

NOTE: The governor signed this measure on 6/3/2015.

An Act

SENATE BILL 15-213

BY SENATOR(S) Cadman and Scheffel, Hill, Crowder, Grantham, Lambert, Lundberg, Martinez Humenik, Neville T., Woods;
also REPRESENTATIVE(S) Hullinghorst and Duran, Kagan, Melton, Salazar, Singer.

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

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

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

- (a) Colorado benefits from having an educated citizenry;
- (b) Primary and secondary school students have limited autonomy during school hours and little say in the security provided during the school day; and
- (c) Public school districts provide essential public services through primary and secondary schools and charter schools and unlimited liability against school districts could disrupt the provision of educational services.

Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.

(2) Therefore, the general assembly finds that public school districts and charter schools should be provided with protection from unlimited liability. However, the general assembly also finds and acknowledges that the sovereign immunity that has been extended to public school districts and to charter schools prior to the passage of this act can lead to inequitable results for students who are otherwise unable to protect themselves from serious bodily injury or death in the school environment. Moreover, the general assembly acknowledges that times have changed in this country and in this state because there have been so many acts of school violence in which students and teachers have been killed and injured by persons. In this state since April 20, 1999, there have been three separate incidents of school violence in which students have been killed at their schools. In response to school violence, schools have begun to undertake actions to address security issues, undertake safety drills, train staff, and assess the risks to students from acts of school violence. Parents have a reasonable expectation that when they send their children to a public school that the school and its employees will have taken steps to keep the children safe. The general assembly finds that it is now foreseeable that violence in schools could occur.

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

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

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

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

(4) It is the intent of the general assembly in enacting this act to affirmatively recognize a statutory duty upon school districts, charter schools, and their employees to protect students, faculty, and staff from

foreseeable harm caused by other persons. The general assembly hereby declares that the purpose of recognizing that this duty exists under this act is to create a tort remedy against school districts and charter schools in cases where a school district, charter school, or its employees knew or should have known of the danger that was presented and breached that duty of care.

(5) The general assembly also further states that its intent in enacting the provisions in this act regarding discovery and settlement is to provide a remedy for plaintiffs affected by acts of school violence and to achieve robust and vigorous discovery of events leading to those incidents of school violence.

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

24-10-106.3. Immunity and partial waiver - claims for serious bodily injury or death on public school property or at school-sponsored events - short title - definitions - repeal. (1) THIS SECTION SHALL BE KNOWN AND MAY BE CITED AS THE "CLAIRE DAVIS SCHOOL SAFETY ACT".

(2) **Definitions.** FOR PURPOSES OF THIS SECTION, UNLESS THE CONTEXT OTHERWISE REQUIRES:

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

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

(I) MURDER;

(II) FIRST DEGREE ASSAULT; OR

(III) A FELONY SEXUAL ASSAULT, AS DEFINED IN SECTION 18-3-402, C.R.S.

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

(I) ENGAGED IN A CRIME OF VIOLENCE; AND

(II) THE ACTIONS DESCRIBED IN SUBPARAGRAPH (I) OF THIS PARAGRAPH (c) BY THAT PERSON CAUSED SERIOUS BODILY INJURY OR DEATH TO ANY OTHER PERSON.

(d) "PUBLIC SCHOOL" HAS THE SAME MEANING AS PROVIDED IN SECTION 22-1-101, C.R.S, AND INCLUDES A CHARTER SCHOOL OR INSTITUTE CHARTER SCHOOL.

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

(f) "SERIOUS BODILY INJURY" MEANS BODILY INJURY THAT, EITHER AT THE TIME OF THE ACTUAL INJURY OR 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.

