

BILL ANALYSIS

Senate Research Center
81R72 CAS-D

S.B. 48
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Higher Education
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As Filed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

First, current definitions of hazing are vague. The description of activities that are potentially regarded as hazing are unclear and offer little insight as to what degree of activity should be considered as hazing. This ambiguity leads institutions to interpret various hazing statutes.

Second, the statute does not fully address concerns related to the dangers of alcohol-related hazing. A compelling combination of news articles, incidences, court cases, police investigations, and official panel discussion have revealed that alcohol is in fact a dominating force in perilous hazing activity. The current hazing statute solely punishes alcohol-related hazing that "subjects the student to an unreasonable risk of harm or that adversely affects the mental or physical health or safety of the student." This provision fails to acknowledge that it is difficult to recognize at what point the "unreasonable risk" or "adversely affects" standards are reached, and that any forced alcohol consumption should be construed as hazing *per se*.

Third, the immunity provision in current statute is unclear and does not give prosecuting attorneys or judges much discretion in when to grant immunity. What's more, current statute allows students to avoid prosecution by reporting their own hazing activities or report their involvement only after a report has been filed already.

Finally, current law does not allow for venue changes, which might be important because sometimes hazing incidences occur in counties outside the county of residence or of the university.

As proposed, S.B. 48 redefines "hazing" under the Texas Education Code, and expands the definition to include coerced consumption of alcoholic beverages, liquor, or drugs. S.B. 48 clarifies instances where the person reporting an act of hazing may be immune from civil or judicial liability, if the person reports the act before being contacted by an institution and cooperates in good faith throughout the investigation and judicial process. The bill provides that a person will not be granted immunity if the person reports the person's own act of hazing or the report is made in bad faith or with malice. Finally, the bill addresses matters relating to venue and the distribution of information to students regarding hazing.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 37.151(6), Education code, to redefine "hazing."

SECTION 2. Amends Section 37.155, Education Code, as follows:

Sec. 37.155. New heading: IMMUNITY FROM PROSECUTION OR CIVIL LIABILITY AVAILABLE. (a) Creates this subsection from existing text.

(b) Provides that any person who voluntarily reports a specific hazing incident involving a student in an educational institution to the dean of students or other appropriate official of the institution is immune from civil liability that might otherwise be incurred as a result of the reported hazing incident if the person

reports the incident before being contacted or investigated by the institution and cooperates in good faith, throughout any institutional process regarding the incident, as determined by the dean of students or other appropriate institution official. Deletes existing text relating to any person reporting a specific hazing incident to the dean of students or other appropriate official of the institution being immune from criminal liability that might otherwise be imposed as a result of the reported hazing incident.

(c) Provides that immunity under Subsection (b) extends to participation in any judicial proceeding resulting from the report.

(d) Provides that a person is not immune if the person reports the person's own act of hazing or reports an incident of hazing in bad faith or with malice. Deletes existing text stating that a person reporting in bad faith or with malice is not protected by this section.

SECTION 3. Amends Subchapter F, Chapter 37, Education Code, by adding Section 37.158, as follows:

Sec. 37.158. VENUE. (a) Defines "prosecuting attorney."

(b) Authorizes an offense under this subchapter to be prosecuted:

(1) in any county where the offense may be prosecuted under other law;
or

(2) in a county, other than a county described by Subdivision (1), where the educational institution campus is located that the victim of the offense is enrolled.

(c) Authorizes an offense under this subchapter to be prosecuted in a county described in Subsection (b)(2) only with written consent of a prosecuting attorney of a county described by Subsections (b)(1) who has authority to prosecute an offense under this subchapter.

SECTION 4. Amends Section 51.936(c), Education code, to require each postsecondary educational institution to distribute to each student enrolled at the institution by the 21st day of each semester, rather than during the first three weeks of each semester, a summary of the provision of Subchapter F (Hazing), Chapter 37 (Discipline; Law and Order) and a list of organizations that have been disciplined or convicted for hazing on or off campus during the preceding three years.

SECTION 5. Makes application of this Act prospective.

SECTION 6. Makes application of Section 37.155, Education Code, as amended by this Act, prospective.

SECTION 7. Effective date: September 1, 2009.