STATE OF NEW YORK

7002

IN SENATE

(Prefiled)

January 8, 2020

Introduced by Sen. KAPLAN -- read twice and ordered printed, and when printed to be committed to the Committee on Education

AN ACT to amend the education law, in relation to enacting hazing offenses and anti-hazing educational programs at educational institutions; and to repeal certain provisions of the penal law relating thereto

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. The education law is amended by adding a new article 25 to read as follows:

ARTICLE 25
HAZING

Section 1300. Definitions.
1301. Personal hazing offense.
1302. Organizational hazing offense.
1303. Prohibited defenses.
1304. Immunity from prosecution or civil liability.
1305. Failure to seek assistance.
1306. Hazing adjudication requirements for educational institutions.
1307. Educational programs at educational institutions.
1308. Institutional reports of certain violations.
1309. State anti-hazing fund.

§ 1300. Definitions. For the purposes of this article, the following terms shall have the following meanings:

1. The term "educational institution" means any secondary or post-secondary educational institution as defined in this section, including any degree granting institution authorized to operate in this state.

2. The term "hazing" means any intentional, knowing, or reckless act committed by a person, whether individually or in concert with other persons, against a minor or student of an educational institution, whether or not committed on the educational institution's campus or property, for the purpose of recruiting, joining, pledging, initiating,

EXPLANATION--Matter in *italics* (underscored) is new; matter in brackets [-] is old law to be omitted.

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admitting, affiliating or for the purpose of continuing or enhancing status in an organization which causes a minor or student to do any of the following:

a. Be coerced to violate federal or state law.

b. Be coerced to consume any food, liquid, alcoholic liquid, drug or other substance in any non-customary manner which subjects the minor or student to a substantial risk of emotional or physical harm which includes, but not limited to, sickness, vomiting, intoxication or unconsciousness.

c. Endure brutality of a physical nature, including, but not limited to, whipping, beating, paddling, branding, dangerous physical activity or exposure to elements or endure threats of such conduct that results in verifiable mental or physical harm.

d. Endure brutality of a mental nature, including, but not limited to, activity adversely affecting the mental health or dignity of the minor or student, sleep deprivation, exclusion from social contact or conduct that could result in extreme embarrassment or endure threats of such conduct that results in verifiable mental or physical harm.

e. Endure any other forced activity which adversely affects the health and safety of the minor or student.

3. The term "local organization" means an organization that is not chartered nor recognized by a national organization.

4. The term "local affiliate organization" means an organization that is chartered or recognized by a national organization and may include students or non-students.

5. The term "national organization" means an organization, as defined in this section, that is separate from a local affiliate organization, and may charter or recognize local affiliate organizations at multiple educational institutions.

6. The term "organization" means a club, association, corporation, order, society, corps, private club, fraternity, sorority, varsity or club athletic team, or service, social, or similar group, whose members are primarily students or alumni of one or more educational institutions.

7. The term "post-secondary educational institution" means any public or private institution within the state authorized to grant an associate degree or higher academic degree.

8. The term "secondary educational institution" means any public or private school within the state providing instruction in grades nine through twelve or any combination of those grades.

9. The term "serious bodily injury" means a bodily injury that involves any of the following:

a. Unconsciousness as a result of hazing of any kind.

b. Extreme physical pain.

c. Protracted or obvious disfigurement of a bodily member, protracted loss or impairment of the function of a bodily member, organ or mental faculty.

d. Death or a substantial risk of death.

e. Incapacitation as a result of consumption of alcohol that results in a minor or student requiring emergency medical attention or having a blood alcohol content of .25 or greater.

10. The term "student" means any person who is registered in or in attendance at an educational institution or has been accepted for admission at the educational institution at which the hazing occurs.

11. The term "alcoholic liquid" means any substance containing liquor, spirit, wine, beer, malt or brewed beverage or any combination thereof.

12. The term "minor" means an individual younger than eighteen years of age.

§ 1301. Personal hazing offense. 1. Generally. A person commits a personal hazing offense if the person requests, authorizes, commands, encourages or participates in hazing, or knowingly aids, assists or conspires with another person to commit a personal hazing offense against a minor or student.

