

BILL ANALYSIS

Senate Research Center
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C.S.S.B. 576
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State Affairs
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Committee Report (Substituted)

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

With studies showing that one in five female college students experience some kind of assault during their time at college, it is imperative that victims and witnesses have a safe and reliable reporting structure. By compelling both public and private Texas colleges and universities to account for incidents of rape and sexual violence on their campuses, Texans can finally understand the pervasive nature of these horrible crimes. It is time to put a real and tangible number to the occurrence of these criminal acts on Texas campuses. By confronting the prevalence of these crimes through the reporting required in S.B. 576, Texas colleges can take their first steps towards eliminating sexual assault and violence. (Original Author's/Sponsor's Statement of Intent)

C.S.S.B. 576 amends current law 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, creates a criminal offense, and authorizes administrative penalties.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to Texas Higher Education Coordinating Board in SECTION 1 (Section 51.289, Education Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Chapter 51, Education Code, by adding Subchapter E-3, as follows:

SUBCHAPTER E-3. REPORTING INCIDENTS OF SEXUAL HARASSMENT, SEXUAL ASSAULT, DATING VIOLENCE, AND STALKING

Sec. 51.281. DEFINITIONS. Defines "coordinating board," "dating violence," "postsecondary educational institution," "private or independent institution of higher education," "sexual assault," "sexual harassment," and "stalking."

Sec. 51.282. REPORTING REQUIRED FOR CERTAIN INCIDENTS. (a) Requires an employee of a postsecondary educational institution (PEI) or, subject to Subsection (b), an officer of a student organization registered with a PEI (organization) 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 PEI at the time of the incident to promptly report the incident to the PEI's Title IX coordinator (coordinator) or deputy Title IX coordinator.

(b) Provides that an officer of an organization 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 organization or at an event held or sponsored by the organization.

(c) Requires that the report, except as provided by Subsection (d), 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) Requires a PEI employee designated by the PEI as a person with whom students may speak confidentially concerning sexual harassment, sexual assault, dating violence, or stalking to, in making a report under this section, state only the type of incident reported and prohibits the employee from including any information that would violate a student's expectation of privacy.

(e) Provides that, notwithstanding Subsection (a), a person is not required to make a report 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) Requires the coordinator, not less than once per month, to submit to the PEI's chief executive officer (CEO) a written report on the reports received under Section 51.282, including information regarding the investigation of those reports; the disposition, if any, of any disciplinary processes arising from those reports; and the reports for which the PEI determined not to initiate a disciplinary process, if any.

(b) Requires the coordinator to immediately report to the CEO 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) Requires the CEO to, at least once during each fall or spring semester, submit to the PEI's governing body a report concerning the reports received under Section 51.282. Prohibits the report from identifying any person and requires it to include certain information.

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

Sec. 51.284. IMMUNITIES. (a) Provides that 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 is immune from civil or criminal liability that might otherwise be incurred or imposed as a result of those actions and is prohibited from being subjected to any disciplinary action by the PEI at which the person is enrolled or employed for any violation by the person of the PEI's code of conduct occurring in relation to the incident.

(b) Provides that 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) Requires a PEI to terminate the employment of an employee who is required to make a report under Section 51.282 and fails to promptly make the report without good cause, as determined by the PEI; or, with the intent to harm or deceive, knowingly makes a report that is false.

(b) Requires a PEI to terminate the employment of the coordinator or CEO if the coordinator or CEO fails to make a report as required under Section 51.283.

(c) Requires a PEI to suspend for at least one year or expel a student who is required to make a report under Section 51.282 and fails to promptly make the

report without good cause, as determined by the PEI, or, with the intent to harm or deceive, knowingly makes a report that is false.

(d) Provides that a person commits an offense if the person is a PEI employee and is required to make a report under Section 51.282 and knowingly fails to make the report; or, with the intent to harm or deceive, knowingly makes a report that is false.

(e) Provides that 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.

Sec. 51.286. CONFIDENTIALITY. (a) Provides that, unless waived in writing by the alleged victim, the identity of an alleged victim of an incident reported under Section 51.282 is confidential and not subject to disclosure under Chapter 552, Government Code, and authorizes the disclosure of identity only to the PEI to which the report is made as necessary to conduct an investigation of the report or to a law enforcement officer as necessary to conduct a criminal investigation of the report.

(b) Provides that a disclosure under Subsection (a) is not a voluntary disclosure for purposes of Section 552.007 (Voluntary Disclosure of Certain Information When Disclosure Not Required), Government Code.

Sec. 51.287. RETALIATION PROHIBITED. (a) Prohibits a PEI from disciplining or otherwise discriminating against a student or an employee who, in good faith, makes a report as required by Section 51.282 or 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) Provides that Subsection (a) does not apply to a student or an employee who reports an incident described by Section 51.282(a) perpetrated by the student or employee or who cooperates with an investigation, a disciplinary process, or a judicial proceeding relating to an allegation that the student or employee perpetrated an incident.

Sec. 51.288. COMPLIANCE. (a) Requires the CEO of each private or independent IHE to annually certify in writing to the Texas Higher Education Coordinating Board (THECB) that the IHE is in substantial compliance with this subchapter.

(b) Authorizes THECB, if THECB determines that a private or independent IHE is not in substantial compliance with this subchapter, to assess an administrative penalty against the IHE in an amount not to exceed \$2 million. Requires THECB, in determining the amount of the penalty, to consider the nature of the violation and the number of students enrolled at the IHE.

(c) Requires THECB, if THECB assesses an administrative penalty against a private or independent IHE, to provide to the IHE written notice of THECB's reasons for assessing the penalty.

(d) Authorizes a private or independent IHE assessed an administrative penalty to appeal the penalty in the manner provided by Chapter 2001 (Administrative Procedure), Government Code.

(e) Prohibits a private or independent IHE from paying an administrative penalty using state or federal money.

(f) Requires a collected administrative penalty to be deposited to the credit of the sexual assault program fund (fund) established under Section 420.008 (Sexual Assault Program Fund), Government Code.

Sec. 51.289. RULES. Requires THECB to 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) Requires the commissioner of higher education (commissioner) to establish an advisory committee (committee) to develop recommended training for persons required to report certain incidents under Section 51.282 and for coordinators at PEIs.

(b) Provides that the committee consists of nine members appointed by the commissioner and requires each member to be a CEO of a PEI or a representative designated by that CEO.

(c) Requires the committee to, not later than December 1, 2017, develop the recommended training under Subsection (a).

(d) Provides that this section expires September 1, 2018.

SECTION 2. Amends Section 420.008(b), Government Code, as follows:

(b) Provides that the fund consists of fees collected under certain statutes and administrative penalties collection under Section 51.288, Education Code. Redesignates existing Subdivisions (1) to (3) as Paragraphs (A) to (C) and makes nonsubstantive changes.

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

SECTION 4. (a) Effective date, except as provided by Subsections (b) and (c): September 1, 2017.

(b) Effective date, Section 51.290, Education Code, as added by this Act: upon passage or September 1, 2017.

(c) Effective date, Section 51.285(d), Education Code, as added by this Act: January 1, 2018.