

Date of Hearing: June 21, 2016

ASSEMBLY COMMITTEE ON HIGHER EDUCATION

Jose Medina, Chair

SB 1439 (Block) – As Amended June 1, 2016

SENATE VOTE: 36-1

SUBJECT: Postsecondary education: academic and administrative employees: disclosure of sexual harassment

SUMMARY: Requires that the California State University (CSU) and the California Community Colleges (CCC) require applicants for employment, as specified, to disclose information regarding final administrative findings of sexual harassment. Specifically, **this bill:**

- 1) Requires the governing board of a CCC district to require that an application for appointment to an academic or administrative position with that district include a requirement that the applicant disclose any final administrative decision or final judicial decision determining that the applicant committed sexual harassment.
- 2) Requires the trustees of the CSU to require that an application for appointment to an academic or administrative position with the CSU include a requirement that the applicant disclose any final administrative decision or final judicial decision determining that the applicant committed sexual harassment.
- 3) Defines the following terms:
 - a) “Final administrative decision” means a final determination based on the investigative findings of a Title IX compliance coordinator, or other designated investigator, at a college or university on a complaint of sexual harassment.
 - b) “Final judicial decision” means a final determination of a matter submitted to a court that is recorded in a judgment or order of that court.

EXISTING LAW:

- 1) Requires the governing board of public, private, and independent postsecondary educational institution that receives public funds for student financial assistance to compile records of crimes on campus, make crime records available upon request, and to disclose a reported Part 1 violent crime, sexual assault, or hate crime, to the local law enforcement agency where the campus is located. (Education Code Section 67380, 67383)
- 2) Requires, under the Kristen Smart Campus Safety Act, UC Regents, CSU Trustees, CCD governing boards, and independent colleges that meet specified conditions to enter into specific written agreements with local law enforcement agencies regarding the coordination and responsibilities for investigating Part 1 violent crimes which occur on campus. (EDC Section 67381)
- 3) Requires public postsecondary educational institutions to each adopt, and implement at each campus or other facilities, a written procedure or protocols to ensure, to the fullest extent

possible, that students, faculty and staff who are victims of sexual assault committed on grounds maintained by the institution or affiliated student organizations, receive treatment and information. The written procedures or protocols must contain specified information. (EDC Section 67385.)

- 4) Requires public postsecondary educational institutions, and requests UC, in collaboration with campus- and community-based victim advocacy organizations, to provide as part of campus orientations, educational and preventive information about sexual violence and to develop policies to encourage students to report any campus crimes involving sexual violence. (EDC Section 67385.7.)
- 5) Requires public and independent postsecondary institutions, as a condition of receipt of student aid funds, to adopt a policy concerning campus sexual violence, domestic violence, dating violence, and stalking that includes specified components and standards, including an "affirmative consent" standard for determining whether consent was given by both parties to sexual activity. Establishes a preponderance of evidence as the evidentiary standard for determining if sexual violence/harassment occurred. (EDC Section 67386)
- 6) Requires, under the federal Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act (Clery Act), public and private postsecondary educational institutions that participate in the federal financial aid program to disclose information about crimes on and around campuses. (20 U.S.C. section 1092(f))
- 7) Requires, under federal Title IX (20 U.S.C. sections 1681-1688), public and private postsecondary educational institutions that participate in the federal financial aid program to establish certain rights for victims of sexual assault, including:
 - a) Institutions are responsible for immediately and effectively responding to any sexual harassment or violence that creates a hostile environment. The institution must eliminate the harassment or violence, prevent its recurrence, and address its effects. Regardless of whether a student chooses to file a complaint with the institution, the institution is responsible for investigating and taking appropriate steps to resolve the situation. A criminal investigation does not relieve the school of its duty under Title IX.
 - b) Institutions must have and distribute policies against sex discrimination; the policy must state that inquiries concerning Title IX may be referred to the institution's Title IX coordinator or to the Office of Civil Rights (OCR).
 - c) Institutions must have a designated Title IX coordinator and notify students and employees of the name and contact information for the Title IX coordinator. The coordinator is responsible for overseeing all complaints of sex discrimination, which include harassment and assault, and identifying and addressing patterns or systemic problems.
 - d) Institutions are required to have and make known the procedures for students to file complaints of sex discrimination, and procedures must provide for prompt and equitable resolution of sex discrimination complaints. All complainants must have the right to present his or her case, including the right to a full investigation, to present witnesses and evidence, and to an appeal process (available to both parties).

