

First Regular Session
Seventieth General Assembly
STATE OF COLORADO

INTRODUCED

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/billsummaries>.)

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

4 **24-10-106.3. Immunity and partial waiver - claims for serious**
5 **bodily injury or death on public school property or at**
6 **school-sponsored events - legislative declaration - definitions.**

7 (1) **Legislative declaration.** (a) THE GENERAL ASSEMBLY RECOGNIZES
8 THAT:

9 (I) COLORADO BENEFITS FROM HAVING AN EDUCATED CITIZENRY;

10 (II) PRIMARY AND SECONDARY SCHOOL STUDENTS HAVE LIMITED
11 AUTONOMY DURING SCHOOL HOURS AND LITTLE SAY IN THE SECURITY
12 PROVIDED DURING THE SCHOOL DAY; AND

13 (III) PUBLIC SCHOOL DISTRICTS PROVIDE ESSENTIAL PUBLIC
14 SERVICES THROUGH PRIMARY AND SECONDARY SCHOOLS AND CHARTER
15 SCHOOLS AND UNLIMITED LIABILITY AGAINST SCHOOL DISTRICTS COULD
16 DISRUPT THE PROVISION OF EDUCATIONAL SERVICES.

17 (b) THEREFORE, THE GENERAL ASSEMBLY FINDS THAT PUBLIC
18 SCHOOL DISTRICTS AND CHARTER SCHOOLS SHOULD BE PROVIDED WITH
19 PROTECTION FROM UNLIMITED LIABILITY. HOWEVER, THE GENERAL
20 ASSEMBLY ALSO FINDS AND ACKNOWLEDGES THAT THE SOVEREIGN
21 IMMUNITY THAT HAS BEEN EXTENDED TO PUBLIC SCHOOL DISTRICTS AND
22 TO CHARTER SCHOOLS PRIOR TO THE PASSAGE OF THIS SECTION CAN LEAD
23 TO INEQUITABLE RESULTS FOR STUDENTS WHO ARE OTHERWISE UNABLE
24 TO PROTECT THEMSELVES FROM SERIOUS BODILY INJURY OR DEATH IN THE
25 SCHOOL ENVIRONMENT. MOREOVER, THE GENERAL ASSEMBLY
26 ACKNOWLEDGES THAT TIMES HAVE CHANGED IN THIS COUNTRY AND IN

1 THIS STATE BECAUSE THERE HAVE BEEN SO MANY ACTS OF SCHOOL
2 VIOLENCE IN WHICH STUDENTS AND TEACHERS HAVE BEEN KILLED AND
3 INJURED BY PERSONS. IN THIS STATE SINCE APRIL 20, 1999, THERE HAVE
4 BEEN THREE SEPARATE INCIDENTS OF SCHOOL VIOLENCE IN WHICH
5 STUDENTS HAVE BEEN KILLED AT THEIR SCHOOLS. IN RESPONSE TO
6 SCHOOL VIOLENCE, SCHOOLS HAVE BEGUN TO UNDERTAKE ACTIONS TO
7 ADDRESS SECURITY ISSUES, UNDERTAKE SAFETY DRILLS, TRAIN STAFF,
8 AND ASSESS THE RISKS TO STUDENTS FROM ACTS OF SCHOOL VIOLENCE.
9 PARENTS HAVE A REASONABLE EXPECTATION THAT WHEN THEY SEND
10 THEIR CHILDREN TO A PUBLIC SCHOOL THAT THE SCHOOL AND ITS
11 EMPLOYEES WILL HAVE TAKEN STEPS TO KEEP THE CHILDREN SAFE. THE
12 GENERAL ASSEMBLY FINDS THAT IT IS NOW FORESEEABLE THAT VIOLENCE
13 IN SCHOOLS COULD OCCUR.

14 (c) FOR THE REASONS STATED IN PARAGRAPHS (a) AND (b) OF THIS
15 SUBSECTION (1), THE GENERAL ASSEMBLY THEREFORE DECLARES THE
16 PURPOSES OF THIS SECTION ARE:

17 (I) TO RECOGNIZE AND STATE THAT THERE IS A LIMITED DUTY OF
18 REASONABLE CARE UPON PUBLIC SCHOOLS, CHARTER SCHOOLS, AND THEIR
19 EMPLOYEES TO PROVIDE FOR STUDENT SAFETY AND TO PROTECT STUDENTS
20 AND EMPLOYEES IN THEIR SCHOOLS;

21 (II) TO WAIVE ON A LIMITED BASIS GOVERNMENTAL IMMUNITY
22 THEREBY ALLOWING FOR RECOVERY OF CAPPED DAMAGES WHERE THAT
23 DUTY OF REASONABLE CARE HAS BEEN BREACHED BY A SCHOOL DISTRICT,
24 CHARTER SCHOOL, OR THEIR EMPLOYEES; AND

25 (III) TO WAIVE ON A LIMITED BASIS GOVERNMENTAL IMMUNITY TO
26 ENSURE THAT THERE IS A ROBUST AND EFFECTIVE DISCOVERY THROUGH
27 THE LEGAL SYSTEM OF THE CAUSES OF ACTS OF SCHOOL VIOLENCE.

