

**First Regular Session
Seventieth General Assembly
STATE OF COLORADO**

PREAMENDED

*This Unofficial Version Includes Committee
Amendments Not Yet Adopted on Second Reading*

LLS NO. 15-0861.01 Debbie Haskins x2045

SENATE BILL 15-213

SENATE SPONSORSHIP

Cadman and Scheffel, Hill

HOUSE SPONSORSHIP

Hullinghorst and Duran,

Senate Committees

Judiciary

House Committees

A BILL FOR AN ACT

101 **CONCERNING THE LIMITED WAIVER OF GOVERNMENTAL IMMUNITY**
102 **FOR CLAIMS INVOLVING PUBLIC SCHOOLS FOR INJURIES**
103 **RESULTING FROM INCIDENTS OF SCHOOL VIOLENCE.**

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://www.leg.state.co.us/bills summaries>.)

The bill amends the "Colorado Governmental Immunity Act" (CGIA) to recognize that a duty of reasonable care exists with respect to public school districts, charter schools, and their employees to exercise reasonable care to protect students, faculty, staff, and others from harm that is reasonably foreseeable while such students, faculty, staff, and

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
*Capital letters indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.*

others are within the school facilities or are participating in school-sponsored activities.

The bill also amends the CGIA to waive sovereign immunity in connection with claims against public school districts and charter schools in an action for serious bodily injury or death resulting from an incident of school violence that occurs on property of a school or during school-sponsored activities on or after January 1, 2013.

For purposes of the bill, "serious bodily injury" means a bodily injury that, either at the time of the actual injury or at a later time, involves a substantial risk of death, a substantial risk of serious permanent disfigurement, or a substantial risk of protracted loss or impairment of the function of any part or organ of the body.

The maximum amount of damages that may be recovered from a school district or charter school in an action brought under the CGIA in a single occurrence is subject to the limits on damages under the CGIA (\$350,000 to one person in any single occurrence and \$900,000 for injuries to multiple persons in any single occurrence; except that no person may recover more than \$350,000). In addition, if there is an award of damages on behalf of plaintiffs, the court may also award to the plaintiff attorney fees and costs in an amount not to exceed \$350,000.

The bill specifies that it shall not be construed to constitute a waiver of sovereign immunity if the injury arises from any act, or failure to act, of an employee of a school district or a charter school if the act is the type of act for which the public employee would be or heretofore has been personally immune from liability.

The bill specifies that a public school district or charter school shall also have the same immunity as a public employee for any act or failure to act for which a public employee would be or heretofore has been personally immune from liability.

In order to promote vigorous discovery of events leading to an incident of violence in schools, the bill states that a defendant may not make an offer of judgment until discovery has been completed. The bill further states that if any defendant refuses to answer any complaint, if a default judgment is entered for failure to answer a complaint, or if a defendant confesses liability in an action brought against a public school district, the court shall allow full discovery upon request of the plaintiff.

The bill also precludes any rule of law imposing absolute or strict liability from being applied in any action against a public school employee for serious bodily injury or death suffered as a result of the breach of the duty of care established by the bill. No liability is to be imposed in any such action unless negligence is proven.

The bill makes conforming amendments. The bill applies to claims asserted against a school district or charter school resulting from an incident of school violence occurring on or after January 1, 2013.

1 *Be it enacted by the General Assembly of the State of Colorado:*

2 **SECTION 1. Legislative declaration.** (1) The general assembly
3 recognizes that:

4 (a) Colorado benefits from having an educated citizenry;

5 (b) Primary and secondary school students have limited autonomy
6 during school hours and little say in the security provided during the
7 school day; and

8 (c) Public school districts provide essential public services
9 through primary and secondary schools and charter schools and unlimited
10 liability against school districts could disrupt the provision of educational
11 services.

12 (2) Therefore, the general assembly finds that public school
13 districts and charter schools should be provided with protection from
14 unlimited liability. However, the general assembly also finds and
15 acknowledges that the sovereign immunity that has been extended to
16 public school districts and to charter schools prior to the passage of this
17 act can lead to inequitable results for students who are otherwise unable
18 to protect themselves from serious bodily injury or death in the school
19 environment. Moreover, the general assembly acknowledges that times
20 have changed in this country and in this state because there have been so
21 many acts of school violence in which students and teachers have been
22 killed and injured by persons. In this state since April 20, 1999, there
23 have been three separate incidents of school violence in which students
24 have been killed at their schools. In response to school violence, schools
25 have begun to undertake actions to address security issues, undertake
26 safety drills, train staff, and assess the risks to students from acts of

1 school violence. Parents have a reasonable expectation that when they
2 send their children to a public school that the school and its employees
3 will have taken steps to keep the children safe. The general assembly
4 finds that it is now foreseeable that violence in schools could occur.

