Colorado Revised Statutes 2022

TITLE 24

GOVERNMENT - STATE

Cross references: For elections, see title 1; for peace officers and firefighters, see article 5 of title 29; for state engineer, see article 80 of title 37; for state chemist, see part 4 of article 1 of title 25; for offenses against government, see article 8 of title 18; for the "Uniform Records Retention Act", see article 17 of title 6.

ARTICLE 10

Governmental Immunity

Editor's note: The doctrine of sovereign immunity of the state, school districts, and counties was prospectively overruled in three Colorado supreme court decisions announced contemporaneously prior to July 1, 1972, the effective date of this article. In these decisions, the court held that the legislature had full authority to restore the doctrine, in whole or in part. The decisions are: Evans v. Board of County Comm'rs of County of El Paso, 174 Colo. 97, 482 P.2d 968 (1971); Flournoy v. School Dist. No. 1 in City and County of Denver, 174 Colo. 110, 482 P.2d 966 (1971); and Proffitt v. State, 174 Colo. 113, 482 P.2d 965 (1971).

Cross references: For applicability of the risk management fund to claims under this article, see § 24-30-1510.

Law reviews: For note, "The Colorado Governmental Immunity Act: A Judicial Challenge and the Legislative Response", see 43 U. Colo. L. Rev. 58 (1972); for comment, "The Colorado Governmental Immunity Act: A Prescription for Retrogression", see 49 Den. L. J. 567 (1973); for article, "Federal Practice and Procedure", which discusses a Tenth

Circuit decision dealing with governmental immunity, see 62 Den. U. L. Rev. 227 (1985); for article, "Governmental Immunity: The Effect of Theories of Liability after Initial Notice", see 15 Colo. Law. 232 (1986); for article, "Amendments to the Colorado Governmental Immunity Act", see 15 Colo. Law. 1193 (1986); for article, "1986 Colorado Tort Reform Legislation", see 15 Colo. Law. 1363 (1986); for article, "New Role for Nonparties in Tort Actions -- The Empty Chair", see 15 Colo. Law. 1650 (1986); for article, "Colorado Municipal Liability after Annexing Potential Superfund Site", see 16 Colo. Law. 258 (1987); for comment, "Leake v. Cain: Abolition of the Public Duty Rule and the status of Governmental Immunity in Colorado", see 64 Den. U. L. Rev. 733 (1988); for comment, "Leake v. Cain: Abrogation of the Public Duty Doctrine in Colorado?", see 59 U. Colo. L. Rev. 383 (1988); for article, "Governmental Immunity Act Developments", see 17 Colo. Law. 1525 (1988); for article, "Section 1983 Litigation in State Courts: A Review", see 18 Colo. Law. 27 (1989); for article, "Asserting Governmental Immunity by Attacking Subject Matter Jurisdiction", see 22 Colo. 2551 (1993); for article, "The Changing Concept of Governmental Immunity", see 23 Colo. Law. 603 (1994); for article, "Recent Developments in Governmental Immunity: Post-Trinity Broadcasting", see 25 Colo. Law. 43 (June 1996); for article, "Interpreting the Colorado Governmental Immunity Act", see 26 Colo. Law. 77 (Feb. 1997); for article, "Bailment Claims Under the Colorado Government Immunity Act and the Economic Loss Doctrine", see 44 Colo. Law. 37 (Sept. 2015); for article, "Overview of General Liability, Workers' Compensation, and Employment Law Issues in K-12 Educational Institutions", see 44 Colo. Law. 25 (Oct. 2015); for article, "Sovereign Immunity in Colorado: A Look at the CGIA", see 46 Colo. Law. 49 (Apr. 2017); for article "Civil Interlocutory Appeals in Colorado State Courts", see 49 Colo. Law. 38 (Oct. 2020).

24-10-101. Short title. This article shall be known and may be cited as the "Colorado Governmental Immunity Act".

Source: L. 71: p. 1204, § 1. **C.R.S. 1963:** § 130-11-1.

