

1-1 By: Watson S.B. No. 585
 1-2 (In the Senate - Filed February 1, 2019; February 21, 2019,
 1-3 read first time and referred to Committee on Higher Education;
 1-4 April 16, 2019, reported adversely, with favorable Committee
 1-5 Substitute by the following vote: Yeas 9, Nays 0; April 16, 2019,
 1-6 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 S.B. No. 585 By: Taylor

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) "Institution of higher education" and "private or
 1-37 independent institution of higher education" have the meanings
 1-38 assigned by Section 61.003.

1-39 (4) "Postsecondary educational institution" means an
 1-40 institution of higher education or a private or independent
 1-41 institution of higher education, as those terms are defined by
 1-42 Section 61.003.

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 Sec. 51.282. POLICY ON SEXUAL HARASSMENT, SEXUAL ASSAULT,
 1-53 DATING VIOLENCE, AND STALKING. (a) Each postsecondary
 1-54 educational institution shall adopt a policy on sexual harassment,
 1-55 sexual assault, dating violence, and stalking applicable to each
 1-56 student enrolled at and each employee of the institution. The
 1-57 policy must:

1-58 (1) include:

1-59 (A) definitions of prohibited behavior;

1-60 (B) sanctions for violations;

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

3-1 other person who reports such an incident are offered counseling
 3-2 provided by a counselor who does not provide counseling to any other
 3-3 person involved in the incident; and

3-4 (2) notwithstanding any other law, allow an alleged
 3-5 victim or alleged perpetrator of an incident of sexual harassment,
 3-6 sexual assault, dating violence, or stalking to drop a course in
 3-7 which both parties are enrolled without any academic penalty.

3-8 (f) Each biennium, each postsecondary educational
 3-9 institution shall review the institution's sexual harassment,
 3-10 sexual assault, dating violence, and stalking policy and, with
 3-11 approval of the institution's governing board, revise the policy as
 3-12 necessary.

3-13 Sec. 51.285. VICTIM REQUEST NOT TO INVESTIGATE. (a) If an
 3-14 alleged victim of an incident of sexual harassment, sexual assault,
 3-15 dating violence, or stalking reported to a postsecondary
 3-16 educational institution requests the institution not to
 3-17 investigate the alleged incident, the institution may investigate
 3-18 the alleged incident in a manner that complies with the
 3-19 confidentiality requirements under Section 51.291. In determining
 3-20 whether to investigate the alleged incident, the institution shall
 3-21 consider:

3-22 (1) the seriousness of the alleged incident;

3-23 (2) whether the institution has received other reports
 3-24 of sexual harassment, sexual assault, dating violence, or stalking
 3-25 committed by the alleged perpetrator or perpetrators;

3-26 (3) whether the alleged incident poses a risk of harm
 3-27 to others; and

3-28 (4) any other factors the institution determines
 3-29 relevant.

3-30 (b) If a postsecondary educational institution decides not
 3-31 to investigate an alleged incident of sexual harassment, sexual
 3-32 assault, dating violence, or stalking based on the alleged victim's
 3-33 request not to investigate, the institution shall take any steps
 3-34 the institution determines necessary to protect the health and
 3-35 safety of the institution's community in relation to the alleged
 3-36 incident.

3-37 (c) A postsecondary educational institution shall inform an
 3-38 alleged victim of an incident of sexual harassment, sexual assault,
 3-39 dating violence, or stalking who requests the institution not to
 3-40 investigate the alleged incident of the institution's decision
 3-41 whether to investigate the alleged incident.

3-42 Sec. 51.286. DISCIPLINARY PROCESS FOR CERTAIN VIOLATIONS.
 3-43 A postsecondary educational institution that initiates a
 3-44 disciplinary process concerning an allegation that a student
 3-45 enrolled at the institution violated the institution's code of
 3-46 conduct by committing sexual harassment, sexual assault, dating
 3-47 violence, or stalking shall:

3-48 (1) provide to the student and the alleged victim a
 3-49 prompt and equitable opportunity to present witnesses and other
 3-50 evidence relevant to the alleged violation during the disciplinary
 3-51 process;

3-52 (2) ensure that both the student and the alleged
 3-53 victim have reasonable and equitable access to all evidence
 3-54 relevant to the alleged violation in the institution's possession,
 3-55 including any statements made by the alleged victim or by other
 3-56 persons, information stored electronically, written or electronic
 3-57 communications, social media posts, or physical evidence, redacted
 3-58 as necessary to comply with any applicable federal or state law
 3-59 regarding confidentiality; and

3-60 (3) take reasonable steps to protect the student and
 3-61 the alleged victim from retaliation and harassment during the
 3-62 pendency of the disciplinary process.

