

**SENATE JUDICIARY COMMITTEE**  
**Senator Thomas Umberg, Chair**  
**2023-2024 Regular Session**

AB 299 (Holden)  
Version: June 19, 2023  
Hearing Date: June 27, 2023  
Fiscal: Yes  
Urgency: No  
ID

**SUBJECT**

Hazing: educational institutions: civil liability: resources

**DIGEST**

This bill creates civil liability for a public or private institution of higher education by a person harmed by hazing from an organization affiliated with the educational institution when the institution “knew or should have known” of the hazing, and also mandates the creation and availability of antihazing resources for K-12 schools.

**EXECUTIVE SUMMARY**

Hazing is a major issue on many college campuses that results in injuries and the deaths of students every year. Despite attempts to reduce hazing and push universities to respond, hazing continues to be an issue on many California campuses. This bill creates a private cause of action for civil liability for a public or private institution of higher education by a person who was subject to hazing at an organization affiliated with the higher education institution. This civil liability allows for recovery for injury or damages, including emotional injuries and bodily injury or harm, when the organization that committed the hazing is affiliated with the institution of higher education and the educational institution had direct involvement in, or knew or should have known of the hazing practices of the organization. It defines “should have known” to include an institution that unreasonably fails to proactively prevent, discover, or stop the hazing practices of the organization. The bill also lists measures the institution may take to meet the requirement of “proactively prevent,” such as the adoption of an antihazing policy, education and training on hazing, and procedures for the investigation and enforcement of reports of hazing and the institution’s antihazing policy.

Lastly, with regard to public or private schools from kindergarten to 12th grade, the bill requires the California Department of Education to make available a model antihazing policy for local educational purposes, as well as resources on hazing prevention. The

bill states that such schools are encouraged to use the resources available for professional development purposes and for increasing awareness of the dangers of hazing.

AB 299 is supported by Consumer Attorneys of California and the organization StopHazing. It is opposed by the Community College League of California, and the California State University is opposed unless amended. Should this bill pass out of this Committee, it will then be heard in the Senate Education Committee.

### **PROPOSED CHANGES TO THE LAW**

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. (Pen. Code § 245.6.)
  - a. Defines “hazing” for purposes of the above to mean any method of initiation or preinitiation 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. (Pen. Code § 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. (Pen. Code § 245.6 (e).)
- 2) Makes hazing, as defined in Penal Code Section 245.6, grounds for suspension or expulsion from school. (Education Code 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, and (b) compile, maintain, and post the collected information into a publicly accessible report, as specified. (Edu. Code § 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. (Edu. Code § 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. (Edu. Code § 66302.)

This bill:

- 1) Allows a person against whom hazing is committed to commence a civil action for injury or damages from the hazing against an institution of higher education, if both of the following apply:
  - a) the educational institution had direct involvement in, or knew or in the exercise of ordinary care 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 was affiliated with the educational institution.
- 2) Specifies that an educational institution that “should have known” of dangerous hazing practices of an affiliated organization if the educational institution unreasonably 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 “unreasonably 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; and
  - c) implementation of an institution wide anti-hazing education and training program, as prescribed.

- 4) Provides that the civil action allowed by this section may be commenced beginning January 1, 2025.
- 5) 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.
- 6) Mandates that, on or before July 1, 2024, the Department of Education must make available a model antihazing policy for local educational agencies and provide resources on hazing prevention, and encourages K-12 public or private educational institutions to use these resources for professional development purposes and for increasing awareness of the dangers of hazing.

### COMMENTS

#### 1. Author's statement

According to the author:

Hazing is a clearly detrimental practice that California has characteristically taken seriously through legislation. Despite this, we have seen an influx of dangerous hazing practices within these 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.

This bill allows for civil action to be brought against an institution of higher education 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 that participation 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.

