By:  Zaffirini, Campbell S.B. No. 38

(In the Senate - Filed November 12, 2018; February 1, 2019, read first time and referred to Committee on Criminal Justice; April 1, 2019, reported adversely, with favorable Committee Substitute by the following vote: Yeas 5, Nays 1; April 1, 2019, sent to printer.)

COMMITTEE VOTE

               Yea Nay Absent  PNV

Whitmire        X

Huffman         X

Buckingham          X

Flores          X

Hughes                    X

Miles           X

Perry           X

COMMITTEE SUBSTITUTE FOR S.B. No. 38 By:  Perry

A BILL TO BE ENTITLED

AN ACT

relating to the offense of hazing.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1.  Section 37.151(6), Education Code, is amended to read as follows:

(6)  "Hazing" means any intentional, knowing, or reckless act, occurring on or off the campus of an educational institution, by one person alone or acting with others, directed against a student[~~, that endangers the mental or physical health or safety of a student~~] for the purpose of pledging, being initiated into, affiliating with, holding office in, or maintaining membership in an organization if the act:

(A)  is[~~. The term includes:~~

[~~(A)~~]  any type of physical brutality, such as whipping, beating, striking, branding, electronic shocking, placing of a harmful substance on the body, or similar activity;

(B)  involves [~~any type of physical activity, such as~~] sleep deprivation, exposure to the elements, confinement in a small space, calisthenics, or other similar activity that subjects the student to an unreasonable risk of harm or that adversely affects the mental or physical health or safety of the student;

(C)  involves [~~any activity involving~~] consumption of a food, liquid, alcoholic beverage, liquor, drug, or other substance, other than as described by Paragraph (F), that subjects the student to an unreasonable risk of harm or that adversely affects the mental or physical health or safety of the student;

(D)  is any activity that:

(i)  a reasonable person would believe intimidates or threatens the student with ostracism, [~~that~~] subjects the student to extreme mental stress, shame, or humiliation, [~~that~~] adversely affects the mental health or dignity of the student, or discourages the student from entering or remaining registered in an educational institution;[~~,~~] or

(ii)  [~~that~~] may reasonably be expected to cause the [~~a~~] student to leave the organization or the institution rather than submit to the activity [~~acts described in this subdivision~~]; [~~and~~]

(E)  is any activity that induces, causes, or requires the student to perform a duty or task that involves a violation of the Penal Code; or

(F)  involves coercing, as defined by Section 1.07, Penal Code, the student to consume an alcoholic beverage, liquor, or drug.

SECTION 2.  Section 37.152(a), Education Code, is amended to read as follows:

(a)  A person commits an offense if the person:

(1)  engages in hazing;

(2)  solicits, encourages, directs, aids, or attempts to aid another in engaging in hazing;

(3)  recklessly permits hazing to occur; [~~or~~]

(4)  has firsthand knowledge of the planning of a specific hazing incident involving a student in an educational institution, or has firsthand knowledge that a specific hazing incident has occurred, and knowingly fails to report that knowledge in writing to the dean of students or other appropriate official of the institution; or

(5)  with the intent to prevent another person from documenting or reporting a hazing incident:

(A)  disables or takes the other person's telephone or other electronic communication device;

(B)  requires the other person to relinquish possession of the other person's telephone or other electronic communication device; or

(C)  denies the other person access to a telephone or other electronic communication device.

SECTION 3.  Section 37.155, Education Code, is amended to read as follows:

Sec. 37.155.  IMMUNITY FROM PROSECUTION OR CIVIL LIABILITY AVAILABLE. (a)  In the prosecution of an offense under this subchapter, the court may grant immunity from prosecution for the offense to each person who is subpoenaed to testify for the prosecution and who does testify for the prosecution.

(b)  Any person who voluntarily reports [~~reporting~~] 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 or criminal liability that might otherwise be incurred or imposed as a result of the reported hazing incident if the person:

(1)  reports the incident before being contacted by the institution concerning the incident or otherwise being included in the institution's investigation of the incident; and

(2)  as determined by the dean of students or other appropriate official of the institution designated by the institution, cooperates in good faith throughout any institutional process regarding the incident [~~report~~].