3-63 Sec. 51.287. STUDENT WITHDRAWAL OR GRADUATION PENDING
 3-64 DISCIPLINARY CHARGES. (a) If a student withdraws or graduates
 3-65 from a postsecondary educational institution pending a
 3-66 disciplinary charge alleging that the student violated the
 3-67 institution's code of conduct by committing sexual harassment,
 3-68 sexual assault, dating violence, or stalking, the institution:

3-69 (1) may not end the disciplinary process or issue a

4-1 transcript to the student until the institution makes a final
4-2 determination of responsibility; and

4-3 (2) shall expedite the institution's disciplinary
4-4 process as necessary to accommodate both the student's and the
4-5 alleged victim's interest in a speedy resolution.

4-6 (b) On request by another postsecondary educational
4-7 institution, a postsecondary educational institution shall provide
4-8 to the requesting institution information relating to a
4-9 determination by the institution that a student enrolled at the
4-10 institution violated the institution's code of conduct by
4-11 committing sexual harassment, sexual assault, dating violence, or
4-12 stalking.

4-13 Sec. 51.288. TRAUMA-INFORMED INVESTIGATION TRAINING. Each
4-14 peace officer employed by a postsecondary educational institution
4-15 shall complete training on trauma-informed investigation into
4-16 allegations of sexual harassment, sexual assault, dating violence,
4-17 and stalking.

4-18 Sec. 51.289. MEMORANDA OF UNDERSTANDING REQUIRED. To
4-19 facilitate effective communication and coordination regarding
4-20 allegations of sexual harassment, sexual assault, dating violence,
4-21 and stalking at the institution, a postsecondary educational
4-22 institution shall enter into a memorandum of understanding with one
4-23 or more:

4-24 (1) local law enforcement agencies;

4-25 (2) sexual harassment, sexual assault, dating
4-26 violence, or stalking advocacy groups; and

4-27 (3) hospitals or other medical resource providers.

4-28 Sec. 51.290. RESPONSIBLE AND CONFIDENTIAL EMPLOYEE;
4-29 STUDENT ADVOCATE. (a) Each postsecondary educational institution
4-30 shall:

4-31 (1) designate:

4-32 (A) one or more employees to act as responsible
4-33 employees for purposes of Title IX of the Education Amendments of
4-34 1972 (20 U.S.C. Section 1681 et seq.); and

4-35 (B) one or more employees as persons to whom
4-36 students enrolled at the institution may speak confidentially
4-37 concerning sexual harassment, sexual assault, dating violence, and
4-38 stalking; and

4-39 (2) inform each student enrolled at the institution of
4-40 the responsible and confidential employees designated under
4-41 Subdivision (1).

4-42 (b) A postsecondary educational institution may designate
4-43 one or more students enrolled at the institution as student
4-44 advocates to whom other students enrolled at the institution may
4-45 speak confidentially concerning sexual harassment, sexual assault,
4-46 dating violence, and stalking. The institution shall notify each
4-47 student enrolled at the institution of the student advocates
4-48 designated under this subsection.

4-49 (c) A confidential employee designated under Subsection
4-50 (a)(1)(B) or a student advocate designated under Subsection (b) may
4-51 not disclose any communication made by a student to the employee or
4-52 advocate unless the student consents to the disclosure or the
4-53 employee or advocate is required to make the disclosure under state
4-54 or federal law.

4-55 Sec. 51.291. CONFIDENTIALITY. (a) The protections
4-56 provided by this section apply to:

4-57 (1) an alleged victim of an incident of sexual
4-58 harassment, sexual assault, dating violence, or stalking reported
4-59 to a postsecondary educational institution;

4-60 (2) a person who reports to a postsecondary
4-61 educational institution an incident of sexual harassment, sexual
4-62 assault, dating violence, or stalking, who sought guidance from the
4-63 institution concerning such an incident, or who participated in the
4-64 institution's investigation of such an incident; and

4-65 (3) a person who is alleged in a report made to a
4-66 postsecondary educational institution to have committed or
4-67 assisted in the commission of sexual harassment, sexual assault,
4-68 dating violence, or stalking if, after completing an investigation,
4-69 the institution determines the report to be unsubstantiated or

5-1 without merit.

