

1 **H. B. 4587**

2
3 (By Delegate Marshall)

4 [Introduced February 17, 2012; referred to the
5 Committee on the Judiciary.]

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10 A BILL to amend and reenact §18-16-2, §18-16-3 and §18-16-4 of the
11 Code of West Virginia, 1931, as amended, all relating to West
12 Virginia's antihazing statute; including a clearer definition
13 of hazing; eliminating further possible defenses; protecting
14 the identities of accusers from the public and applying
15 requirements to all colleges and universities who receive
16 state-funded student aid assistance relating to judicial
17 hearings and remedial remedies.

18 *Be it enacted by the Legislature of West Virginia:*

19 That §18-16-2, §18-16-3 and §18-16-4 of the Code of West
20 Virginia, 1931, as amended, be amended and reenacted, all to read
21 as follows:

22 **ARTICLE 16. ANTIHAZING LAW.**

23 **§18-16-2. Definitions.**

1 (a) "Hazing" means to cause any action or situation which
2 recklessly or intentionally endangers the mental or physical health
3 or safety of another person or persons or causes another person or
4 persons to destroy or remove public or private property for the
5 purpose of initiation or admission into or affiliation with, or as
6 a condition for continued membership in, any organization operating
7 under the sanction of or recognized as an organization by an
8 institution of higher education. ~~The term~~ Hazing includes, but is
9 not limited to, any brutality of a physical nature, such as
10 whipping, beating, branding, forced consumption of any food,
11 liquor, drug or other substance, or any other forced physical
12 activity which ~~could~~ adversely ~~affect~~ affects the physical health
13 and safety of the individual or individuals, and includes any
14 activity which would subject the individual or individuals to
15 extreme mental stress, such as sleep deprivation, forced exclusion
16 from social contact, forced conduct which could result in extreme
17 embarrassment, or any other forced activity which could adversely
18 affect the mental health or dignity of the individual or
19 individuals, or any willful destruction or removal of public or
20 private property. ~~Provided, That the implied or expressed consent~~
21 ~~or willingness of a person or persons to hazing shall not be a~~
22 ~~defense under this section.~~

23 (b) It is not a defense to a charge of hazing that: (1) The
24 consent of the victim has been obtained; (2) the conduct or

1 activity that resulted in the death or injury of a person was not
2 part of an official organizational event or was not otherwise
3 sanctioned or approved by the organization; or (3) the conduct or
4 activity that resulted in death or injury of the person was not
5 done as a condition of membership to an organization.

6 (c) Notwithstanding the provisions set forth in subsection
7 (a), hazing does not include initiation activities that further
8 conditioning goals on athletic teams, promotes scholarship within
9 an organization, promotes service to the community, develops
10 leadership and/or social skills, assists career goals, involves
11 students in lawful activities with alumni, builds awareness of
12 organizational history, instills team-building within the
13 organization, fosters solidarity or otherwise promotes the
14 institutional missions of the institution of higher education.

15 ~~(b)~~ (d) "Institution of higher education" or "institution"
16 means any public or private institution as defined in section two,
17 article one, chapter eighteen-b of this code. These terms also
18 include any public and nonpublic postsecondary educational
19 institutions whose students receive state student financial
20 assistance.

21 **§18-16-3. Hazing prohibited.**

22 Any person or persons who causes hazing is guilty of a
23 misdemeanor and, upon conviction thereof, shall be fined not less
24 than \$100 nor more than \$1,000, or confined in a regional jail, not

1 more than nine months, or both fined and imprisoned. ~~Provided,~~
 2 That

3 (a) If the act would otherwise be deemed a felony as defined
 4 in this code, the person committing such act may be found guilty of
 5 such felony and, be subject to penalties provided for such felony.

6 (b) This section does not preclude prosecution for a more
 7 general offense resulting from the same criminal transaction or
 8 episode.

9 **§18-16-4. Enforcement by institution.**

10 (a) *Antihazing policy.* -- ~~The university of West Virginia~~
 11 ~~board of trustees created pursuant to article two, chapter~~
 12 ~~eighteen-b of this code and the board of directors of the state~~
 13 ~~college system created pursuant to article three of said chapter~~
 14 ~~shall by August 1, 1995,~~ Each institution of higher education as
 15 defined herein shall promulgate guidelines for antihazing policies.
 16 The guidelines shall consist of clear and concise definitions of
 17 what hazing is and what hazing is not and be consistent with the
 18 language set forth herein.

19 (b) *Enforcement and penalties.*--

20 (1) Each institution shall provide a program for the
 21 enforcement of such rules and shall adopt appropriate penalties for
 22 violations of such rules to be administered by the person or agency
 23 at the institution responsible for the sanctioning or recognition
 24 of such organizations. As the negative stigma associated with a

1 hazing allegation is high, all persons and organizations accused of
2 hazing shall be granted a hearing in which they are permitted to
3 face their accusers and be advised of the allegations against them.
4 The hearing shall permit the accused the right to defend himself or
5 herself and shall be conducted by no fewer than three faculty
6 members and one student.

7 (2) The information provided to the accused persons for
8 purposes of a hearing shall not be made known to the public and
9 consistent with the provisions set forth in subsection five-a,
10 article four, chapter eighteen-b of this code, having to do with a
11 strict adherence to protecting the identities of the accusers from
12 the public domain.

13 ~~(2)~~ (3) In the case of an organization which authorizes
14 serious hazing in blatant intentional disregard of such rules,
15 penalties may also include recision of permission for that
16 organization to operate on campus property or to otherwise operate
17 under the sanction or recognition of the institution.

18 (4) In the case of an organization which authorizes hazing in
19 reckless disregard where no injuries, physical or mental are
20 sustained, penalties shall include a period of remedial instruction
21 and training designed to educate each person about what hazing is
22 and what it can cause.

23 ~~(3)~~ (5) All penalties imposed under the authority of this
24 section shall be in addition to any penalty imposed for violation

1 of section three of this article or of any of the criminal laws of
2 this state or for violation of any other institutional rule to
3 which the violator may be subject.

4 ~~(4)~~ (6) Rules adopted pursuant hereto apply to acts conducted
5 on or off campus whenever such acts are deemed to constitute
6 hazing.

NOTE: The purpose of this bill is to clarify and to extend
protections offered by West Virginia's anti-hazing statute.

Strike-throughs indicate language that would be stricken from
the present law, and underscoring indicates new language that would
be added.