5 (3) For the reasons stated in paragraphs (1) and (2) of this section,
6 the general assembly therefore declares the purposes of this act are:

7 (a) To recognize and state that there is a limited duty of reasonable
8 care upon public schools, charter schools, and their employees to provide
9 for student safety and to protect students and employees in their schools;

10 (b) To waive on a limited basis governmental immunity, thereby
11 allowing for recovery of capped damages where that duty of reasonable
12 care has been breached by a school district, charter school, or their
13 employees; and

14 (c) To waive on a limited basis governmental immunity to ensure
15 that there is a robust and effective discovery through the legal system of
16 the causes of acts of school violence.

17 (4) It is the intent of the general assembly in enacting this act to
18 affirmatively recognize a statutory duty upon school districts, charter
19 schools, and their employees to protect students, faculty, and staff from
20 foreseeable harm caused by other persons. The general assembly hereby
21 declares that the purpose of recognizing that this duty exists under this act
22 is to create a tort remedy against school districts and charter schools in
23 cases where a school district, charter school, or its employees knew or
24 should have known of the danger that was presented and breached that
25 duty of care.

26 (5) The general assembly also further states that its intent in
27 enacting the provisions in this act regarding discovery and settlement is

1 to provide a remedy for plaintiffs affected by acts of school violence and
2 to achieve robust and vigorous discovery of events leading to those
3 incidents of school violence.

4 **SECTION 2.** In Colorado Revised Statutes, add 24-10-106.3 as
5 follows:

6 **24-10-106.3. Immunity and partial waiver - claims for serious**
7 **bodily injury or death on public school property or at**
8 **school-sponsored events - definitions. (1) Definitions.** FOR PURPOSES

9 OF THIS SECTION, UNLESS THE _____ CONTEXT OTHERWISE REQUIRES:

10 (a) "CHARTER SCHOOL" MEANS A CHARTER SCHOOL OR AN
11 INSTITUTE CHARTER SCHOOL ESTABLISHED PURSUANT TO ARTICLE 30.5 OF
12 TITLE 22, C.R.S.

13 (b) "CRIME OF VIOLENCE" MEANS THAT THE PERSON COMMITTED,
14 CONSPIRED TO COMMIT, OR ATTEMPTED TO COMMIT ONE OF THE
15 FOLLOWING CRIMES:

- 16 (I) MURDER;
- 17 (II) FIRST DEGREE ASSAULT;
- 18 (III) SECOND DEGREE ASSAULT; OR
- 19 (IV) SEXUAL ASSAULT, AS DEFINED IN SECTION 18-3-402, C.R.S.

20 (c) "INCIDENT OF SCHOOL VIOLENCE" MEANS AN OCCURRENCE AT
21 A PUBLIC SCHOOL OR PUBLIC SCHOOL-SPONSORED ACTIVITY IN WHICH A
22 PERSON:

- 23 (I) ENGAGED IN A CRIME OF VIOLENCE; AND
- 24 (II) THE ACTIONS DESCRIBED IN SUBPARAGRAPH (I) OF THIS
25 PARAGRAPH (c) BY THAT PERSON CAUSED SERIOUS BODILY INJURY OR
26 DEATH TO ANY OTHER PERSON.

27 (d) "PUBLIC SCHOOL" HAS THE SAME MEANING AS PROVIDED IN

1 SECTION 22-1-101, C.R.S, AND INCLUDES A CHARTER SCHOOL OR
2 INSTITUTE CHARTER SCHOOL.

3 (e) "SCHOOL DISTRICT" MEANS A SCHOOL DISTRICT ORGANIZED
4 PURSUANT TO ARTICLE 30 OF TITLE 22, C.R.S., AND THE CHARTER SCHOOL
5 INSTITUTE ESTABLISHED PURSUANT TO SECTION 22-30.5-503, C.R.S.