2. Personal hazing offense; no serious bodily injury. A person who commits a personal hazing offense where no serious bodily injury results shall be guilty of personal hazing. A person convicted of personal hazing pursuant to this subdivision shall be subject to a fine of five thousand dollars, imprisonment for a term of not more than one year or by both such fine and imprisonment.

3. Personal hazing offense; serious bodily injury. A person who commits a personal hazing offense where serious bodily injury results shall be guilty of aggravated personal hazing. A person convicted of aggravated personal hazing pursuant to this subdivision shall be subject to a fine of fifteen thousand dollars, imprisonment for a term of not more than ten years or by both such fine and imprisonment.

§ 1302. Organizational hazing offense. 1. Local organization. A local organization or local affiliate organization commits organizational hazing when the elected leadership of the local organization or local affiliate organization had specific knowledge its members were participating, aiding, or assisting in any act of hazing a minor or student and did not attempt to intervene to stop the hazing or report it to the appropriate local authorities. A local organization or local affiliate organization convicted of organizational hazing pursuant to this subdivision shall be subject to a fine up to fifteen thousand dollars.

2. National organization. A national organization commits national organizational hazing if an employee of the national organization or member of the national organization's governing board of directors knowingly directed, supervised, or actively participated in any act of hazing a minor or student. A national organization convicted of national organizational hazing pursuant to this subdivision shall be subject to a fine up to fifteen thousand dollars.

3. Post-secondary education. A post-secondary educational institution commits post-secondary educational hazing if an employee of the post-secondary educational institution or member of the educational institution's governing board of trustees knowingly directed, supervised, or actively participated in any act of hazing a minor or student. A post-secondary educational institution convicted of post-secondary educational hazing pursuant to this subdivision shall be subject to a fine up to fifteen thousand dollars.

§ 1303. Prohibited defenses. 1. The implied or expressed consent of a convicted individual, convicted organization or of either a minor or student whom the hazing was directed against shall not be a defense to a charge pursuant to this article.

2. The argument that the hazing conduct was approved or sanctioned by a local organization, local affiliate organization, national organization, or educational institution, or was traditional or customary shall not be a defense to a charge pursuant to this article.

§ 1304. Immunity from prosecution or civil liability. 1. A student, local organization, local affiliate organization or national organization who in good faith reports or participates in reporting an allegation of hazing to local law enforcement or educational institution in advance of hazing that causes injury to a minor or student and who takes

reasonable steps to prevent hazing in the future shall not be subject to any civil or criminal liability arising from the reported hazing.

2. a. A person acting in good faith and in a timely manner shall be immune from prosecution for the criminal offenses related to hazing or alcohol possession, consumption or distribution if:

(i) A law enforcement officer has contact with such person because the person:

(1) requests emergency medical assistance for himself or herself or another minor or student;

(2) acts in concert with another person who requests emergency medical assistance; or

(3) appears to be in need of emergency medical assistance and is the individual for whom the request is made;

(ii) The request is made for a minor or student who reasonably appears to need medical assistance due to alcohol consumption or hazing; and

(iii) The person described in paragraph a of this subdivision, if physically capable:

(1) provides his or her own full name if requested by emergency medical assistance personnel or law enforcement officers;

(2) provides any other relevant information requested by the law enforcement officer that is known to such person;

(3) remains with, or is, the minor or student who reasonably appears to need medical assistance due to alcohol consumption or hazing until professional emergency medical assistance is provided; and

(4) cooperates with emergency medical assistance personnel and law enforcement officers.

§ 1305. Failure to seek assistance. 1. Any person who actively directs or engages in an act of hazing which results in the injury of a minor or student, shall, to the extent that the person can do so without danger or peril to himself or herself or others, give reasonable assistance to the injured minor or student. Reasonable assistance includes immediately seeking or reporting the need for medical assistance to the local emergency medical service provider or a 911 emergency services equivalent.

2. A person who fails to seek assistance for an injured minor or student, pursuant to subdivision one of this section, where no serious bodily injury occurs shall be convicted of a misdemeanor and shall be subject to a fine of one thousand dollars, imprisonment for a term not more than one year or by both such fine and imprisonment.

