

## **BILL ANALYSIS**

Senate Research Center

H.B. 2038  
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Health & Human Services  
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Engrossed

### **AUTHOR'S / SPONSOR'S STATEMENT OF INTENT**

A concussion is an injury to the brain that can be caused by a blow to a person's body or head. Because the impact that results in a concussion may not result in loss of consciousness, the symptoms of a concussion, such as physical, cognitive, emotional, or sleep-related symptoms, can be missed by someone without the proper training to recognize such a condition. The medical consequences for failing to recognize and appropriately treat a concussion can be severe, sometimes causing brain swelling and death, and athletes who sustain concussions are sometimes more susceptible to repeat injury. Recent studies have shown that younger patients may recover from concussions more slowly than adults, making young athletes particularly vulnerable. Though increased media attention has called attention to the seriousness of concussions, it is believed that many concussions sustained by student athletes go unrecognized or unreported. While current law establishes protocol for a student athlete who becomes unconscious while participating in an extracurricular athletic activity, statute does not adequately provide for the safety of student athletes who sustain concussions from an impact that does not render the athlete unconscious. H.B. 2038 seeks to increase awareness of student athletes, parents, coaches, athletic trainers, and administrators regarding concussions, thereby increasing the safety of student athletes, by requiring the governing body of applicable schools and school districts to appoint or approve a concussion oversight team to establish a return-to-play protocol for student athletes who are believed to have sustained a concussion during a practice or competition.

H.B. 2038 amends current law relating to prevention, treatment, and oversight of concussions affecting public school students participating in interscholastic athletics.

### **RULEMAKING AUTHORITY**

Rulemaking authority is expressly granted to the commissioner of education in SECTION 2 (Section 38.160, Education Code) of this bill.

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Provides that this Act may be cited as Natasha's Law in honor of Natasha Helmick for her courage in advocating for the enactment of this Act and in honor of all other student athletes at the middle and high school levels.

SECTION 2. Amends Chapter 38, Education Code, by adding Subchapter D, as follows:

#### **SUBCHAPTER D. PREVENTION, TREATMENT, AND OVERSIGHT OF CONCUSSIONS AFFECTING STUDENT ATHLETES**

Sec. 38.151. DEFINITIONS. Defines, in this subchapter, "advanced practice nurse," "athletic trainer," "coach," "concussion," "licensed health care professional," "neuropsychologist," "open-enrollment charter school," "physician," and "physician assistant."

Sec. 38.152. APPLICABILITY. Provides that this subchapter applies to an interscholastic athletic activity, including practice and competition, sponsored or sanctioned by:

(1) a school district, including a home-rule school district, or a public school, including any school for which a charter has been granted under Chapter 12 (Charters); or

(2) the University Interscholastic League (UIL).

Sec. 38.153. OVERSIGHT OF CONCUSSIONS BY SCHOOL DISTRICTS AND CHARTER SCHOOLS; RETURN-TO-PLAY PROTOCOL DEVELOPMENT BY CONCUSSION OVERSIGHT TEAM. (a) Requires the governing body of each school district and open-enrollment charter school with students enrolled who participate in an interscholastic athletic activity to appoint or approve a concussion oversight team.

(b) Requires each concussion oversight team to establish a return-to-play protocol, based on peer-reviewed scientific evidence, for a student's return to interscholastic athletics practice or competition following the force or impact believed to have caused a concussion.

Sec. 38.154. CONCUSSION OVERSIGHT TEAM: MEMBERSHIP. (a) Requires each concussion oversight team to include at least one physician and, to the greatest extent practicable, considering factors including the population of the metropolitan statistical area in which the school district or open-enrollment charter school is located, district or charter school student enrollment, and the availability of and access to licensed health care professionals in the district or charter school area, also include one or more of the following:

- (1) an athletic trainer;
- (2) an advanced practice nurse;
- (3) a neuropsychologist; or
- (4) a physician assistant.

(b) Requires the athletic trainer, if a school district or open-enrollment charter school employs an athletic trainer, to be a member of the district or charter school concussion oversight team.

(c) Requires each member of the concussion oversight team to have had training in the evaluation, treatment, and oversight of concussions at the time of appointment or approval as a member of the team.

Sec. 38.155. REQUIRED ANNUAL FORM ACKNOWLEDGING CONCUSSION INFORMATION. Prohibits a student from participating in an interscholastic athletic activity for a school year until both the student and the student's parent or guardian or another person with legal authority to make medical decisions for the student have signed a form for that school year that acknowledges receiving and reading written information that explains concussion prevention, symptoms, treatment, and oversight and that includes guidelines for safely resuming participation in an athletic activity following a concussion. Requires that the form be approved by UIL.

Sec. 38.156. REMOVAL FROM PLAY IN PRACTICE OR COMPETITION FOLLOWING CONCUSSION. Requires a student to be removed from an interscholastic athletics practice or competition immediately if one of the following persons believes the student might have sustained a concussion during the practice or competition:

- (1) a coach;
- (2) a physician;

(3) a licensed health care professional; or

(4) the student's parent or guardian or another person with legal authority to make medical decisions for the student.

