

Unfavorable Response to House Bill 201 Immunities – Liability of Agents and Volunteers

Families Advocating Intelligent Registries (FAIR) has a special concern for persons accused and convicted of sexual offenses, and seeks rational, constitutional sexual offense laws and policies. FAIR opposes HB 201 due to concerns regarding due process.

Courts & Judicial Proceedings Article 5-406 is aimed at ensuring that individuals like board members and volunteers are protected by their organization's liability insurance as long as that insurance is robust enough. The existing language has one exception to this protection: for willful violations of Title 6 of the Business Regulations Article that have been alleged and proven.

The new language seeks to exclude anyone who is facing allegations of any sort of sexual offense (ALL of Title 3 of the Criminal Law Article) or that allege "intimidation, bullying, or coercion of a sexual nature, unwelcome sexual advances or requests for sexual favors, or other verbal or physical conduct of a sexual nature that tends to create a hostile or offensive environment." (Emphasis above has been added.)

It should not be hard to see the problem here: being denied immunity/liability protection based on an allegation allows for no due process at all. No matter what the insurance policy might cover, the state is denying that based solely on an accusation. Any person making an accusation certainly has the right to be heard, but the person facing those accusations is facing a loss of liberty. Therefore he or she also has the right to present an opposing view in court, and if his or her organization has liability insurance that could assist with this, that should not be denied right from the start, with no confession or verdict entered. If this bill becomes law, it would almost certainly be challenged in court.

The second portion of the new language focuses on allegations that do not rise to the level of a statutory sexual offense. The language is vague: What constitutes a "tendency?" How would the situation be proven to be hostile? And again, to deny the assistance of liability coverage based on an allegation is extreme. It would seem more appropriate to demonstrate arbitration has occurred, or some other process that can verify the seriousness of the allegation and determination that the act actually happened, was hostile, and was willful.

For these reasons, FAIR respectfully requests that the committee vote NO on HB 201.

Sincerely,



Brenda V. Jones, Executive Director
Families Advocating Intelligent Registries