A BILL FOR AN ACT

CONCERNING THE LIMITED WAIVER OF GOVERNMENTAL IMMUNITY
FOR CLAIMS INVOLVING PUBLIC SCHOOLS FOR INJURIES
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
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.
Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. 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 - legislative declaration - definitions.

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

(I) Colorado benefits from having an educated citizenry;

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

(III) 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.

(b) 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 section 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.

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

(I) 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;

(II) 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

(III) 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.
(d) It is the intent of the General Assembly in enacting this section 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 article 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.

(e) The General Assembly also further states that its intent in enacting the provisions 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.

(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) "Incident of school violence" means an occurrence at a public school or public school-sponsored activity in which a person:

(I) (A) used or possessed and threatened the use of a deadly weapon; or

(B) physically attacked another person; and
(II) The actions described in subparagraph (I) of this paragraph (b) by that person caused serious bodily injury or death to any other person.

(c) "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.

(d) "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.

(e) "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 and, since January 1, 2013, have had a duty to exercise reasonable care to protect all students, faculty, and staff from harm for 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 JANUARY 1, 2013.

(5) 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.

(6) 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.

(7) 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.

(8) 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); except that, if there is an award of damages on
behalf of a plaintiff, the court may also award attorney fees
and costs to the plaintiff in an amount not to exceed three
hundred fifty thousand dollars.

(9) In order to promote vigorous discovery of events
leading to an incident of school violence in any action brought
under this section, a defendant may not make an offer of
judgment under section 13-17-202, C.R.S., until 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 2. 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
SECTION 3. 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 4. 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 5. Applicability. This act applies to claims asserted against a school district or charter school resulting from an incident of school violence on or after January 1, 2013.

SECTION 6. 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.