24-10-102. Declaration of policy. It is recognized by the general assembly that the doctrine of sovereign immunity, whereunder the state and its political subdivisions are often immune from suit for injury suffered by private persons, is, in some instances, an inequitable doctrine. The general assembly also recognizes that the supreme court has abrogated the doctrine of sovereign immunity effective July 1, 1972, and that thereafter the doctrine shall be recognized only to such extent as may be provided by statute. The general assembly also

recognizes that the state and its political subdivisions provide essential public services and functions and that unlimited liability could disrupt or make prohibitively expensive the provision of such essential public services and functions. The general assembly further recognizes that the taxpayers would ultimately bear the fiscal burdens of unlimited liability and that limitations on the liability of public entities and public employees are necessary in order to protect the taxpayers against excessive fiscal burdens. It is also recognized that public employees, whether elected or appointed, should be provided with protection from unlimited liability so that such public employees are not discouraged from providing the services or functions required by the citizens or from exercising the powers authorized or required by law. It is further recognized that the state, its political subdivisions, and the public employees of such public entities, by virtue of the services and functions provided, the powers exercised, and the consequences of unlimited liability to the governmental process, should be liable for their actions and those of their agents only to such an extent and subject to such conditions as are provided by this article. The general assembly also recognizes the desirability of including within one article all the circumstances under which the state, any of its political subdivisions, or the public employees of such public entities may be liable in actions which 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 a claimant and that the distinction for liability purposes between governmental and proprietary functions should be abolished.

Source: L. 71: p. 1204, § 1. **C.R.S. 1963:** § 130-11-2. **L. 79:** Entire section amended, p. 862, § 1, effective July 1. **L. 86:** Entire section amended, p. 873, § 1, effective July 1.

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

(1) "Controlled agricultural burn" means a technique used in farming to clear the land of any existing crop residue, kill weeds and weed seeds, or to reduce fuel buildup and decrease the likelihood of a future fire.

(1.3) "Dangerous condition" means either a physical condition of a facility or the use thereof that constitutes an unreasonable risk to the health or safety of the public, which is known to exist or which in the exercise of reasonable care should have been known to exist and which condition is proximately caused by the negligent act or omission of the public entity or public employee in constructing or maintaining such facility. For the purposes of this subsection (1.3), a dangerous condition should have been known to exist if it is established that the condition had existed for such a period and was of such a nature that, in the exercise of reasonable care, such condition and its dangerous character should have been discovered. A dangerous condition shall not exist solely because the design of any

facility is inadequate. The mere existence of wind, water, snow, ice, or temperature shall not, by itself, constitute a dangerous condition.

(1.5) "Health-care practitioner" means a physician, dentist, clinical psychologist, or any other person acting at the direction or under the supervision or control of any such persons.

(2) "Injury" means death, injury to a person, damage to or loss of property, of whatsoever kind, which, if inflicted by a private person, would 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 a claimant.

(2.5) "Maintenance" means the act or omission of a public entity or public employee in keeping a facility in the same general state of repair or efficiency as initially constructed or in preserving a facility from decline or failure. "Maintenance" does not include any duty to upgrade, modernize, modify, or improve the design or construction of a facility.

(2.7) "Motor vehicle" means a motor vehicle as defined in section 42-1-102, C.R.S., and a light rail car or engine owned or leased by a public entity.

(3) (a) "Operation" means the act or omission of a public entity or public employee in the exercise and performance of the powers, duties, and functions vested in them by law with respect to the purposes of any public hospital, jail, or public water, gas, sanitation, power, or swimming facility. "Operation" does not include any duty to upgrade, modernize, modify, or improve the design or construction of a facility.

(b) The term "operation" shall not be construed to include:

(I) A failure to exercise or perform any powers, duties, or functions not vested by law in a public entity or employee with respect to the purposes of any public facility set forth in paragraph (a) of this subsection (3);

(II) A negligent or inadequate inspection or a failure to make an inspection of any property, except property owned or leased by the public entity, to determine whether such property constitutes a hazard to the health or safety of the public.