1 (d) IT IS THE INTENT OF THE GENERAL ASSEMBLY IN ENACTING THIS
2 SECTION TO AFFIRMATIVELY RECOGNIZE A STATUTORY DUTY UPON
3 SCHOOL DISTRICTS, CHARTER SCHOOLS, AND THEIR EMPLOYEES TO
4 PROTECT STUDENTS, FACULTY, AND STAFF FROM FORESEEABLE HARM
5 CAUSED BY OTHER PERSONS. THE GENERAL ASSEMBLY HEREBY DECLARES
6 THAT THE PURPOSE OF RECOGNIZING THAT THIS DUTY EXISTS UNDER THIS
7 ARTICLE IS TO CREATE A TORT REMEDY AGAINST SCHOOL DISTRICTS AND
8 CHARTER SCHOOLS IN CASES WHERE A SCHOOL DISTRICT, CHARTER
9 SCHOOL, OR ITS EMPLOYEES KNEW OR SHOULD HAVE KNOWN OF THE
10 DANGER THAT WAS PRESENTED AND BREACHED THAT DUTY OF CARE.

11 (e) THE GENERAL ASSEMBLY ALSO FURTHER STATES THAT ITS
12 INTENT IN ENACTING THE PROVISIONS REGARDING DISCOVERY AND
13 SETTLEMENT IS TO PROVIDE A REMEDY FOR PLAINTIFFS AFFECTED BY ACTS
14 OF SCHOOL VIOLENCE AND TO ACHIEVE ROBUST AND VIGOROUS
15 DISCOVERY OF EVENTS LEADING TO THOSE INCIDENTS OF SCHOOL
16 VIOLENCE.

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

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

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

25 (I) (A) USED OR POSSESSED AND THREATENED THE USE OF A
26 DEADLY WEAPON; OR

27 (B) PHYSICALLY ATTACKED ANOTHER PERSON; AND

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

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

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

10 (e) "SERIOUS BODILY INJURY" MEANS BODILY INJURY THAT,
11 EITHER AT THE TIME OF THE ACTUAL INJURY OR A LATER TIME, INVOLVES
12 A SUBSTANTIAL RISK OF DEATH, A SUBSTANTIAL RISK OF SERIOUS
13 PERMANENT DISFIGUREMENT, OR A SUBSTANTIAL RISK OF PROTRACTED
14 LOSS OR IMPAIRMENT OF THE FUNCTION OF ANY PART OR ORGAN OF THE
15 BODY.

16 (3) **Recognition of duty of care.** ALL SCHOOL DISTRICTS AND
17 CHARTER SCHOOLS AND THEIR EMPLOYEES IN THIS STATE HAVE AND,
18 SINCE JANUARY 1, 2013, HAVE HAD A DUTY TO EXERCISE REASONABLE
19 CARE TO PROTECT ALL STUDENTS, FACULTY, AND STAFF FROM HARM FOR
20 ACTS COMMITTED BY ANOTHER PERSON WHEN THE HARM IS REASONABLY
21 FORESEEABLE, WHILE SUCH STUDENTS, FACULTY, AND STAFF ARE WITHIN
22 THE SCHOOL FACILITIES OR ARE PARTICIPATING IN SCHOOL-SPONSORED
23 ACTIVITIES.

24 (4) **Limited waiver of sovereign immunity.** NOTWITHSTANDING
25 ANY OTHER PROVISION OF THIS ARTICLE, A PUBLIC SCHOOL DISTRICT OR
26 CHARTER SCHOOL IS IMMUNE FROM LIABILITY IN ALL CLAIMS FOR INJURY
27 THAT LIE IN TORT OR COULD LIE IN TORT REGARDLESS OF WHETHER THAT

