

BILL ANALYSIS

Senate Research Center

S.B. 212
By: Huffman
State Affairs
6/24/2019
Enrolled

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 all 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. S.B. 212 amends current law relating to a reporting requirement for certain incidents of sexual harassment, sexual assault, family violence, or stalking at institutions of higher education and creates a criminal offense. (Original Author's/Sponsor's Statement of Intent)

S.B. 212 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 the Texas Higher Education Coordinating Board in SECTION 1 (Section 51.259, Education Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Chapter 51, Education Code, by adding Subchapter E-2, as follows:

SUBCHAPTER E-2. REPORTING INCIDENTS OF SEXUAL HARASSMENT, SEXUAL ASSAULT, DATING VIOLENCE, AND STALKING

Sec. 51.251. DEFINITIONS. Defines "coordinating board," "dating violence," "sexual assault," "stalking," "employee of a postsecondary educational institution," "postsecondary educational institution," and "sexual harassment."

Sec. 51.252. REPORTING REQUIRED FOR CERTAIN INCIDENTS. (a) Requires an employee of a postsecondary educational institution who, in the course and scope of employment, witnesses or receives information regarding the occurrence of an incident that the employee reasonably believes constitutes sexual harassment, sexual assault, dating violence, or stalking and is 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 to report the incident to the institution's Title IX coordinator or deputy Title IX coordinator.

(b) Requires the report, except as provided by Subsection (c), to 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 in reporting the incident.

(c) Requires an employee of a postsecondary educational institution designated by the institution as a person with whom students may speak confidentially concerning certain incidents or who receives information regarding such an

incident under circumstances that render the employee's communications confidential or privileged under other law 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. Provides that this subsection does not affect the employee's duty to report an incident under any other law.

(d) Provides that, 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 or an incident of which the person received information due to a disclosure made at a public awareness event concerning certain incidents by a postsecondary educational institution or by a student organization associated with the institution.

Sec. 51.253. ADMINISTRATIVE REPORTING REQUIREMENTS. (a) Requires the Title IX coordinator of a postsecondary educational institution, not less than once every three months, to submit to the institution's chief executive officer a written report on the reports received under Section 51.252, including certain information.

(b) Requires the Title IX coordinator or deputy Title IX coordinator of a postsecondary educational institution to immediately report to the institution's chief executive officer an incident reported to the coordinator under Section 51.252 if the coordinator has cause to believe that the safety of any person is in imminent danger as a result of the incident.

(c) Requires the chief executive officer of a postsecondary educational institution, subject to Subsection (d), to submit to the institution's governing body and post on the institution's Internet website a report concerning the reports received under Section 51.252 at least once during each fall or spring semester. Prohibits the report from identifying any person and requires the report to include the number of reports received under Section 51.252, the number of investigations conducted as a result of those reports, the disposition, if any, of any disciplinary processes arising from those reports, the number of those reports for which the institutions determined not to initiate a disciplinary process, if any, and any disciplinary actions taken under Section 51.255.

(d) Requires the chief executive officer of a postsecondary educational institution, if for any semester a postsecondary educational institution has fewer than 1,500 enrolled students, to submit and post a report required under Subsection (c) for that semester only if more than five reports were received under Section 51.252 during that semester.

Sec. 51.254. 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 51.252(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 liability and from criminal liability for offenses punishable by fine only, 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 postsecondary educational institution at which the person is enrolled or employed for any violation by the person of the institution's code of conduct reasonably related to the incident for which suspension or expulsion from the institution is not a possible punishment.

(b) Provides that Subsection (a) does not apply to a person who perpetrates or assists in the perpetration of the incident reported under Section 51.252.

Sec. 51.255. FAILURE TO REPORT OR FALSE REPORT; OFFENSES. (a) Provides that a person commits an offense if the person is required to make a report under Section 51.252 and knowingly fails to make the report or, with the intent to harm or deceive, knowingly makes a report under Section 51.252 that is false.

(b) Provides that an offense under Subsection (a) 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 51.252.

(c) Requires a postsecondary educational institution to terminate the employment of an employee whom the institution determines in accordance with the institution's disciplinary procedure to have committed an offense under Subsection (a).