(3.5) "Prescribed fire" means the application of fire in accordance with a written prescription for vegetative fuels and excludes a controlled agricultural burn.

(4) (a) "Public employee" means an officer, employee, servant, or authorized volunteer of the public entity, whether or not compensated, elected, or appointed, but does not include an independent contractor or any person who is sentenced to participate in any type of useful public service. For the purposes of this subsection (4), "authorized volunteer" means a person who performs an act for the benefit of a public entity at the request of and

subject to the control of such public entity and includes a qualified volunteer as defined in section 24-33.5-802 (9).

(b) "Public employee" includes any of the following:

(I) Any health-care practitioner employed by a public entity, except for any health-care practitioner who is employed on less than a full-time basis by a public entity and who additionally has an independent or other health-care practice. Any such person employed on less than a full-time basis by a county or a district public health agency and who additionally has an independent or other health-care practice shall maintain the status of a public employee only when such person engages in activities at or for the county or the district public health agency that are within the course and scope of such person's responsibilities as an employee of the county or the district public health agency. For purposes of this subparagraph (I), work performed as an employee of another public entity or of an entity of the United States government shall not be considered to be an independent or other health-care practice.

(II) Any health-care practitioner employed part-time by and holding a clinical faculty appointment at a public entity as to any injury caused by a health-care practitioner-in-training under such health-care practitioner's supervision. Any such person shall maintain the status of a public employee when such person engages in supervisory and educational activities over a health-care practitioner-in-training at a nonpublic entity if said activities are within the course and scope of such person's responsibilities as an employee of a public entity.

(III) Any health-care practitioner-in-training who is duly enrolled and matriculated in an educational program of a public entity and who is working at either a public entity or a nonpublic entity. Any such person shall maintain the status of a public employee when such person engages in professional or educational activities at a nonpublic entity if said activities are within the course and scope of such person's responsibilities as a student or employee of a public entity.

(IV) Any health-care practitioner who is a nurse licensed under part 1 of article 255 of title 12 employed by a public entity. Any such person shall maintain the status of a public employee only when such person engages in activities at or for the public entity that are within the course and scope of such person's responsibilities as an employee of the public entity.

(V) Any health-care practitioner who volunteers services at or on behalf of a public entity, or who volunteers services as a participant in the community maternity services program;

(VI) Any release hearing officer utilized by the department of corrections and the state board of parole pursuant to section 17-2-217 (1), C.R.S. A release hearing officer shall maintain the status of a public employee only when the release hearing officer engages in activities that are within the course and scope of his or her responsibilities as a release hearing officer.

(VII) Any administrative hearing officer utilized by the department of corrections and the state board of parole pursuant to section 17-2-201 (3)(h)(I). An administrative hearing officer shall maintain the status of a public employee only when the administrative hearing officer engages in activities that are within the course and scope of his or her responsibilities as an administrative hearing officer.

(c) Except for persons identified in subsections (4)(b)(II), (4)(b)(III), and (4)(b)(V) of this section, "public employee" shall not include any health-care practitioner or any health-care professional as defined in section 13-64-202 (4) who is employed by the university of Colorado hospital authority unless the practitioner or professional is providing services within the course and scope of the person's responsibilities as an employee or volunteer of the university of Colorado hospital authority in a facility that is either located on the Anschutz medical campus or that is operating under the hospital license issued to the university hospital pursuant to part 1 of article 3 of title 25, including off-campus locations. The "Health Care Availability Act", article 64 of title 13, is applicable to health-care practitioners and health-care professionals employed by the university of Colorado hospital authority that are not immune from liability under section 24-10-118 because of the definition of "public employee" specified in this subsection (4)(c).