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

(d)  A person is not immune under Subsection (b) if the person:

(1)  reports the person's own act of hazing; or

(2)  reports an incident of hazing [~~reporting~~] in bad faith or with malice [~~is not protected by this section~~].

SECTION 4.  Subchapter F, Chapter 37, Education Code, is amended by adding Section 37.158 to read as follows:

Sec. 37.158.  VENUE. (a)  In this section, "prosecuting attorney" means a county attorney, district attorney, or criminal district attorney.

(b)  An offense under this subchapter may be prosecuted:

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

(2)  if the consent required by Subsection (c) is provided, in a county, other than a county described by Subdivision (1), in which is located the educational institution campus at which a victim of the offense is enrolled.

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

SECTION 5.  Section 51.936, Education Code, is amended by amending Subsection (c) and adding Subsections (c-1) and (c-2) to read as follows:

(c)  Not later than the 14th day before the first class day of each fall or spring semester, each [~~Each~~] postsecondary educational institution shall distribute to each student enrolled at the institution [~~during the first three weeks of each semester~~]:

(1)  a summary of the provisions of Subchapter F, Chapter 37; and

(2)  a copy of, or an electronic link to a copy of, the report required under Subsection (c-1) [~~list of organizations that have been disciplined for hazing or convicted for hazing on or off the campus of the institution during the preceding three years~~].

(c-1)  Each postsecondary educational institution shall develop and post in a prominent location on the institution's Internet website a report on hazing committed on or off campus by an organization registered with or recognized by the institution. The report:

(1)  must include information regarding each disciplinary action taken by the institution against an organization for hazing, and each conviction of hazing under Section 37.153 by an organization, during the three years preceding the date on which the report is issued or updated, including:

(A)  the name of the organization disciplined or convicted;

(B)  the date on which the incident occurred or the citation was issued, if applicable;

(C)  the date on which the institution's investigation into the incident, if any, was initiated;

(D)  a general description of:

(i)  the incident;

(ii)  the violations of the institution's code of conduct or the criminal charges, as applicable;

(iii)  the findings of the institution or court; and

(iv)  any sanctions imposed by the institution, or any fines imposed by the court, on the organization; and

(E)  the date on which the institution's disciplinary process was resolved or on which the conviction became final;

(2)  must be updated to include information regarding each disciplinary process or conviction not later than the 30th day after the date on which the disciplinary process is resolved or the conviction becomes final, as applicable; and

(3)  may not include personally identifiable student information and must comply with the Family Educational Rights and Privacy Act of 1974 (20 U.S.C. Section 1232g).

(c-2)  Each postsecondary educational institution shall provide to each student who attends the institution's student orientation a notice regarding the nature and availability of the report required under Subsection (c-1), including the report's Internet website address.

SECTION 6.  The change in law made by this Act applies only to an offense committed on or after the effective date of this Act. An offense committed before the effective date of this Act is governed by the law in effect when the offense was committed, and the former law is continued in effect for that purpose. For purposes of this section, an offense was committed before the effective date of this Act if any element of the offense was committed before that date.

SECTION 7.  Section 37.155, Education Code, as amended by this Act, applies only to a civil cause of action that accrues on or after the effective date of this Act. An action that accrued before the effective date of this Act is governed by the law in effect at the time the action accrued, and that law is continued in effect for that purpose.

SECTION 8.  Section 51.936(c), Education Code, as amended by this Act, and Section 51.936(c-2), Education Code, as added by this Act, apply beginning with the 2020 spring semester.

SECTION 9.  Not later than January 1, 2020, each postsecondary educational institution shall develop and post on the institution's Internet website the report required under Section 51.936(c-1), Education Code, as added by this Act.

SECTION 10.  This Act takes effect September 1, 2019.

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