Sec. 51.256. CONFIDENTIALITY. (a) Provides that, unless waived in writing by the alleged victim, the identity of an alleged victim of an incident reported under Section 51.252:

(1) is confidential and not subject to disclosure under Chapter 552 (Public Information), Government Code; and

(2) is authorized to be disclosed only to:

(A) persons employed by or under contract with the postsecondary educational institution to which the report is made who are necessary to conduct an investigation of the report or any related hearings;

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

(C) the person or persons alleged to have perpetrated the incident, to the extent required by other law; or

(D) potential witnesses to the incident as necessary to conduct an 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.

(c) Provides that nothing in this section may be construed as prohibiting a victim from making a report to law enforcement agency using the pseudonym form described by Article 57.02 (Confidentiality of Files and Records), Code of Criminal Procedure.

Sec. 51.257. RETALIATION PROHIBITED. (a) Prohibits a postsecondary educational institution from disciplining or otherwise discriminating against an employee who in good faith makes a report as required by Section 51.252 or cooperates with an investigation, a disciplinary process, or a judicial proceeding relating to a report made by the employee as required by Section 51.252.

(b) Provides that Subsection (a) does not apply to an employee who reports an incident described by Section 51.252(a) perpetrated by the employee or cooperates with an investigation, a disciplinary process, or a judicial proceeding relating to an allegation that the employee perpetrated an incident described by Section 51.252(a).

Sec. 51.258. COMPLIANCE. (a) Requires the chief executive officer of each postsecondary educational institution to annually certify in writing to the Texas Higher Education Coordinating Board (THECB) that the institution is in substantial compliance with this subchapter.

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

(c) Requires THECB, if THECB assesses an administrative penalty against a postsecondary educational institution under Subsection (b), to provide to the institution written notice of THECB's reasons for assessing the penalty.

(d) Authorizes a postsecondary educational institution assessed an administrative penalty under Subsection (b) to appeal the penalty in the manner provided by Chapter 2001 (Administrative Procedure), Government Code.

(e) Prohibits a postsecondary educational institution from paying an administrative penalty assessed under Subsection (b) using state or federal money.

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

(g) Requires THECB to 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 and any penalties assessed under this section during the calendar year preceding the date of the report.

Sec. 51.259. 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). Requires THECB, in adopting those rules, to use the negotiated rulemaking procedures under Chapter 2008 (Negotiated Rulemaking), Government Code, and consult with relevant stakeholders.

Sec. 51.260. TRAINING ADVISORY COMMITTEE. (a) Requires the commissioner of higher education (commissioner) to establish an advisory committee to develop recommended training for persons required to report certain incidents under Section 51.252 and for Title IX coordinators and deputy Title IX coordinators at postsecondary educational institutions.

(b) Provides that the advisory committee consists of nine members appointed by the commissioner, eight of whom are a chief executive officer of a postsecondary educational institution or a representative designated by that officer and one of whom is a representative of an advocacy organization for victims of sexual assault or family violence.

(c) Requires the advisory committee, not later than December 1, 2019, to develop the recommended training under Subsection (a).

(d) Provides that this section expires September 1, 2020.

SECTION 2. Amends Section 61.0331, Education Code, to require THECB to engage institutions of higher education in a negotiated rulemaking process as described by Chapter 2008 (Negotiated Rulemaking), Government Code, when adopting a policy, procedure, or rule relating

to certain matters, including the reporting of certain incidents of sexual harassment, sexual assault, dating violence, or stalking under Subchapter E-2, Chapter 51.

SECTION 3. Amends Section 420.008(b), Government Code, to provide that the Sexual Assault Program Fund consists of certain fees, including administrative penalties collected under Section 51.258, Education Code, and to make nonsubstantive changes.

SECTION 4. Provides that Sections 51.251–51.259, Education Code, as added by this Act, and Section 61.0331, Education Code, as amended by this Act, apply beginning January 1, 2020.

SECTION 5. Requires THECB to submit its initial report required under Section 51.258(g), Education Code, as added by this Act, not later than January 1, 2021.

SECTION 6. (a) Effective date, except as provided by Subsections (b) and (c) of this section: September 1, 2019.

(b) Effective date: Section 51.260, Education Code: upon passage or September 1, 2019.

(c) Effective date, Section 51.255(a), Education Code: January 1, 2020.