5-2 (b) Unless waived in writing by the person, the identity of
5-3 a person described by Subsection (a):

5-4 (1) is confidential and not subject to disclosure
5-5 under Chapter 552, Government Code; and

5-6 (2) may be disclosed only to:

5-7 (A) the postsecondary educational institution to
5-8 which the report described by Subsection (a) is made as necessary to
5-9 conduct an investigation of the report;

5-10 (B) a law enforcement officer as necessary to
5-11 conduct a criminal investigation of the report described by
5-12 Subsection (a); or

5-13 (C) a health care provider in an emergency
5-14 situation, as determined necessary by the institution.

5-15 (c) A disclosure under Subsection (b) is not a voluntary
5-16 disclosure for purposes of Section 552.007, Government Code.

5-17 (d) Information regarding an incident of sexual harassment,
5-18 sexual assault, dating violence, or stalking disclosed to a health
5-19 care provider or other medical provider employed by a postsecondary
5-20 educational institution is confidential and may be shared by the
5-21 provider only with the victim's consent. The provider must provide
5-22 aggregate data or other nonidentifying information regarding those
5-23 incidents to the institution's Title IX coordinator.

5-24 Sec. 51.292. COMPLIANCE. (a) If the coordinating board
5-25 determines that an institution of higher education is not in
5-26 substantial compliance with this subchapter, the coordinating
5-27 board shall report that determination to the legislature for
5-28 consideration of whether to reduce the allocation of state funding
5-29 to the institution for the following academic year.

5-30 (b) If the coordinating board determines that a private or
5-31 independent institution of higher education is not in substantial
5-32 compliance with this subchapter, the coordinating board may assess
5-33 an administrative penalty against the institution in an amount not
5-34 to exceed the amount of funding received by students enrolled at the
5-35 institution from tuition equalization grants under Subchapter F,
5-36 Chapter 61, for the preceding academic year or \$2 million,
5-37 whichever is greater. In determining the amount of the penalty, the
5-38 coordinating board shall consider the nature of the violation and
5-39 the number of students enrolled at the institution.

5-40 (c) If the coordinating board takes an action under
5-41 Subsection (a) or (b) against a postsecondary educational
5-42 institution, the coordinating board shall provide to the
5-43 institution written notice of the coordinating board's reasons for
5-44 taking the action.

5-45 (d) A postsecondary educational institution against which
5-46 the coordinating board takes an action under Subsection (a) or (b),
5-47 as applicable, may appeal the action taken in the manner provided by
5-48 Chapter 2001, Government Code.

5-49 (e) A private or independent institution of higher
5-50 education may not pay an administrative penalty assessed under
5-51 Subsection (b) using state or federal money.

5-52 (f) An administrative penalty collected under this section
5-53 shall be deposited to the credit of the sexual assault program fund
5-54 established under Section 420.008, Government Code.

5-55 Sec. 51.293. EQUAL ACCESS. In implementing the
5-56 requirements under this subchapter, a postsecondary educational
5-57 institution shall, to the greatest extent practicable, ensure equal
5-58 access for students enrolled at or employees of the institution who
5-59 are persons with disabilities. The institution shall make
5-60 reasonable efforts to consult with a disability services office of
5-61 the institution, advocacy groups for people with disabilities, and
5-62 other relevant stakeholders to assist the institution with
5-63 complying with the institution's duties under this section.

5-64 Sec. 51.294. ADVISORY COMMITTEE. (a) The commissioner of
5-65 higher education shall establish an advisory committee to:

5-66 (1) make recommendations to the coordinating board
5-67 regarding rules for adoption under Section 51.295; and

5-68 (2) develop recommended training for responsible and
5-69 confidential employees designated under Section 51.290 and for

6-1 Title IX coordinators at postsecondary educational institutions.

6-2 (b) The advisory committee consists of nine members
6-3 appointed by the commissioner of higher education. Each member
6-4 must be a chief executive officer of a postsecondary educational
6-5 institution or a representative designated by that officer.

6-6 (c) The advisory committee shall annually review and, if
6-7 necessary, update the training recommended under Subsection
6-8 (a)(2).

