

**GEORGE NELSON LAW FIRM**

1501 AVENUE K  
LUBBOCK, TEXAS 79401

-----

GEORGE H. NELSON  
ELIZABETH S. NELSON

TELEPHONE: (806) 765-7788  
FACSIMILE: (806) 765-7803

March 26, 2007

Dr. Brian Carr  
3709 - 22<sup>nd</sup> Place  
Lubbock, Texas 79410

Re: Senate Bill 1138

Dear Brian:

I am enclosing a copy of SB 1138 by our Senator Robert Duncan and a letter I have sent to him about it.

It is my feeling that any legislation (state or federal) is bad law which is so narrowly focused and places such administrative requirements on people or institutions or businesses without meaningful consideration of whether the hassles and obligations created will really help solve any problem. No legislature should be dictating to a university particular programming that should be delivered to particular students by a particular date each year. That by definition is bad law. I consider it both meaningless and onerous.

This has nothing to do with personalities, either Senator Duncan or anyone in the university administration. It has to do with an unfair and unequal approach to a problem that is simply wrong and should not be passed. I hope that you will distribute this among the Texas Tech Fraternities so that they can also express an opinion.

Yours very truly,



George Nelson

GHN:gc

Encls: as stated

# GEORGE NELSON LAW FIRM

1501 AVENUE K  
LUBBOCK, TEXAS 79401

GEORGE H. NELSON  
ELIZABETH S. NELSON

TELEPHONE: (806) 765-7788  
FACSIMILE: (806) 765-7803

March 23, 2007

Senator Robert L. Duncan  
P. O. Box 12068  
Austin, Texas 78711-2068

Re: SB 1138

Dear Bob:

As you know, I have been involved for the past 17 years as the graduate advisor to the Phi Gamma Delta Fraternity Chapter at Texas Tech. For four of those years I also served as one of the nine officers of our international fraternity. My personal experiences in these positions leads me to comment on your SB 1138 presently pending in the legislature.

I have read the bill and understand it **requires** the university to present a risk management program within the first 30 days of each fall semester covering alcohol, drugs, hazing, sexual abuse and harassment, fire and other safety issues like firearms, weapons and explosive devises, conduct of parties and other events held by fraternities, and the adoption of a risk management policy by a fraternity. The university **may** include other topics (not specified in the bill). It further **requires** the attendance of each officer, the advisor, pledges, and members who have not attended the program before. The bill provides for the taking of attendance but does not specify the penalty for failure to have 100% attendance of those whose attendance is made mandatory. Presumably the university authorities could suspend the certification of a fraternity as a recognized student organization or impose other penalties of various degrees for failure of a fraternity to have 100% attendance. The attendance of members of student organizations other than fraternities is not required by the bill, but is optional only.

The remainder of the bill concerns a fraternity insurance investigation by the State Board of Insurance.

Some of my objections to the proposed bill are as follows:

1. It is often well past 30 days from the beginning of school before we are able to establish the roster of the chapter, i.e. which members are active and which have been suspended or gone on inactive status. About one-half of the chapters at Tech are very large and require some time before an accurate roster can be assimilated for the campus authorities and the international headquarters.

We have both pledges and members who work and may not be able to physically attend the program required to be presented by the university and which each man is required to attend. I can tell you that the volunteer advisors do work and might not be able to attend at a time and place that the university personnel assign to the program, often to accommodate their schedule and not that of the fraternity men or their advisors.

3. The program to be presented by the university is not limited as to time. It is conceivable that these retreat programs could be designed to cover as much as a whole day or even two days.
4. We are required by our International Fraternity to conduct seminars on alcohol and drug abuse, hazing, fire safety, date rape and other topics. We are required to present a video called "Tell Me Something I Don't Know" each semester to the officers, pledges and members. It is a video produced by our fraternity concerning the death of a pledge at MIT which involved alcohol abuse and hazing. We are required to file reports that those programs have in fact been presented. We also voluntarily present other programs to the membership each year on various topics like transmission of sexual disease, etiquette, study habits, time management, resume writing, job interviewing, interpersonal relationships, and many other topics.
5. The truth is that social fraternities are the only student organizations on campus who are already actively conducting these types of risk management and educational programs within their chapters. The Saddle Tramps, for example, and other student organizations are not, although they may be having alcohol parties and hazing pledges and such. Their attendance under your bill would be voluntary. There seems to be an unequal and unfair amount of attention focused on fraternities when they are the organizations who are already conducting risk management and educational programs for their members.
6. I don't question the substantive value of the content of a program like the Warren Risk Management Program, but large retreats such as those required in your bill are, in my opinion, less effective than programs presented to smaller groups like officers, executive committees, or pledge classes within each chapter. Massive required attendance does not guarantee the attention of the audience or the effectiveness of the message.
7. So far as I can determine, your bill has no penalty range for a fraternity not having 100% attendance or in some fashion failing to comply with the details of this risk management program. I have some concerns about the penalties that the university professionals might impose, and I feel that any penalty would be unconscionable and an unequal protection of the law when not all campus student organizations are included in the requirements of the law.

