

Date of Hearing: April 18, 2023

ASSEMBLY COMMITTEE ON HIGHER EDUCATION

Mike Fong, Chair

AB 299 (Holden) – As Amended April 11, 2023

SUBJECT: Hazing: educational institutions: civil liability

SUMMARY: Authorizes a civil action against an educational institution for an instance of hazing, as defined, if that educational institution knew or should have known of the dangerous hazing practices of an affiliated organization. Specifically, **this bill:**

- 1) Allows a person against whom hazing is directed to commence a civil action for injury or damages against an educational institution for the dangerous hazing practices of the organization if both of the following apply:
 - a) The educational institution has direct involvement in, or knew, or should have known of, the dangerous hazing practices of the organization.
 - b) At the time of the alleged hazing incident, the organization involved in the hazing is affiliated with the educational institution.
- 2) Specifies that for purposes of the above an educational institution that “should have known” of dangerous hazing practices of an affiliated organization includes an educational institution that fails to proactively prevent, discover, or stop the dangerous hazing practices of the organization.
- 3) Specifies that for purposes of determining whether an educational institution, “fails to proactively prevent, discover, or stop the dangerous hazing practices of the organization,” consideration may be given to the extent to which the institution, at the time of the alleged hazing incident, had each of the following measures in place:
 - a) Adoption and distribution of a written anti-hazing policy consisting of rules and procedures for hazing prevention, intervention, and discipline, as prescribed.
 - b) Implementation of an anti-hazing investigation, enforcement, and reporting program, as prescribed.
 - c) Implementation of an institution wide anti-hazing education and training program, as prescribed.
- 4) Provides that a civil action brought under this bill, or under Section 245.6 of the Penal Code, may seek damages for emotional injuries as a component of actual damages, in addition to any other remedies available under law, including, but not limited to, damages for bodily injury or harm. Specifies that nothing in this bill prohibits or limits any other potential cause of action under any other law that is available to a person against whom hazing is directed.

EXISTING LAW:

- 1) Makes it unlawful to engage in hazing, as defined. Makes any violation that does not result in death or serious bodily injury punishable as a misdemeanor, and makes any violation that results in death or serious bodily injury punishable as a misdemeanor or a felony. (Penal Code Section 245.6.)
 - a) Defines “hazing” for purposes of the above to mean any method of initiation or pre-initiation into a student organization or student body, whether or not the organization or body is officially recognized by an educational institution, which is likely to cause serious bodily injury to any former, current, or prospective student of any school, community college, college, university, or other educational institution in this state. Specifies that “hazing” does not include customary athletic events or school-sanctioned events. (Penal Code Section 245.6 (b).)
 - b) In addition to imposing criminal penalties, authorizes a victim of hazing to bring a civil action against any person who participates in the hazing, or any organization to which the student is seeking membership whose agents or officers authorized, requested, commanded, participated in, or ratified the hazing. (Penal Code Section 245.6 (e).)
- 2) Makes hazing, as defined in Penal Code Section 245.6, grounds for suspension or expulsion from school. (Education Code (EDC) Section 48900.)
- 3) Requires colleges and universities to adopt a policy that requires fraternities and sororities seeking campus recognition to submit annual reports to the college or university that contain specified information on the sorority’s or fraternity’s members and their conduct. Requires the college or university to (a) suspend campus recognition of any sorority or fraternity that does not comply with the reporting requirements (b) compile, maintain, and post the collected information into a publicly accessible report, as specified. (EDC Section 66310 et seq.)
- 4) Requires the governing board of each community college district, the Trustees of the California State University (CSU), the Regents of the University of California (UC), and the governing boards of independent postsecondary education institutions receiving public funds for student financial assistance to require the appropriate officials at each campus to compile records of all occurrences reported to the campus of, and arrests for, crimes that are committed on campus that involve violence, hate violence, theft, destruction of property, illegal drugs, or alcohol intoxication. (EDC Section 67380.)
- 5) Requests the Trustees of the CSU, the Regents of the UC, and the governing board of each community college district to adopt and publish policies on harassment, intimidation, and bullying to be included within the rules and regulations governing student behavior and, if the institution expends funds to support activities related to campus climate, as defined, to adopt and publish the above-described policies. (EDC Section 66302.)

