

**First Regular Session
Sixty-sixth General Assembly
STATE OF COLORADO**

PREAMENDED

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

LLS NO. 07-0808.01 Duane Gall

SENATE BILL 07-219

SENATE SPONSORSHIP

Fitz-Gerald,

HOUSE SPONSORSHIP

Levy,

Senate Committees
Judiciary

House Committees

A BILL FOR AN ACT

101 **CONCERNING LIMITATIONS ON THE LIABILITY OF RAILROADS THAT**
102 **MAKE THEIR PROPERTY AVAILABLE FOR THE PROVISION OF**
103 **PUBLIC PASSENGER RAIL SERVICE, AND, IN CONNECTION**
104 **THEREWITH, CLARIFYING THE STATUS OF PUBLIC LIGHT RAIL**
105 **VEHICLES UNDER THE "COLORADO GOVERNMENTAL IMMUNITY**
106 **ACT".**

Bill Summary

(Note: This summary applies to this bill as introduced and does not necessarily reflect any amendments that may be subsequently adopted.)

Limits the imposition of punitive or exemplary damages or damages for outrageous conduct in an action against a railroad operating

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.

in interstate commerce that sells to a public entity, or allows a public entity to use, the railroad's property, including its tracks, for public passenger rail service for injuries arising out of the operation and maintenance of the public passenger rail service.

Authorizes a public entity to insure against all or part of its liability or the liability of a railroad for claims by passengers or invitees of a public passenger rail service that occur as a result of passenger rail operations where a railroad allowed public transit to use its property or its tracks. Authorizes such insurance to be provided by a risk management pool of public passenger rail services authorized pursuant to the federal "Product Liability Risk Retention Act of 1981". Directs that such insurance shall be maintained at levels sufficient to insure against the maximum liability permitted against a railroad or its indemnitor pursuant to federal law.

Defines a motor vehicle to include a light rail vehicle for purposes of an existing exemption from governmental immunity.

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

2 **SECTION 1.** 24-10-103, Colorado Revised Statutes, is amended
3 BY THE ADDITION OF A NEW SUBSECTION to read:

4 **24-10-103. Definitions.** As used in this article, unless the context
5 otherwise requires:

6 (2.7) "MOTOR VEHICLE" MEANS A MOTOR VEHICLE AS DEFINED IN
7 SECTION 42-1-102, C.R.S., AND A LIGHT RAIL CAR OR ENGINE OWNED OR
8 LEASED BY A PUBLIC ENTITY.

9 **SECTION 2.** 24-10-114 (4), Colorado Revised Statutes, is
10 amended to read:

11 **24-10-114. Limitations on judgments.** (4) (a) A public entity
12 shall not be liable either directly or by indemnification for punitive or
13 exemplary damages or for damages for outrageous conduct, except as
14 otherwise determined by a public entity pursuant to section 24-10-118 (5).

15 (b) A RAILROAD OPERATING IN INTERSTATE COMMERCE THAT
16 SELLS TO A PUBLIC ENTITY, OR ALLOWS THE PUBLIC ENTITY TO USE, SUCH

1 RAILROAD'S PROPERTY OR TRACKS FOR THE PROVISION OF PUBLIC
2 PASSENGER RAIL SERVICE SHALL NOT BE LIABLE EITHER DIRECTLY OR BY
3 INDEMNIFICATION FOR PUNITIVE OR EXEMPLARY DAMAGES OR FOR
4 DAMAGES FOR OUTRAGEOUS CONDUCT TO ANY PERSON FOR ANY
5 ACCIDENT OR INJURY ARISING OUT OF THE OPERATION AND MAINTENANCE
6 OF THE PUBLIC PASSENGER RAIL SERVICE BY A PUBLIC ENTITY.

7 **SECTION 3.** 24-10-115 (1), Colorado Revised Statutes, is
8 amended BY THE ADDITION OF A NEW PARAGRAPH to read:

9 **24-10-115. Authority for public entities other than the state to**
10 **obtain insurance.** (1) A public entity, other than the state, either by
11 itself or in conjunction with any one or more public entities may:

12 (d) INSURE AGAINST ALL OR PART OF ITS LIABILITY OR THE
13 LIABILITY OF A RAILROAD FOR CLAIMS ARISING FROM THE PASSENGER
14 RAIL OPERATIONS OF A PUBLIC ENTITY ON PROPERTY OR TRACKS OWNED
15 BY, OR PURCHASED FROM, A RAILROAD.

16 **SECTION 4.** 24-10-115 (2), Colorado Revised Statutes, is
17 amended BY THE ADDITION OF A NEW PARAGRAPH to read:

18 **24-10-115. Authority for public entities other than the state to**
19 **obtain insurance.** (2) The insurance authorized by subsection (1) of this
20 section may be provided by:

21 (d) ANY RISK MANAGEMENT POOL OF PUBLIC PASSENGER RAIL
22 SERVICES AUTHORIZED TO BE CREATED PURSUANT TO THE FEDERAL
23 "PRODUCT LIABILITY RISK RETENTION ACT OF 1981", 15 U.S.C. SEC. 3901
24 ET SEQ., AS AMENDED.

25 **SECTION 5.** 24-10-115, Colorado Revised Statutes, is amended
26 BY THE ADDITION OF A NEW SUBSECTION to read:

27 **24-10-115. Authority for public entities other than the state to**

1 **obtain insurance.** (7) POLICIES WRITTEN, SELF-INSURANCE FUNDS
2 ESTABLISHED, OR RISK MANAGEMENT POOLS ENTERED INTO BY A PUBLIC
3 ENTITY FOR THE PURPOSE OF INSURING A PUBLIC ENTITY AS DESCRIBED IN
4 PARAGRAPH (d) OF SUBSECTION (1) OF THIS SECTION SHALL MAINTAIN
5 SUCH LEVELS OF INSURANCE AS ARE SUFFICIENT TO INSURE AGAINST THE
6 MAXIMUM LIABILITY PERMITTED AGAINST A RAILROAD OR ITS INDEMNITOR
7 PURSUANT TO 49 U.S.C. SEC. 28103.

8 **SECTION 6. Effective date - applicability.** (1) This act shall
9 take effect July 1, 2007.

10 (2) However, if a referendum petition is filed against this act or
11 an item, section, or part of this act during the 90-day period after final
12 adjournment of the general assembly that is allowed for submitting a
13 referendum petition pursuant to article V, section 1 (3) of the state
14 constitution, then the act, item, section, or part, shall not take effect unless
15 approved by the people at a biennial regular general election and shall
16 take effect on the date specified in subsection (1) or on the date of the
17 official declaration of the vote thereon by proclamation of the governor,
18 whichever is later.

19 (3) The provisions of this act shall apply to acts or omissions
20 occurring on or after the applicable effective date of this act; except that
21 this act shall not apply to a railroad operating in interstate commerce until
22 an agreement is executed between such railroad and the board of directors
23 of the regional transportation district, created in article 9 of title 32,
24 Colorado Revised Statutes, for the operation of a fixed guideway corridor
25 pursuant to the transportation plan adopted by the board and adopted by
26 the voters on November 2, 2004.