- e) Establishes a preponderance of the evidence standard (more likely than not) when determining if sexual harassment or violence occurred.
- f) Provides complainants the right to be notified of the outcome of the complaint, including the sanction. Complainants cannot be required to abide by a nondisclosure agreement.
- g) Authorizes grievance procedures to include voluntary informal methods (such as mediation) for resolving some types of sexual harassment complaints. However, mediation is not appropriate in cases involving allegations of sexual assault.

FISCAL EFFECT: According to the Senate Appropriations Committee:

- 1) Mandate costs: The CCC Chancellor's Office estimates costs of up to \$3,000 per district to make the necessary changes to its application forms, resulting in statewide costs of up to \$216,000. To the extent the Commission on State Mandates determined this requirement to be a reimbursable state-mandated activity, there would be pressure to increase the mandate block grant for community colleges. (Proposition 98)
- 2) Other potential cost pressures: Both segments cite unknown, potentially significant, costs related to liability resulting from potential lawsuits pursued by applicants who disclose the required information. The CSU estimates costs of \$50,000 per case related to hiring outside counsel. Both segments also indicate the need to investigate the disclosures on applications. However, this is not a requirement of the bill. It is unclear how many applicants will actually self-report this information.

COMMENTS: *Purpose of this bill.* According to the author, "the current practice of hiring professors at California colleges and universities does not take into account the potential candidate's history of sexual harassment or misconduct when a negative decision has been rendered. Professors who have been investigated for workplace sexual harassment at a university and found to have violated sexual harassment rules do not have to disclose that they were previously investigated and disciplined when they apply for a position at another university. In addition, hiring universities do not have access to these applicants' disciplinary history. Consequently, universities may inadvertently hire professors who have a history of misconduct and pose a serious threat to the well-being of their students. Professors and instructors can avoid the consequences of their actions by moving from one university to the next since their history does not follow them. The information as to their misconduct should be considered when hiring decisions are being made."

This bill directs the CCC and CSU to require applicants for an academic or administrative position to disclose any final administrative decisions or final judicial decisions that determined that the applicant committed sexual harassment.

CSU requested amendments. CSU has indicated support for the goal of this proposal, to prevent sexual harassers from violating the rights of students and employees, but is concerned about the following provisions:

- 1) Final judicial or administrative decisions. According to CSU, a final judicial decision is relatively easy to apply, and can be applied across all sectors of employment. However, the overwhelming majority of civil suits are settled with no final judgment.

CSU notes that the definition of "final administrative decision", which relies on the investigative findings of a Title IX officer, would be difficult to implement for a number of reasons. Title IX compliance officer investigations are not final. Like civil litigation, they often are settled without a final decision. Because many CSU employees come from outside of higher education, where there is no Title IX, these applicants would not be required to disclose administrative sexual harassment allegations.

CSU has requested an amendment to remove administrative decisions from this bill.

- 2) Timeline of disclosure requirement. According to CSU, by requiring sexual harassment disclosure irrespective of the severity or timing of the misconduct, this bill places higher significance on sexual harassment than other forms of misconduct, including criminal actions. Pursuant to Civil Code Section 1786.18, employers in California are limited to obtaining background check records of certain convictions or other "adverse information" less than seven years old.

CSU has requested an amendment to limit disclosure to less than seven years.

- 3) Minimum employment criteria. CSU notes that, pursuant to Labor Code Section 432.9, employers are prohibited from asking about criminal convictions in a job application, and can only make such an inquiry after a determination has been made that the candidate meets the minimum employment criteria.

CSU has requested an amendment to require disclosure from the applicant only after it has been determined that the applicant meets minimum criteria.

- 4) Immunity from litigation. CSU has expressed concern regarding potential exposure for liability if CSU makes a decision to hire or reject candidates based on a minor, many-years-old allegation.

CSU has requested an amendment to remove CSU liability for suits arising out of the requirements of this bill. However, CSU notes that this exposure is reduced by the aforementioned suggested amendments.

REGISTERED SUPPORT / OPPOSITION:

Support

United Auto Workers

Opposition

None on File

Analysis Prepared by: Laura Metune / HIGHER ED. / (916) 319-3960