3. A person who fails to seek assistance for an injured minor or student, pursuant to subdivision one of this section, where serious bodily injury occurs shall be convicted of a felony and shall be subject to a fine of two thousand dollars, imprisonment for a term not more than five years or by both such fine and imprisonment.

§ 1306. Hazing adjudication requirements for educational institutions. Upon learning of any alleged act of hazing that is not covered under section thirteen hundred four of this article, an educational institution is required to use their standard campus disciplinary process to investigate individual students alleged to be involved in such acts of hazing.

§ 1307. Educational programs at educational institutions. 1. The department shall develop a statewide educational plan for preventing hazing at educational institutions.

2. Educational institutions shall provide students with an educational program on hazing which shall include information on hazing awareness, prevention, intervention, and such educational institution's policies on

hazing. Such educational program on hazing may be conducted in-person or online. An educational institution is individually responsible for:

a. Verifying attendance at an in-person educational program on hazing or participation on an online educational program on hazing; and

b. Providing staff and/or volunteers to administer and advise on such educational program.

3. A student shall complete the educational program on hazing within thirty days of enrollment at a post-secondary school or within thirty days from the start of the secondary educational institution's school year. A student who fails to complete such educational program on hazing shall not be able to attend such educational institution or participate in local organizations, affiliated local organizations or national organizations until such educational program is complete.

4. National organizations shall provide separate and supplemental educational program on hazing for their local affiliate chapters operating within the state.

§ 1308. Institutional reports of certain violations. 1. Beginning in the two thousand twenty--two thousand twenty-one academic school year each educational institution shall maintain and publicly report actual findings of violations of the educational institution's code of conduct or federal or state laws relating to hazing that are reported to the educational institution's authorities, local law enforcement, national organizations or any organization formally affiliated with such educational institution. Such report shall be updated at least ten calendar days before the start of each fall and spring academic semesters.

2. The institutional report on violations of hazing shall include:

a. The name of the local organization or affiliate local organization;

b. When the local organization or affiliate local organization was charged with a violation including if applicable:

(i) the dates on which the citation for a violation was issued;

(ii) the event that the violation occurred; and

(iii) if the investigation resulted in a finding of a violation, the date on which the investigation on such violations was initiated and concluded; and

c. A general description of the incident including:

(i) the violations charged;

(ii) the findings of the investigation; and

(iii) the sanctions placed on the local organization or affiliate local organization.

3. No personal identifying information of a minor or individual student shall be included in the institutional report on violations of hazing and shall be subject to the requirements pursuant to the Family Education Rights and Privacy Act, section 1232-g of title 20 of the United States code.

4. The institutional reports on violations of hazing required under this section shall be made available on the educational institution's website in a prominent location. Each educational institution shall maintain reports as they are updated on the website for five years. The webpage that contains such reports must include a statement notifying the public:

a. Of the availability of additional information related to findings, sanctions, and organizational sanction completion;

b. Where a member of the public may obtain the additional information that is not protected under the Family Education Rights and Privacy Act, section 1232-g of title 20 of the United States code; and

c. That the educational institution is required to provide this additional information pursuant to article six of the public officers law.

5. Each educational institution shall furnish a printed notice of the nature and availability of this report and the website address where it can be found to attendees at student orientation.

6. Each educational institution is required to report to local authorities within seventy-two hours any hazing allegation that involved significant risk of bodily injury or resulted in a serious bodily injury.

§ 1309. State anti-hazing fund. 1. The department shall establish a fund to be known as the "state anti-hazing fund" and shall deposit into the fund all moneys received pursuant to sections thirteen hundred two and thirteen hundred three of this article and any other monies appropriated by law for deposit into the fund.

2. The department shall allocate monies available in the state anti-hazing fund for the purpose of making grants to educational institutions for the establishment and administration of hazing education programs as described in section thirteen hundred seven of this article.

§ 2. Section 120.16 of the penal law is REPEALED.

§ 3. Section 120.17 of the penal law is REPEALED.

§ 4. This act shall take effect on the first of July next succeeding the date on which it shall have become a law.