6 (f) "SERIOUS BODILY INJURY" MEANS BODILY INJURY THAT, EITHER
7 AT THE TIME OF THE ACTUAL INJURY OR A LATER TIME, INVOLVES A
8 SUBSTANTIAL RISK OF DEATH, A SUBSTANTIAL RISK OF SERIOUS
9 PERMANENT DISFIGUREMENT, OR A SUBSTANTIAL RISK OF PROTRACTED
10 LOSS OR IMPAIRMENT OF THE FUNCTION OF ANY PART OR ORGAN OF THE
11 BODY.

12 (2) **Recognition of duty of care.** ALL SCHOOL DISTRICTS AND
13 CHARTER SCHOOLS AND THEIR EMPLOYEES IN THIS STATE HAVE A
14 DUTY TO EXERCISE REASONABLE CARE TO PROTECT ALL STUDENTS,
15 FACULTY, AND STAFF FROM HARM FOR ACTS COMMITTED BY ANOTHER
16 PERSON WHEN THE HARM IS REASONABLY FORESEEABLE, WHILE SUCH
17 STUDENTS, FACULTY, AND STAFF ARE WITHIN THE SCHOOL FACILITIES OR
18 ARE PARTICIPATING IN SCHOOL-SPONSORED ACTIVITIES.

19 (3) **Limited waiver of sovereign immunity.** NOTWITHSTANDING
20 ANY OTHER PROVISION OF THIS ARTICLE, A PUBLIC SCHOOL DISTRICT OR
21 CHARTER SCHOOL IS IMMUNE FROM LIABILITY IN ALL CLAIMS FOR INJURY
22 THAT LIE IN TORT OR COULD LIE IN TORT REGARDLESS OF WHETHER THAT
23 MAY BE THE TYPE OF ACTION OR THE FORM OF RELIEF CHOSEN BY THE
24 CLAIMANT EXCEPT AS OTHERWISE PROVIDED IN THIS SECTION OR IN THIS
25 ARTICLE. IN ADDITION TO ANY OTHER CLAIMS FOR WHICH THE "COLORADO
26 GOVERNMENTAL IMMUNITY ACT" WAIVES SOVEREIGN IMMUNITY IN THIS
27 ARTICLE, SOVEREIGN IMMUNITY IS WAIVED UNDER THE "COLORADO

1 GOVERNMENTAL IMMUNITY ACT" WITH RESPECT TO SCHOOL DISTRICTS
2 AND CHARTER SCHOOLS FOR A CLAIM OF A BREACH OF THE DUTY OF CARE
3 ESTABLISHED IN SUBSECTION (2) OF THIS SECTION BY THE SCHOOL
4 DISTRICT, A CHARTER SCHOOL, OR AN EMPLOYEE OF THE SCHOOL DISTRICT
5 OR CHARTER SCHOOL ARISING FROM AN INCIDENT OF SCHOOL VIOLENCE ON
6 OR AFTER THE EFFECTIVE DATE OF THIS ACT.

7 (4) NOTHING IN THIS SECTION SHALL BE CONSTRUED TO
8 CONSTITUTE A WAIVER OF SOVEREIGN IMMUNITY BY A SCHOOL DISTRICT
9 OR CHARTER SCHOOL IF THE INJURY ARISES FROM ANY ACT, OR FAILURE TO
10 ACT, OF AN EMPLOYEE OF THE SCHOOL DISTRICT OR CHARTER SCHOOL IF
11 THE ACT IS THE TYPE OF ACT FOR WHICH THE SCHOOL DISTRICT OR
12 CHARTER SCHOOL EMPLOYEE WOULD BE OR HERETOFORE HAS BEEN
13 PERSONALLY IMMUNE FROM LIABILITY.

14 (5) IN ADDITION TO THE IMMUNITY PROVIDED UNDER THIS
15 SECTION, THE SCHOOL DISTRICT AND CHARTER SCHOOL SHALL ALSO HAVE
16 THE SAME IMMUNITY AS A SCHOOL DISTRICT OR CHARTER SCHOOL
17 EMPLOYEE FOR ANY ACT OR FAILURE TO ACT FOR WHICH A SCHOOL
18 DISTRICT OR CHARTER SCHOOL EMPLOYEE WOULD BE OR HERETOFORE HAS
19 BEEN PERSONALLY IMMUNE FROM LIABILITY.