Sec. 38.157. RETURN TO PLAY IN PRACTICE OR COMPETITION. (a) Prohibits a student removed from an interscholastic athletics practice or competition under Section 38.156 from being permitted to practice or compete again following the force or impact believed to have caused the concussion until:

(1) the student has been evaluated, using established medical protocols based on peer-reviewed scientific evidence, by a treating physician chosen by the student or the student's parent or guardian or another person with legal authority to make medical decisions for the student;

(2) the student has successfully completed each requirement of the return-to-play protocol established under Section 38.153 necessary for the student to return to play;

(3) the treating physician has provided a written statement indicating that, in the physician's professional judgment, it is safe for the student to return to play; and

(4) the student and the student's parent or guardian or another person with legal authority to make medical decisions for the student:

(A) have acknowledged that the student has completed the requirements of the return-to-play protocol necessary for the student to return to play;

(B) have provided the treating physician's written statement under Subdivision (3) to the person responsible for compliance with the return-to-play protocol under Subsection (c) and the person who has supervisory responsibilities under Subsection (c); and

(C) have signed a consent form indicating that the person signing:

(i) has been informed concerning and consents to the student participating in returning to play in accordance with the return-to-play protocol;

(ii) understands the risks associated with the student returning to play and will comply with any ongoing requirements in the return-to-play protocol;

(iii) consents to the disclosure to appropriate persons, consistent with the Health Insurance Portability and Accountability Act of 1996 (Pub. L. No. 104-191), of the treating physician's written statement under Subdivision (3) and, if any, the return-to-play recommendations of the treating physician; and

(iv) understands the immunity provisions under Section 38.159.

(b) Prohibits a coach of an interscholastic athletics team from authorizing a student's return to play.

(c) Requires the school district superintendent or the superintendent's designee or, in the case of a home-rule school district or open-enrollment charter school,

the person who serves the function of superintendent or that person's designee to supervise an athletic trainer or other person responsible for compliance with the return-to-play protocol. Prohibits the person who has supervisory responsibilities under this subsection from being a coach of an interscholastic athletics team.

Sec. 38.158. TRAINING COURSES. (a) Requires UIL to approve for coaches of interscholastic athletic activities training courses that provide for not less than two hours of training in the subject matter of concussions, including evaluation, prevention, symptoms, risks, and long-term effects. Requires UIL to maintain an updated list of individuals and organizations authorized by the league to provide the training.

(b) Requires the Department of State Health Services Advisory Board of Athletic Trainers to approve for athletic trainers training courses in the subject matter of concussions and maintain an updated list of individuals and organizations authorized by the board to provide the training.

(c) Requires the following persons to take a training course in accordance with Subsection (e) from an authorized training provider at least once every two years:

(1) a coach of an interscholastic athletic activity;

(2) a licensed health care professional who serves as a member of a concussion oversight team and is an employee, representative, or agent of a school district or open-enrollment charter school; and

(3) a licensed health care professional who serves on a volunteer basis as a member of a concussion oversight team for a school district or open-enrollment charter school.

(d) Requires a physician who serves as a member of a concussion oversight team to, to the greatest extent practicable, periodically take an appropriate continuing medical education course in the subject matter of concussions.

(e) Provides that for purposes of Subsection (c):

(1) a coach is required to take a course described by Subsection (a);

(2) an athletic trainer is required to take:

(A) a course described by Subsection (b); or

(B) a course concerning the subject matter of concussions that has been approved for continuing education credit by the appropriate licensing authority for the profession; and

(3) a licensed health care professional, other than an athletic trainer, is required to take:

(A) a course described by Subsection (a) or (b); or

(B) a course concerning the subject matter of concussions that has been approved for continuing education credit by the appropriate licensing authority for the profession.

(f) Requires each person described by Subsection (c) to submit proof of timely completion of an approved course in compliance with Subsection (e) to the school district superintendent or the superintendent's designee or, in the case of a home-rule school district or open-enrollment charter school, a person who serves the function of a superintendent or that person's designee.

(g) Prohibits a licensed health care professional who is not in compliance with the training requirements under this section from serving on a concussion oversight team in any capacity.

Sec. 38.159. IMMUNITY. Provides that this subchapter does not:

(1) waive any immunity from liability of a school district or open-enrollment charter school or of district or charter school officers or employees;

(2) create any liability for a cause of action against a school district or open-enrollment charter school or against district or charter school officers or employees;

(3) waive any immunity from liability under Section 74.151 (Liability for Emergency Care), Civil Practice and Remedies Code; or

(4) create any cause of action or liability for a member of a concussion oversight team arising from the injury or death of a student participating in an interscholastic athletics practice or competition, based on service or participation on the concussion oversight team.

Sec. 38.160. RULES. Authorizes the commissioner of education to adopt rules as necessary to administer this subchapter.

SECTION 3. Provides that Subchapter D, Chapter 38, Education Code, as added by this Act, applies beginning with the 2011-2012 school year.

SECTION 4. Requires a person required under Section 38.158(c), Education Code, as added by this Act, to take a training course in the subject of concussions, notwithstanding Section 38.158(f), Education Code, as added by this Act, to initially complete the training course not later than September 1, 2012.

SECTION 5. Effective date: upon passage or September 1, 2011.