submit to the
5-43 governor, the lieutenant governor, the speaker of the house of
5-44 representatives, and the standing legislative committees with
5-45 primary jurisdiction over legislation concerning sexual assault at
5-46 postsecondary educational institutions a report regarding
5-47 compliance with this subchapter, including a summary of the
5-48 postsecondary educational institutions found not to be in
5-49 substantial compliance as provided by this section and any
5-50 penalties assessed under this section during the preceding year.

5-51 Sec. 51.293. EQUAL ACCESS. In implementing the
5-52 requirements under this subchapter, a postsecondary educational
5-53 institution shall, to the greatest extent practicable, ensure equal
5-54 access for students enrolled at or employees of the institution who
5-55 are persons with disabilities. The institution shall make
5-56 reasonable efforts to consult with a disability services office of
5-57 the institution, advocacy groups for people with disabilities, and
5-58 other relevant stakeholders to assist the institution with
5-59 complying with the institution's duties under this section.

5-60 Sec. 51.294. ADVISORY COMMITTEE. (a) The commissioner of
5-61 higher education shall establish an advisory committee to:

5-62 (1) make recommendations to the coordinating board
5-63 regarding rules for adoption under Section 51.295; and

5-64 (2) develop recommended training for responsible and
5-65 confidential employees designated under Section 51.290 and for
5-66 Title IX coordinators at postsecondary educational institutions.

5-67 (b) The advisory committee consists of nine members
5-68 appointed by the commissioner of higher education. Each member
5-69 must be a chief executive officer of a postsecondary educational

6-1 institution or a representative designated by that officer.
6-2 (c) The advisory committee shall annually review and, if
6-3 necessary, update the training recommended under Subsection
6-4 (a)(2).

6-5 Sec. 51.295. RULES. (a) The coordinating board shall adopt
6-6 rules as necessary to implement and enforce this subchapter,
6-7 including rules that:

- 6-8 (1) define relevant terms; and
- 6-9 (2) ensure implementation of this subchapter in a
6-10 manner that complies with federal law regarding confidentiality of
6-11 student educational information, including the Family Educational
6-12 Rights and Privacy Act of 1974 (20 U.S.C. Section 1232g).

6-13 (b) In adopting rules under this section, the coordinating
6-14 board shall consult with relevant stakeholders.

6-15 SECTION 2. Sections 51.9365(b), (c), and (d), Education
6-16 Code, are transferred to Subchapter E-3, Chapter 51, Education
6-17 Code, as added by this Act, redesignated as Section 51.283,
6-18 Education Code, and amended to read as follows:

6-19 Sec. 51.283. ELECTRONIC REPORTING OPTION. (a) [~~(b)~~] Each
6-20 postsecondary educational institution shall provide an option for a
6-21 student enrolled at or an employee of the institution to
6-22 electronically report to the institution an allegation of sexual
6-23 harassment, sexual assault, dating violence, or stalking committed
6-24 against or witnessed by the student or employee, regardless of the
6-25 location at which the alleged offense occurred.

6-26 (b) [~~(c)~~] The electronic reporting option provided under
6-27 Subsection (a) [~~(b)~~] must:

6-28 (1) enable a student or employee to report the alleged
6-29 offense anonymously; and

6-30 (2) be easily accessible through a clearly
6-31 identifiable link on the postsecondary educational institution's
6-32 Internet website home page.

6-33 (c) [~~(d)~~] A protocol for reporting sexual assault adopted
6-34 under Section 51.282 [~~51.9363~~] must comply with this section.

6-35 SECTION 3. Sections 51.9366(b), (c), (d), (e), and (f),
6-36 Education Code, are transferred to Subchapter E-3, Chapter 51,
6-37 Education Code, as added by this Act, redesignated as Section
6-38 51.284, Education Code, and amended to read as follows:

6-39 Sec. 51.284. AMNESTY FOR STUDENTS REPORTING CERTAIN
6-40 INCIDENTS. (a) [~~(b)~~] A postsecondary educational institution may

6-41 not take any disciplinary action against a student enrolled at the
6-42 institution who in good faith reports to the institution being the
6-43 victim of, or a witness to, an incident of sexual harassment, sexual
6-44 assault, dating violence, or stalking for a violation by the
6-45 student of the institution's code of conduct occurring at or near
6-46 the time of the incident, regardless of the location at which the
6-47 incident occurred or the outcome of the institution's disciplinary
6-48 process regarding the incident, if any.

6-49 (b) [~~(c)~~] A postsecondary educational institution may
6-50 investigate to determine whether a report of an incident of sexual
6-51 harassment, sexual assault, dating violence, or stalking was made
6-52 in good faith.

6-53 (c) [~~(d)~~] A determination that a student is entitled to
6-54 amnesty under Subsection (a) [~~(b)~~] is final and may not be revoked.

6-55 (d) [~~(e)~~] Subsection (a) [~~(b)~~] does not apply to a student
6-56 who reports the student's own commission or assistance in the
6-57 commission of sexual harassment, sexual assault, dating violence,
6-58 or stalking.

6-59 (e) [~~(f)~~] This section may not be construed to limit a
6-60 postsecondary educational institution's ability to provide amnesty
6-61 from application of the institution's policies in circumstances not
6-62 described by Subsection (a) [~~(b)~~].

6-63 SECTION 4. The following provisions of the Education Code
6-64 are repealed:

- 6-65 (1) Section 51.9363;
- 6-66 (2) the heading to Sections 51.9365 and 51.9366;
- 6-67 (3) Sections 51.9365(a) and (e); and
- 6-68 (4) Sections 51.9366(a) and (g).

6-69 SECTION 5. The changes in law made by this Act apply

7-1 beginning August 1, 2020.

7-2 SECTION 6. Not later than September 1, 2021, the Texas
7-3 Higher Education Coordinating Board shall submit its initial report
7-4 required under Section 51.292(f), Education Code, as added by this
7-5 Act.

7-6 SECTION 7. This Act takes effect September 1, 2019.

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