1 MAY BE THE TYPE OF ACTION OR THE FORM OF RELIEF CHOSEN BY THE
2 CLAIMANT EXCEPT AS OTHERWISE PROVIDED IN THIS SECTION OR IN THIS
3 ARTICLE. IN ADDITION TO ANY OTHER CLAIMS FOR WHICH THE "COLORADO
4 GOVERNMENTAL IMMUNITY ACT" WAIVES SOVEREIGN IMMUNITY IN THIS
5 ARTICLE, SOVEREIGN IMMUNITY IS WAIVED UNDER THE "COLORADO
6 GOVERNMENTAL IMMUNITY ACT" WITH RESPECT TO SCHOOL DISTRICTS
7 AND CHARTER SCHOOLS FOR A CLAIM OF A BREACH OF THE DUTY OF CARE
8 ESTABLISHED IN SUBSECTION (3) OF THIS SECTION BY THE SCHOOL
9 DISTRICT, A CHARTER SCHOOL, OR AN EMPLOYEE OF THE SCHOOL DISTRICT
10 OR CHARTER SCHOOL ARISING FROM AN INCIDENT OF SCHOOL VIOLENCE
11 ON OR AFTER JANUARY 1, 2013.

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

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

25 (7) NO RULE OF LAW IMPOSING ABSOLUTE OR STRICT LIABILITY
26 SHALL BE APPLIED IN ANY ACTION FILED AGAINST A SCHOOL DISTRICT OR
27 CHARTER SCHOOL PURSUANT TO THIS SECTION FOR SERIOUS BODILY

1 INJURY OR DEATH CAUSED BY A BREACH OF THE DUTY OF CARE,
2 ESTABLISHED PURSUANT TO SUBSECTION (3) OF THIS SECTION. NO
3 LIABILITY SHALL BE IMPOSED IN ANY SUCH ACTION UNLESS NEGLIGENCE
4 IS PROVEN.

5 (8) THE MAXIMUM AMOUNT OF DAMAGES THAT MAY BE
6 RECOVERED UNDER THIS ARTICLE IN ANY SINGLE OCCURRENCE FROM A
7 SCHOOL DISTRICT OR CHARTER SCHOOL FOR A CLAIM BROUGHT UNDER
8 THIS SECTION IS GOVERNED BY THE LIMITS SET FORTH IN SECTION
9 24-10-114 (1); EXCEPT THAT, IF THERE IS AN AWARD OF DAMAGES ON
10 BEHALF OF A PLAINTIFF, THE COURT MAY ALSO AWARD ATTORNEY FEES
11 AND COSTS TO THE PLAINTIFF IN AN AMOUNT NOT TO EXCEED THREE
12 HUNDRED FIFTY THOUSAND DOLLARS.

13 (9) IN ORDER TO PROMOTE VIGOROUS DISCOVERY OF EVENTS
14 LEADING TO AN INCIDENT OF SCHOOL VIOLENCE IN ANY ACTION BROUGHT
15 UNDER THIS SECTION, A DEFENDANT MAY NOT MAKE AN OFFER OF
16 JUDGMENT UNDER SECTION 13-17-202, C.R.S., UNTIL THE COMPLETION OF
17 DISCOVERY. IF A DEFENDANT REFUSES TO ANSWER A COMPLAINT, OR A
18 DEFAULT JUDGMENT IS ENTERED AGAINST A DEFENDANT FOR FAILURE TO
19 ANSWER A COMPLAINT, OR A DEFENDANT CONFESSES LIABILITY IN AN
20 ACTION BROUGHT UNDER THIS SECTION, THE COURT SHALL ALLOW FULL
21 DISCOVERY UPON REQUEST OF THE PLAINTIFF.

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

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

1 care.

2 **SECTION 3.** In Colorado Revised Statutes, **amend** 24-10-108 as
3 follows:

4 **24-10-108. Sovereign immunity a bar.** Except as provided in
5 sections 24-10-104 to 24-10-106 AND 24-10-106.3, sovereign immunity
6 shall be a bar to any action against a public entity for injury which lies in
7 tort or could lie in tort regardless of whether that may be the type of
8 action or the form of relief chosen by a claimant. If a public entity raises
9 the issue of sovereign immunity prior to or after the commencement of
10 discovery, the court shall suspend discovery, except any discovery
11 necessary to decide the issue of sovereign immunity and shall decide such
12 issue on motion. The court's decision on such motion shall be a final
13 judgment and shall be subject to interlocutory appeal.

14 **SECTION 4.** In Colorado Revised Statutes, 13-17-202, **amend**
15 (1) (a) introductory portion as follows:

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

21 **SECTION 5. Applicability.** This act applies to claims asserted
22 against a school district or charter school resulting from an incident of
23 school violence on or after January 1, 2013.

24 **SECTION 6. Safety clause.** The general assembly hereby finds,
25 determines, and declares that this act is necessary for the immediate
26 preservation of the public peace, health, and safety.