6-9 Sec. 51.295. RULES. (a) The coordinating board shall
6-10 adopt rules as necessary to implement and enforce this subchapter,
6-11 including rules that:

6-12 (1) define relevant terms; and

6-13 (2) ensure implementation of this subchapter in a
6-14 manner that complies with federal law regarding confidentiality of
6-15 student educational information, including the Family Educational
6-16 Rights and Privacy Act of 1974 (20 U.S.C. Section 1232g).

6-17 (b) In adopting rules under this section, the coordinating
6-18 board shall consult with relevant stakeholders.

6-19 SECTION 2. Sections 51.9365(b), (c), and (d), Education
6-20 Code, are transferred to Subchapter E-3, Chapter 51, Education
6-21 Code, as added by this Act, redesignated as Section 51.283,
6-22 Education Code, and amended to read as follows:

6-23 Sec. 51.283. ELECTRONIC REPORTING OPTION. (a) [~~(b)~~] Each
6-24 postsecondary educational institution shall provide an option for a
6-25 student enrolled at or an employee of the institution to
6-26 electronically report to the institution an allegation of sexual
6-27 harassment, sexual assault, dating violence, or stalking committed
6-28 against or witnessed by the student or employee, regardless of the
6-29 location at which the alleged offense occurred.

6-30 (b) [~~(c)~~] The electronic reporting option provided under
6-31 Subsection (a) [~~(b)~~] must:

6-32 (1) enable a student or employee to report the alleged
6-33 offense anonymously; and

6-34 (2) be easily accessible through a clearly
6-35 identifiable link on the postsecondary educational institution's
6-36 Internet website home page.

6-37 (c) [~~(d)~~] A protocol for reporting sexual assault adopted
6-38 under Section 51.282 [~~51.9363~~] must comply with this section.

6-39 SECTION 3. Sections 51.9366(b), (c), (d), (e), and (f),
6-40 Education Code, are transferred to Subchapter E-3, Chapter 51,
6-41 Education Code, as added by this Act, redesignated as Section
6-42 51.284, Education Code, and amended to read as follows:

6-43 Sec. 51.284. AMNESTY FOR STUDENTS REPORTING CERTAIN
6-44 INCIDENTS. (a) [~~(b)~~] A postsecondary educational institution may
6-45 not take any disciplinary action against a student enrolled at the
6-46 institution who in good faith reports to the institution being the
6-47 victim of, or a witness to, an incident of sexual harassment, sexual
6-48 assault, dating violence, or stalking for a violation by the
6-49 student of the institution's code of conduct occurring at or near
6-50 the time of the incident, regardless of the location at which the
6-51 incident occurred or the outcome of the institution's disciplinary
6-52 process regarding the incident, if any.

6-53 (b) [~~(c)~~] A postsecondary educational institution may
6-54 investigate to determine whether a report of an incident of sexual
6-55 harassment, sexual assault, dating violence, or stalking was made
6-56 in good faith.

6-57 (c) [~~(d)~~] A determination that a student is entitled to
6-58 amnesty under Subsection (a) [~~(b)~~] is final and may not be revoked.

6-59 (d) [~~(e)~~] Subsection (a) [~~(b)~~] does not apply to a student
6-60 who reports the student's own commission or assistance in the
6-61 commission of sexual harassment, sexual assault, dating violence,
6-62 or stalking.

6-63 (e) [~~(f)~~] This section may not be construed to limit a
6-64 postsecondary educational institution's ability to provide amnesty
6-65 from application of the institution's policies in circumstances not
6-66 described by Subsection (a) [~~(b)~~].

6-67 SECTION 4. The following provisions of the Education Code
6-68 are repealed:

6-69 (1) Section 51.9363;

- 7-1 (2) the heading to Sections 51.9365 and 51.9366;
- 7-2 (3) Sections 51.9365(a) and (e); and
- 7-3 (4) Sections 51.9366(a) and (g).

7-4 SECTION 5. The changes in law made by this Act apply
7-5 beginning August 1, 2020.

7-6 SECTION 6. This Act takes effect immediately if it receives
7-7 a vote of two-thirds of all the members elected to each house, as
7-8 provided by Section 39, Article III, Texas Constitution. If this
7-9 Act does not receive the vote necessary for immediate effect, this
7-10 Act takes effect September 1, 2019.

7-11 * * * * *