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

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

ARTICLE, SOVEREIGN IMMUNITY IS WAIVED UNDER THE "COLORADO GOVERNMENTAL IMMUNITY ACT" WITH RESPECT TO SCHOOL DISTRICTS AND CHARTER SCHOOLS FOR A CLAIM OF A BREACH OF THE DUTY OF CARE ESTABLISHED IN SUBSECTION (3) OF THIS SECTION BY THE SCHOOL DISTRICT, A CHARTER SCHOOL, OR AN EMPLOYEE OF THE SCHOOL DISTRICT OR CHARTER SCHOOL ARISING FROM AN INCIDENT OF SCHOOL VIOLENCE ON OR AFTER THE EFFECTIVE DATE OF THIS SECTION, AND, WITH RESPECT TO SUCH CLAIMS, THE PROVISIONS OF ARTICLE 12 OF TITLE 22, C.R.S., DO NOT APPLY TO SCHOOL DISTRICTS AND CHARTER SCHOOLS. AN EMPLOYEE OF A PUBLIC SCHOOL, SCHOOL DISTRICT, OR A CHARTER SCHOOL IS NOT SUBJECT TO SUIT UNDER THIS SECTION IN HIS OR HER INDIVIDUAL CAPACITY UNLESS THE EMPLOYEE'S ACTIONS OR OMISSIONS ARE WILLFUL AND WANTON.

(5) A PUBLIC SCHOOL, SCHOOL DISTRICT, OR CHARTER SCHOOL SHALL NOT BE FOUND NEGLIGENT UNDER THIS SECTION SOLELY AS A RESULT OF NOT EXPELLING OR SUSPENDING ANY STUDENT.

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

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

(8) NO RULE OF LAW IMPOSING ABSOLUTE OR STRICT LIABILITY SHALL BE APPLIED IN ANY ACTION FILED AGAINST A SCHOOL DISTRICT OR CHARTER SCHOOL PURSUANT TO THIS SECTION FOR SERIOUS BODILY INJURY OR DEATH CAUSED BY A BREACH OF THE DUTY OF CARE, ESTABLISHED PURSUANT TO SUBSECTION (3) OF THIS SECTION. NO LIABILITY SHALL BE IMPOSED IN ANY SUCH ACTION UNLESS NEGLIGENCE IS PROVEN.

(9)(a) EXCEPT AS PROVIDED IN PARAGRAPH (b) OF THIS SUBSECTION

(9), THE MAXIMUM AMOUNT OF DAMAGES THAT MAY BE RECOVERED UNDER THIS ARTICLE IN ANY SINGLE OCCURRENCE FROM A SCHOOL DISTRICT OR CHARTER SCHOOL FOR A CLAIM BROUGHT UNDER THIS SECTION IS GOVERNED BY THE LIMITS SET FORTH IN SECTION 24-10-114 (1).

(b) (I) A PLAINTIFF WHO FILES AN ACTION UNDER THIS SECTION FOR AN INCIDENT OF SCHOOL VIOLENCE THAT OCCURS ON OR AFTER THE EFFECTIVE DATE OF THIS SECTION AND ON OR BEFORE JULY 1, 2017, SHALL FILE THE ACTION IN THE DISTRICT COURT, AND NO COMPENSATORY DAMAGES SHALL BE AWARDED. THE COURT SHALL NOT ISSUE A DECLARATORY JUDGEMENT REGARDING THE NEGLIGENCE OF THE PUBLIC SCHOOL, SCHOOL DISTRICT, OR CHARTER SCHOOL; HOWEVER, IN SUCH ACTION, THE PLAINTIFF IS ENTITLED TO FULL DISCOVERY REGARDING THE INCIDENT OF SCHOOL VIOLENCE.

(II) THIS PARAGRAPH (b) IS REPEALED, EFFECTIVE JULY 1, 2018.

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

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

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

SECTION 4. In Colorado Revised Statutes, **amend** 24-10-108 as

follows:

24-10-108. Sovereign immunity a bar. Except as provided in sections 24-10-104 to 24-10-106 AND 24-10-106.3, sovereign immunity shall be a bar to any action against a public entity for injury which lies in tort or could lie in tort regardless of whether that may be the type of action or the form of relief chosen by a claimant. If a public entity raises the issue of sovereign immunity prior to or after the commencement of discovery, the court shall suspend discovery, except any discovery necessary to decide the issue of sovereign immunity and shall decide such issue on motion. The court's decision on such motion shall be a final judgment and shall be subject to interlocutory appeal.

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

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

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

SECTION 7. Safety clause. The general assembly hereby finds,

determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.

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THE SENATE

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APPROVED _____

John W. Hickenlooper
GOVERNOR OF THE STATE OF COLORADO