8. It is my observation that fraternities already have risk management policies and programs. I know that mine does. They involve a myriad of things like alcohol free housing, third-party vendors, wrist bands, hand stamps, key boards, designated driver phones and crews, professional paid security guards at parties, etc. Out officers are required to certify to the international fraternity each semester that the chapter is in compliance. Each pledge has to sign a written statement that he has had the hazing laws explained to him and understands them. A copy of the Phi Gamma Delta Risk Management Policy is presented to each pledge of the fraternity as his pledge semester begins. I am uncertain of the real value or purpose of legally requiring the chapter to adopt a risk management policy as a result of attending one of these retreats when they already have a policy adopted and in place.

Concerning the insurance provision of your bill, I have no objections whatsoever. I know that you have been personally involved, as I have, in law suits involving fraternity activities and insurance coverage. I am also familiar with the fact that the liability policies have exclusions in them when damages are caused by criminal acts, and that drug possession, hazing, underage possession and/or consumption of alcohol or furnishing alcohol to minors are all criminal in nature. This often brings in homeowner policies of parents of students, and the lack of effective coverage makes it highly advisable for an advisor to carry some independent umbrella coverage. Yet the insurance companies are charging premiums based on underwriting exposures like hazing and alcohol offenses when they know they have the "criminal act" exclusion to rely upon. I think the study you call for in the bill is justified. I know we are all presently paying somewhere around \$200 a year or so in premiums for each student member when the exposure of the companies may not be that extensive in reality.

Thanks for considering my observations about the matter.

Yours very truly,

George H. Nelson

GHN:gc

80R9292 CAS/KCR-D

By: Duncan

S.B. No. 1138

A BILL TO BE ENTITLED  
AN ACT

relating to risk management programs for members of fraternities and other student organizations at public and private postsecondary educational institutions and to certain insurance requirements for fraternities.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Subchapter Z, Chapter 51, Education Code, is amended by adding Section 51.9361 to read as follows:

Sec. 51.9361. RISK MANAGEMENT PROGRAMS FOR MEMBERS OF FRATERNITIES AND OTHER STUDENT ORGANIZATIONS. (a) In this section:

(1) "Pledge" means a person who has been accepted by or is in the process of qualifying for membership in a fraternity.

(2) "Postsecondary educational institution" has the meaning assigned by Section 51.936.

(b) This section applies only to a fraternity that is registered at a postsecondary educational institution and that is composed mostly of students enrolled at the institution. Notwithstanding Section 1.001(a), this section applies to each postsecondary educational institution at which is registered one or more fraternities.

(c) Not later than the 30th day after the first day of the fall semester of each academic year, a postsecondary educational institution shall provide a risk management program for members of fraternities and of any other student organization registered at the institution. Each current officer, advisor, and pledge of a fraternity and any current fraternity member who has not previously attended a program provided under this section must attend the program. A member of any other student organization registered at the institution may attend the program.

(d) A program under this section may address any issue determined by the postsecondary educational institution and must address:

(1) possession and use of alcoholic beverages and illegal drugs, including penalties that may be imposed for possession or use;

(2) hazing;

(3) sexual abuse and harassment;

(4) fire and other safety issues, including the possession and use of a firearm or other weapon or of an explosive device;

(5) conduct of parties and other events held by a fraternity or other student organization; and

(6) adoption by a fraternity or other student organization of a risk management policy.

(e) A postsecondary educational institution shall:

(1) provide notice of a program provided under this section to each student organization registered at the institution;

and

(2) include in the notice information concerning persons associated with a fraternity who are required under this section to attend the program.

(f) A postsecondary educational institution shall take attendance at a program provided under this section and shall, until at least the fifth anniversary of the date of the program, maintain a record of that attendance and of notice provided under Subsection (e).

SECTION 2. (a) The Texas Department of Insurance shall conduct a study concerning:

(1) the levels and types of insurance coverage fraternities at institutions of higher education in this state are required to carry by the fraternities' chartering or national organizations;

(2) the availability and affordability of the levels and types of insurance coverage described by Subdivision (1) of this subsection; and

(3) whether the levels and types of insurance coverage described by Subdivision (1) of this subsection are available in this state under:

(A) insurance policies issued by insurers authorized to engage in the business of insurance in this state or by eligible surplus lines insurers; or

(B) independently procured contracts of insurance.

(b) Not later than January 1, 2009, the Texas Department of Insurance shall submit to the governor, the lieutenant governor, the speaker of the house of representatives, and the standing committees in the senate and the house of representatives that have jurisdiction over insurance and higher education a written report summarizing the results of the study conducted under Subsection (a) of this section.

SECTION 3. Section 51.9361, Education Code, as added by this Act, applies to a risk management program at public and private postsecondary educational institutions beginning with the 2008 fall semester.

SECTION 4. This Act takes effect September 1, 2007.