## 2. The problem of hazing at California educational institutions

Hazing, an activity of initiation or preinitiation into a group, has long occurred on university campuses throughout California. One report has estimated that 55 percent of all college students involved in clubs, teams, and organizations experience hazing.<sup>1</sup> That report found that alcohol consumption, humiliation, isolation, sleep-deprivation, and sexual acts are common hazing practices. Hazing has also resulted in physical harm and even the death of students subjected to it. While hazing usually occurs at a student organization, the organization responsible is often affiliated with the educational institution at which the hazing takes place.

In response to tragic incidents of hazing, various laws have been passed and campaigns launched to prevent and reduce hazing on college campuses. Particularly, in 2006, the California Legislature passed AB 1454 (Torlakson, Ch. 601, Stats. 2006).

## 3. Existing law relating to hazing

Under AB 1454, a private right of action currently exists for someone against whom hazing is directed against “any participants in the hazing, or any organization to which the student is seeking membership whose agents, directors, trustees, managers, or officers authorized, requested, commanded, participated in, or ratified the hazing.” (Cal. Pen. Code § 245.6(e).) By these terms, the civil liability created by AB 1454 did not create any liability or ability for a student subjected to hazing on the educational institution.

Common law torts may already subject educational institutions to some liability if they cause or unreasonably fail to protect their students. However, liability under such torts may be very limited. For negligence, for example, a plaintiff must show that the defendant owed a duty of care to the plaintiff, that the defendant breached this duty of care, and that the break was the proximate cause of plaintiff’s injury. The duty required under negligence only applies to a defendant’s own actions and not those of a third party, unless there is a “special relationship” between the defendant and the plaintiff. (*Regents of University of California v. Superior Court*, (2018) 4 Cal.5th 607.) Typical special relationships include those between common carriers and their passengers, landlords and their tenants, and colleges and students engaged in curricular activities.

California courts have found a “special relationship” between a university and its students, but only if the students are “engaged in activities that are part of the school’s curriculum or closely related to its delivery of educational services.” (*Regents*, 4 Cal.5th at pp. 624-625.) In a case relating to harm during an off-campus party at an affiliated

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<sup>1</sup> Elizabeth Allen et al, “Hazing in View: College Students at Risk,” National Study of Student Hazing (Mar. 11, 2008).

fraternity, a California court found that the university did not have a duty under this test. (*University of Southern California v. Superior Court*, (2018) 30 Cal. App. 5th 429.)

Under these cases and legal standards, it is only under narrow circumstances where a university may be liable for the hazing activities of a sorority or fraternity, even if affiliated with the university. Such hazing would have to be found to be part of the school's curriculum or closely related to the delivery of educational services. While sororities and fraternities may be an important part of college life or a university's social scene and community, making the connection to the university's curriculum or education may be attenuated. There may be more nuance when the sorority or fraternity is considered, as some are, to be a "professional" or "business" sorority or fraternity, as the organization's purpose may then be more closely tied to the university's educational mission. Nonetheless, under the current case law, universities are generally not at risk of liability for hazing committed by a sorority or fraternity affiliated with the university.

Regardless of the state of common law negligence, the Legislature is free to define liability and civil causes of action as a matter of public policy. The California Supreme Court has indeed noted that "whether a new duty should be imposed in any particular context is essentially a question of public policy." (*Regents*, 4 Cal. 5th at p. 627.) Also of relevance to public policy considerations is the fact, as the California Supreme Court has also noted here, that the California Constitution includes provisions noting students' rights to attend campuses which are safe and to be safe and secure at California schools. (*Regents*, 4 Cal. 5th at 628 (referencing Cal. Const., art. I, § 28, subd. (a)(7)).) This provision of the California Constitution evidences a public policy favoring measures to ensure the safety of California's public school students. (*Id.*)

4. AB 299 addresses the issue of hazing through extending liability to the universities that knew or should have known of the hazing at an affiliated organization

The consideration of these public policy decisions underlie AB 299. It seeks to address the issue of hazing by extending a duty to universities to prevent hazing at their campuses by affiliated organizations. The author reasons that this duty should be public policy because universities offer official recognition to sororities and fraternities and benefit from their presence on their campuses, because universities have had a lackluster response to hazing, and because doing so will bolster universities' oversight and hazing prevention activities. This is likely true: since the bill sets out specific university actions to be considered in weighing whether the university "reasonably should have known" of the hazing practices (and thus whether the university can be held liable), the bill will likely result in many or most California universities adopting the actions listed in the bill. Not doing so would risk making the university liable for any harm from hazing by affiliated organizations on their campus.