FISCAL EFFECT: Unknown. This bill is keyed as non-fiscal.

COMMENTS: *Double-referral.* AB 299 (Holden) was heard in the Assembly Committee on Judiciary, where it passed with a 10-0 vote. A legal review of private rights of action is addressed in the Committee on Judiciary analysis.

Purpose. According to the author, “we have seen an influx of dangerous hazing practices within organizations, and a lackluster effort on the part of many institutions to address it in a preventative manner. In its most tragic cases, hazing is often directly responsible for the death or serious injury of a young student. However, the ramifications of this practice extend far beyond for its survivors, undermining their self-esteem and impacting their psychological wellbeing.”

The author further states that, “this bill allows for civil action to be brought against an educational institution for an instance of hazing in which one or more students were involved if that educational institution knew or should have known of the dangerous hazing practices of an affiliated organization. In doing so, we hold the educational institutions who promote participation in and benefit from these organizations responsible for the consequences they may bring to students. This responsibility will incentivize institutions to bolster their oversight and preventative measures as they pertain to hazing. It keeps California on its path of addressing hazing practices in our state, and allows us to work with educational institutions and organizations to prioritize students’ safety.”

Collegiate hazing. The 2008 report, “Hazing in View: College Students at Risk” provided the findings of their National Study of Student Hazing. The research was based on the analysis of 11,482 survey responses from undergraduate students enrolled at 53 colleges and universities and more than 300 interviews with students and campus personnel at 18 of those institutions. The report found that:

- 1) 55% of college students involved in clubs, teams, and organizations experience hazing.
- 2) Hazing occurs in, but extends beyond, varsity athletics and Greek-letter organizations and includes behaviors that are abusive, dangerous, and potentially illegal.
- 3) Alcohol consumption, humiliation, isolation, sleep- deprivation, and sexual acts are common hazing practices across all types of student groups.
- 4) There are public aspects to student hazing including: 25% of coaches or organization advisors that were aware of the group’s hazing behaviors; 25% of the behaviors occurred on-campus in a public space; in 25% of hazing experiences, alumni were present; and students talk with peers (48%) or family (26%) about their hazing experiences.
- 5) In more than half of the hazing incidents, a member of the offending group posts pictures on a public web space.
- 6) More students perceive positive rather than negative outcomes of hazing.
- 7) In 95% of the cases where students identified their experience as hazing, they did not report the events to campus officials.
- 8) Students recognize hazing as part of the campus culture; 69% of students who belonged to a student activity organization reported they were aware of hazing activities occurring in student organizations other than their own.

Arguments in support. The Consumer Attorneys of California wrote in support of AB 299 (Holden), noting that “hazing is a clearly detrimental practice that California has characteristically taken seriously through legislation. This piece of legislation keeps us on that path by holding the educational institutions who promote participation in and benefit from these organizations responsible for the consequences that they may bring to students. This responsibility will hopefully incentivize institutions to bolster their oversight and preventative measures as they pertain to hazing in an effort to save students’ lives.”

“Current law already allows for a civil action to be brought against the participant or organization involved in the hazing; however, the educational institution with knowledge of the hazing currently cannot be held accountable. AB 299 will mirror the current policy in ensuring that educational institutions that knew or should have known of the dangerous hazing practices are also held accountable. In order to be found liable the institution would either have to have had direct involvement in the dangerous hazing practices or the institution knew or should have known about the dangerous hazing practices.”

StopHazing also wrote in support of AB 299 (Holden), expressing that “policy is crucial to comprehensive hazing prevention and can lead to future prevention of dangerous hazing instances. Across the nation, hazing laws vary, are weak, or nonexistent. However, strengthening policy is one of the best ways to confront the issue of hazing. The provisions of AB 299 (Holden) would strengthen California’s commitment to keeping students safe at school and work to prevent senseless hazing tragedies.”

Arguments in opposition. A coalition of opposition representing Association of California School Administrators (ACSA), the Schools Excess Liability Fund (SELF), the California Association of Joint Powers Authorities (CAJPA), and Public Risk Innovation, Solutions, and Management (PRISM) wrote to express opposition, noting that “we believe the approach in AB 299 (Holden) does not appropriately consider the unique differences between K-12 local educational agencies and higher education institutions. It also does not consider existing standards of care that educators serving K-12 grades have for students, who are nearly all minors, in settings outside the school day or off campus. Finally, we believe further review of terms is warranted to avoid confusion on such an important issue.