20 (6) NO RULE OF LAW IMPOSING ABSOLUTE OR STRICT LIABILITY
21 SHALL BE APPLIED IN ANY ACTION FILED AGAINST A SCHOOL DISTRICT OR
22 CHARTER SCHOOL PURSUANT TO THIS SECTION FOR SERIOUS BODILY
23 INJURY OR DEATH CAUSED BY A BREACH OF THE DUTY OF CARE,
24 ESTABLISHED PURSUANT TO SUBSECTION (2) OF THIS SECTION. NO
25 LIABILITY SHALL BE IMPOSED IN ANY SUCH ACTION UNLESS NEGLIGENCE
26 IS PROVEN.

27 (7) THE MAXIMUM AMOUNT OF DAMAGES THAT MAY BE

1 RECOVERED UNDER THIS ARTICLE IN ANY SINGLE OCCURRENCE FROM A
2 SCHOOL DISTRICT OR CHARTER SCHOOL FOR A CLAIM BROUGHT UNDER
3 THIS SECTION IS GOVERNED BY THE LIMITS SET FORTH IN SECTION
4 24-10-114 (1).

5 (8) IN ORDER TO PROMOTE VIGOROUS DISCOVERY OF EVENTS
6 LEADING TO AN INCIDENT OF SCHOOL VIOLENCE IN ANY ACTION BROUGHT
7 UNDER THIS SECTION, AN OFFER OF JUDGMENT BY A DEFENDANT UNDER
8 SECTION 13-17-202, C.R.S., PRIOR TO THE COMPLETION OF DISCOVERY, IS
9 NOT DEEMED REJECTED IF NOT ACCEPTED UNTIL FOURTEEN DAYS AFTER
10 THE COMPLETION OF DISCOVERY AND THE PLAINTIFF IS NOT LIABLE FOR
11 COSTS DUE TO NOT ACCEPTING SUCH AN OFFER OF JUDGMENT UNTIL
12 FOURTEEN DAYS AFTER THE COMPLETION OF DISCOVERY. IF A DEFENDANT
13 REFUSES TO ANSWER A COMPLAINT, OR A DEFAULT JUDGMENT IS ENTERED
14 AGAINST A DEFENDANT FOR FAILURE TO ANSWER A COMPLAINT, OR A
15 DEFENDANT CONFESSES LIABILITY IN AN ACTION BROUGHT UNDER THIS
16 SECTION, THE COURT SHALL ALLOW FULL DISCOVERY UPON REQUEST OF
17 THE PLAINTIFF.

18 **SECTION 3.** In Colorado Revised Statutes, **amend** 24-10-106.5
19 (2) as follows:

20 **24-10-106.5. Duty of care.** (2) EXCEPT AS OTHERWISE PROVIDED
21 IN SECTION 24-10-106.3, WHICH RECOGNIZES A DUTY OF REASONABLE
22 CARE UPON PUBLIC SCHOOL DISTRICTS, CHARTER SCHOOLS, AND THEIR
23 EMPLOYEES, nothing in this article shall be deemed to create any duty of
24 care.

25 **SECTION 4.** In Colorado Revised Statutes, **amend** 24-10-108 as
26 follows:

27 **24-10-108. Sovereign immunity a bar.** Except as provided in

1 sections 24-10-104 to 24-10-106 AND 24-10-106.3, sovereign immunity
2 shall be a bar to any action against a public entity for injury which lies in
3 tort or could lie in tort regardless of whether that may be the type of
4 action or the form of relief chosen by a claimant. If a public entity raises
5 the issue of sovereign immunity prior to or after the commencement of
6 discovery, the court shall suspend discovery, except any discovery
7 necessary to decide the issue of sovereign immunity and shall decide such
8 issue on motion. The court's decision on such motion shall be a final
9 judgment and shall be subject to interlocutory appeal.

10 **SECTION 5.** In Colorado Revised Statutes, 13-17-202, **amend**
11 (1) (a) introductory portion as follows:

12 **13-17-202. Award of actual costs and fees when offer of**
13 **settlement was made.** (1) (a) Notwithstanding any other statute to the
14 contrary, EXCEPT AS PROVIDED IN SECTION 24-10-106.3, C.R.S., in any
15 civil action of any nature commenced or appealed in any court of record
16 in this state:

17 **SECTION 6. Effective date - applicability.** This act takes effect
18 upon passage and applies to claims asserted against a school district or
19 charter school resulting from an incident of school violence that occurred
20 on or after the effective date of this act.

21 **SECTION 7. Safety clause.** The general assembly hereby finds,
22 determines, and declares that this act is necessary for the immediate
23 preservation of the public peace, health, and safety.