Some universities also may simply decide to rescind the recognition of sororities or fraternities at their university altogether. This would shield the university from liability under AB 299 because the second requirement under subdivision (b) of the bill requires that the organization committing the hazing be affiliated with the university at the time of the hazing incident. Yet the decision whether to recognize an organization is one a university faces every time an organization or sorority or fraternity forms on their campus. AB 299 simply makes clear that, when a university has recognized an organization and so benefits from the organization's presence on campus, it should be liable if it fails to do its part to make sure that organization does not engage in hazing. AB 299 sets out a clear path for universities with affiliated sororities and fraternities on their campuses to shield their liability: the implementation of robust anti-hazing policies and programs aimed at prohibiting, investigating, punishing, and educating and training on hazing. The creation of the duty under AB 299 will help ensure that many of California's universities implement these policies and build strong hazing prevention programs, and it will provide those harmed by hazing with a right to be made whole when a school fails to take steps to prevent hazing on their campus.

##### 5. Arguments in support

According to the Consumer Attorneys of California, who are in support of AB 299:

Student hazing has been directly responsible for the deaths or serious injuries of young students. The ramifications of student hazing can extend far beyond for its survivors, undermining their self-esteem and impacting their psychological wellbeing. These consequences have their own tragic results, frequently resulting in student suicide or acts of retaliation, the latter of which we saw most recently at the University of Virginia.

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.

AB 299 will ensure that educational institutions act to prevent dangerous hazing practices and keep students safe. For these reasons our organization joins in strong support.

6. Arguments in opposition

According to the Community College League of California, who oppose AB 299:

Hazing is a dangerous and horrible practice that no student, educational institution, or campus community should have to face. Community colleges are uniquely positioned as the only public educational institutions without fraternities and sororities, where hazing commonly takes place. Our students rarely remain on campus outside of their courses since most community colleges are commuter schools and many students have work and family obligations outside of the classroom. Therefore, the Community College League of California strongly believes that our colleges are not the appropriate target for this legislation.

Although hazing is not prevalent on our campuses, AB 299 would still result in significant costs to our colleges. As Proposition 98 funded campuses with the lowest per-pupil funding rate in the state, compliance with the suggested measure would take millions of dollars away from urgent student needs, such as wrap-around basic needs services. Additionally, the “should have known” standard creates an unreasonable expectation for colleges to have a micro-level involvement within student organizations, further opening colleges up to costly liability.

With increased cost pressures and lower-than-expected state budget revenues, our colleges are forced to make hard decisions on how to best use our limited resources. If implemented, AB 299 (Holden) would result in fewer dollars for critical campus resources, including resources that ensure students are fed, housed, and supported.

**SUPPORT**

Consumer Attorneys of California  
StopHazing

**OPPOSITION**

Community College League of California  
The California State University (opposed unless amended)

**RELATED LEGISLATION**

Pending Legislation: None known



Prior Legislation:

AB 524 (Rodriguez, Ch. 268, Stats. 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.

SB 1454 (Torlakson, Ch.601, Stats. 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.

**PRIOR VOTES:**

Assembly Floor (Ayes 63, Noes 4)

Assembly Appropriations Committee (Ayes 12, Noes 2)

Assembly Higher Education Committee (Ayes 9, Noes 0)

Assembly Judiciary Committee (Ayes 10, Noes 0)

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