“Under existing law, school districts and other [Local Educational Authorities (LEA)] have been respondents to hazing claims and held liable under the provisions generally known as “negligent supervision” pursuant to Education Code Sections 44807 – 44808, amongst others. While the term hazing is not expressly used, failure to hold pupils accountable for their actions, in addition to failing to exercise reasonable care for students, has been grounds for school districts assuming civil liability. AB 299 (Holden) is drafted without reference to these standards.

“The recent amendments to AB 299 (Holden) define the term ‘affiliated student organizations’ and we are continuing our review of this language to ensure school districts proactively protecting students from hazing and other harmful behaviors are not held liable for the actions of a group lacking a direct relationship to the LEA.”

The Association of California Community College Administrators (ACCCA) also wrote in opposition of AB 299 (Holden), noting that “ACCCA emphatically opposes hazing and strongly endorses the needed implementation of practices that prevent hazing and protect students from this horrendous act. However, as currently written, AB 299 (Holden) would open educational

institutions to costly litigation by stating that the institution “should have known” of the dangerous hazing practices of an affiliated organization.”

“There are no educational institutions that want to see the horrific act of hazing take place on their campuses, but to require institutions to know about an event that has yet to take place is an impossible mandate to implement. We strongly believe that unless it can be proven that an institution was grossly negligent in preventing a hazing incident, it is unfair to open them up to costly liability for events that are beyond their control. Furthermore, the current version of AB 299 will result in significant costs for educational institutions to settle lawsuits, which are dollars that should be used on students and staff.”

Joint powers authorities. As noted by the opposition, potential liability created by this bill is being funded, in part, by Proposition 98 funding that would otherwise go directly to education. Many public entities including school districts use the joint powers authority mechanism to self-fund their liability and other risk related obligations in a non-profit, public entity risk pool. These public entity risk pools are not insurance companies with large capital reserves. Instead, risk pools are funded by their local government members.

The Committee may wish to consider the impact that the provisions of AB 299 (Holden) will have on future Proposition 98 responsibilities.

Committee staff notes that this bill, while referred to the Committee on Higher Education, is also applicable to schools traditionally in the purview of the Assembly Committee on Education.

Comments from the Education Committee. The Assembly Committee on Education provided comments on AB 299 (Holden), noting that “although hazing children and youth is clearly a serious issue, many other forms of behavior among peers contribute to negative outcomes and mental health issues. Other bills have proposed requiring schools to adopt policies relating to body shaming, teen dating violence, bleeding control, and many others.

The Committee may wish to consider whether the State can expect schools to respond to each of these with a specific policy. Schools are currently required to address school climate, school connectedness, and school safety within their Local Control and Accountability Plan (LCAP).”

Prior legislation. SB 1454 (Torlakson) Chapter 601, Statutes of 2006, repealed the Education Code hazing provisions and instead codified within the Penal Code a new definition of hazing and prescribed misdemeanor and felony penalties, as well as allowing a person to bring a civil action for injury or damages against individuals who participate in the hazing or the organizations that authorize, request, command, participate in, or ratify the hazing.

AB 524 (Rodriguez) Chapter 268, Statutes of 2022, established the Campus-Recognized Sorority and Fraternity Transparency Act, which requires each institution of higher education to include in the institution’s requirements for campus recognition of a campus-recognized sorority or fraternity a requirement that the sorority or fraternity submit to the institution on or before July 1, 2023, and annually thereafter, specified information concerning the sorority’s or fraternity’s members and their conduct or face suspension. Additionally each institution with sororities or fraternities is required to compile and maintain the collected information into a publicly accessible report posted, and archived, on each respective campus’ Greek Life internet homepage

or its equivalent for a minimum of 10 years and sent through a campus wide email to all enrolled students on or before October 1, 2023, and annually thereafter.

REGISTERED SUPPORT / OPPOSITION:

Support

Consumer Attorneys of California
Stophazing

Opposition

Association of California Community College Administrators
Association of California School Administrators
California Association of Joint Powers Authorities (CAJPA)
Public Risk Innovation, Solutions, and Management (PRISM)
Schools Excess Liability Fund (SELF)

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