(5) "Public entity" means the state, the judicial department of the state, any county, city and county, municipality, school district, special improvement district, and every other kind of district, agency, instrumentality, or political subdivision thereof organized pursuant to law and any separate entity created by intergovernmental contract or cooperation only between or among the state, county, city and county, municipality, school district, special improvement district, and every other kind of district, agency, instrumentality, or political subdivision thereof.

(5.5) "Public sanitation facility" means structures and related apparatus used in the collection, treatment, or disposition of sewage or industrial wastes of a liquid nature that is operated and maintained by a public entity. "Public sanitation facility" does not include: A public water facility; a natural watercourse even if dammed, channelized, or containing storm water runoff, discharge from a storm sewer, or discharge from a sewage treatment plant outfall; a drainage, borrow, or irrigation ditch even if the ditch contains storm water runoff or discharge from storm sewers; a curb and gutter system; or other drainage, flood control, and storm water facilities.

(5.7) "Public water facility" means structures and related apparatus used in the collection, treatment, or distribution of water for domestic and other legal uses that is operated and maintained by a public entity. "Public water facility" does not include: A public sanitation facility; a natural watercourse even if dammed, channelized, or used for transporting domestic water supplies; a drainage, borrow, or irrigation ditch even if dammed, channelized, or containing storm water runoff or discharge; or a curb and gutter system.

(6) "Sidewalk" means that portion of a public roadway between the curb lines or the lateral lines of the traveled portion and the adjacent property lines which is constructed, designed, maintained, and intended for the use of pedestrians.

(7) "State" means the government of the state; every executive department, board, commission, committee, bureau, and office; and every state institution of higher education, whether established by the state constitution or by law, and every governing board thereof. "State" does not include the judicial department, a county, municipality, city and county, school district, special district, or any other kind of district, instrumentality, political subdivision, or public corporation organized pursuant to law.

Source: L. 71: p. 1205, § 1. **C.R.S. 1963:** § 130-11-3. **L. 82:** (4) amended, p. 604, § 6, effective July 1. **L. 86:** (1), (2), and (4) amended, p. 874, § 2, effective July 1. **L. 87:** (4) amended and (1.5) added, p. 929, § 1, effective June 20. **L. 88:** (4)(b)(I) amended and (4)(b)(IV) and (4)(b)(V) added, p. 893, § 1, effective March 20. **L. 92:** (1) and (5) amended and (6) added, p. 1115, § 1, effective July 1. **L. 93:** (4) amended, p. 571, § 1, effective April 30. **L. 2002:** (4)(b)(VI) added, p. 490, § 1, effective May 24. **L. 2003:** (1) and (3)(a) amended and (2.5), (5.5), and (5.7) added, p. 1343, § 2, effective July 1. **L. 2004:** (4)(b)(V) amended, p. 1200, § 61, effective August 4. **L. 2007:** (2.7) added, p. 1025, § 1, effective July 1. **L. 2008:** (4)(b)(VII) added, p. 32, § 1, effective March 13; (4)(b)(I) amended, p. 2051, § 2, effective July 1; (4)(a) amended, p. 610, § 2, effective August 5. **L. 2012:** (1) amended and (1.3), (3.5), and (7) added, (HB 12-1361), ch. 242, p. 1144, § 1, effective June 4. **L. 2013:** (5) amended, (HB 13-1294), ch. 313, p. 1644, § 1, effective May 28; (4)(a) amended, (HB 13-1300), ch. 316, p. 1681, § 51, effective August 7. **L. 2018:** (4)(b)(VII) amended, (HB 18-1375), ch. 274, p. 1705, § 35, effective May 29. **L. 2019:** IP and (4)(b)(IV) amended, (HB 19-1172), ch. 136, p. 1687, § 125, effective October 1. **L. 2020:** (4)(b)(IV) amended, (HB 20-1183), ch. 157, p. 701, § 55, effective July 1; (4)(c) added, (HB 20-1330), ch. 230, p. 1118, § 1, effective September 14.

Editor's note: Section 3(2) of chapter 230 (HB 20-1330), Session Laws of Colorado 2020, provides that the act changing this section applies to acts or omissions occuring on or after January 1, 2021.

