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Senate: JUD DPA 6-0-1-0 | 3rd Read DPA 19-9-2-0-0

House: JUD DPA 7-2-0-0

SB 1435: public entity liability; sexual offenses

Sponsor: Senator Bolick, LD 2

Caucus & COW

Overview

Subjects a public entity to liability for losses arising out of an act or omission by a public employee that is determined to be a felony sexual offense under certain circumstances.

History

[A.R.S. title 12](#), chapter 7, article 2 governs actions against public entities or employees. Among other provisions, this article contains several sections granting public entities or employees immunity from liability in certain circumstances, including absolute immunity ([A.R.S. § 12-820.01](#)), qualified immunity ([A.R.S. § 12-820.02](#)) and other immunity ([A.R.S. § 12-820.05](#)). Except as specifically provided in this article, its provisions do not affect, alter or otherwise modify any other rules of tort immunity regarding public entities and public officers as developed at common law and as established under the A.R.S. and the Arizona Constitution ([A.R.S. § 12-820.05](#)).

One specific form of immunity in [A.R.S. § 12-820.05](#), subsection B provides that a public entity is not liable for losses that arise out of and are directly attributable to an act or omission determined by a court to be a criminal felony by a public employee unless the public entity knew of the public employee's propensity for that action. However, this subsection does not apply to acts or omissions arising out of the operation or use of a motor vehicle.

Provisions

1. Excludes a public entity from immunity under [A.R.S. § 12-820.05](#), subsection B for acts or omissions by a public employee arising out of a felony sexual offense if the victim is a minor or a child with a disability as defined in [A.R.S. § 15-761](#) and one or more of the following conditions exist:
 - a) the public entity was in violation of a statutory duty relating to obtaining information regarding the background of employees;
 - b) the public entity or public employee had a statutory duty to report and failed to do so;
 - c) clear and convincing evidence proves that the public entity failed to reasonably investigate or take reasonable action on an alleged violation of a written policy of the public entity relating to the safety or well-being of a minor or a child with a disability as defined in [A.R.S. § 15-761](#) and the alleged violation of the written policy was substantially related to the harm that occurred. (Sec. 1)
2. Specifies that these changes to [A.R.S. § 12-820.05](#) apply only to acts or omissions involving sexual offenses that are committed on or after the effective date. (Sec. 3)

Prop 105 (45 votes) Prop 108 (40 votes) Emergency (40 votes) Fiscal Note

3. Repeals these changes to [A.R.S. § 12-820.05](#) on January 1, 2027. (Sec. 2, 4)

Amendments

Committee on Judiciary

1. Limits the immunity exclusion to sexual offenses against a child with a disability, rather than to a *minor or* a child with a disability.
2. Modifies the third condition mentioned in provision 1 above to provide that clear and convincing evidence proves that the public entity should have known of the public employee's propensity for harm related to the safety or well-being of a child with a disability.
3. Extends the delayed repeal date from January 1, 2027 to January 1, 2035.
4. Makes conforming changes.