

MAY 2019

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State of Florida Poised to Strengthen and Broaden Antihazing Legislation

SUMMARY

“Andrew’s Law,” which strengthens and broadens Florida’s antihazing statute (Fla. Stat. § 1006.63), is likely to become law after recently passing both chambers of Florida’s legislature without opposition. The legislation is named after a pledge of a Florida State University fraternity who died after drinking a bottle of bourbon during an off-campus hazing event. The legislation, advocated by Andrew’s family, now awaits the signature of Gov. Ron DeSantis.

The legislation expands the definition of hazing to include “initiation into,” “admission into,” “affiliation with” or “perpetration or furtherance of a tradition or ritual of” any organization that operates “under the sanction of a postsecondary institution.” Florida’s previous law, on the books since 2001, limited hazing only to “initiation into or affiliation with” a sanctioned organization at a postsecondary institution. The new law is silent regarding hazing conduct that occurs beyond the scope of an organization that is “sanctioned” by a postsecondary institution.

Andrew’s Law will also expand the scope of criminal liability for hazing. Under current law, only an individual who “intentionally or recklessly commits any act of hazing” could be criminally liable. But the new law subjects anyone who “solicits a person to commit, or is actively involved in the planning of any act of hazing” to criminal liability. That liability scales based on the degree of harm caused by the hazing. Hazing is a third-degree felony if the conduct “results in a permanent injury, serious bodily injury, or death of [another] person.” Hazing is a first-degree misdemeanor if it “creates a substantial risk of physical injury or death to [another] person.” Florida is part of a majority of states, 35 in total, where the potential for incarceration exists for those who participate in hazing.

Criminal liability attaches when hazing occurs in the context of “any type of student organization.” It is unclear whether “any type of student organization” equates to an organization “under the sanction of a postsecondary institution” (i.e. the phrase used in the definition of “hazing”).

The bill prohibits a defense based on a hazing victim’s consent or other participation in the hazing. But the legislation, like those introduced in other states, creates two new avenues of immunity.

- First, a person will be immune from prosecution if they can establish each of following: (1) they were “present at an event where, as a result of hazing, a person appeared to be in need of immediate medical assistance”; (2) they were the “the first person to call 911 or campus security to report the need for immediate medical assistance”; (3) they “provided his or her own name, the address where immediate medical assistance was needed, and a description of the medical issue to the 911 operator or campus security at the time of the call”; and (4) they “remained at the scene with the person in need of immediate medical assistance until such medical assistance, law enforcement, or campus security arrived and that he or she cooperated with such personnel on the scene.”
- The second way a person can avoid criminal liability under the new legislation is to provide “aid” to someone, “before medical assistance, law enforcement, or campus security arrive[] on the scene of a hazing event,” who is in need of medical assistance. By way of example, “aid” includes performing CPR, clearing the victim’s airway, using an automatic defibrillator, “or rendering any other assistance to the victim which the person intended in good faith to stabilize or improve the victim’s condition while waiting for medical assistance, law enforcement, or campus security to arrive.”

Notably, the legislation does not indicate how these immunity provisions apply (or do not apply) when the person seeking immunity actually and directly participated in the hazing.

If Gov. DeSantis signs “Andrew’s Law” into law, as he is expected to do, the law will become effective October 1, 2019. The new law does not alter the requirements that Florida colleges and universities “adopt a written antihazing policy” and “rules prohibiting students or other persons associated with any student organization from engaging in hazing.” Nor does the bill affect the requirement that colleges and universities “adopt appropriate penalties for violations of such rules” relating to hazing. Florida colleges and universities should therefore plan to update their policies, procedures, and rules to account for the new changes in Florida’s hazing law.

Though Andrew’s Law will toughen a hazing statute that was often considered to be the strictest in the country, it is not necessarily the broadest. Pennsylvania, for example, in late 2018 enacted antihazing legislation that includes within the definition of hazing groups that are not officially recognized by a college or university. But like Pennsylvania and Massachusetts among others, Florida requires colleges and universities to distribute policies and rules related to hazing. Should Andrew’s Law become law as expected, Florida will join states like Texas that impose criminal liability on those who solicit another person to commit hazing.

Beyond simply updating their policies, procedures, and rules, Florida colleges and universities should take action to distribute their updated policies and rules to all students and organizations. Institutions should also consider providing comprehensive antihazing training to leaders of student organizations shortly after the new academic year begins. Doing so will help mitigate or prevent future incidents of hazing while also reducing the college or university’s exposure to liability.

For more information, please feel free to reach out to the author or your regular Saul Ewing Arnstein & Lehr point of contact.

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