Cross references: (1) For the exclusion of children ordered to participate in a work or community service program from the definition of "public employee", see § 19-2-308 (8).

(2) For the legislative declaration contained in the 2003 act amending subsections (1) and (3)(a) and enacting subsections (2.5), (5.5), and (5.7), see section 1 of chapter 182, Session Laws of Colorado 2003.

24-10-104. Waiver of sovereign immunity. Notwithstanding any provision of law to the contrary, the governing body of a public entity, by resolution, may waive the immunity granted in section 24-10-106 for the types of injuries described in the resolution. Any such waiver may be withdrawn by the governing body by resolution. A resolution adopted pursuant to this section shall apply only to injuries occurring subsequent to the adoption of such resolution.

Source: L. 71: p. 1205, § 1. **C.R.S. 1963:** § 130-11-4. **L. 86:** Entire section R&RE, p. 875, § 3, effective July 1.

Cross references: For authorization to procure insurance against liability, see §§ 24-10-115 and 24-14-102.

24-10-105. Prior waiver of immunity - effect - indirect claims not separate. (1) It is the intent of this article to cover all actions which 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. No public entity shall be liable for such actions except as provided in this article, and no public employee shall be liable for injuries arising out of an act or omission occurring during the performance of his or her duties and within the scope of his or her employment, unless such act or omission was willful and wanton, except as provided in this article. Nothing in this section shall be construed to allow any action 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 to be brought against a public employee except in compliance with the requirements of this article.

(2) (a) A reference in this article to an injury, claim, or action that "lies in tort or could lie in tort" shall be construed in all cases to include, in addition to a direct claim or action, a claim or action asserted by way of assignment or subrogation to recover from a public entity or public employee the amount paid on a damages claim or the amount that may become payable on a damages claim because of the occurrence of an injury, as defined in section 24-10-103 (2).

(b) In any case in which an assignee or subrogee asserts an injury governed by this article:

(I) The injury shall not be deemed to be separate from the injury suffered by the assignor or subrogor; and

(II) Pursuant to section 24-10-114 (1.5), the assignment or subrogation concerning the injury shall not be deemed to be a separate occurrence with regard to limitations on judgments.

Source: L. 71: p. 1206, § 1. **C.R.S. 1963:** § 130-11-5. **L. 85, 1st Ex. Sess.:** Entire section amended, p. 9, § 4, effective September 27. **L. 86:** Entire section amended, p. 875, § 4, effective July 1. **L. 2006:** Entire section amended, p. 455, § 2, effective April 18.

Cross references: For the legislative declaration contained in the 2006 act amending this section, see section 1 of chapter 132, Session Laws of Colorado 2006.

24-10-106. Immunity and partial waiver. (1) A public entity shall be immune from liability in all claims for injury which 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 provided otherwise in this section. Sovereign immunity is waived by a public entity in an action for injuries resulting from:

(a) The operation of a motor vehicle, owned or leased by such public entity, by a public employee while in the course of employment, except emergency vehicles operating within the provisions of section 42-4-108 (2) and (3), C.R.S.;

(b) The operation of any public hospital, correctional facility, as defined in section 17-1-102, C.R.S., or jail by such public entity;

(c) A dangerous condition of any public building;

(d) (I) A dangerous condition of a public highway, road, or street which physically interferes with the movement of traffic on the paved portion, if paved, or on the portion customarily used for travel by motor vehicles, if unpaved, of any public highway, road, street, or sidewalk within the corporate limits of any municipality, or of any highway which is a part of the federal interstate highway system or the federal primary highway system, or of any highway which is a part of the federal secondary highway system, or of any highway which is a part of the state highway system on that portion of such highway, road, street, or sidewalk which was designed and intended for public travel or parking thereon. As used in this section, the phrase "physically interferes with the movement of traffic" shall not include traffic signs, signals, or markings, or the lack thereof. Nothing in this subparagraph (I) shall preclude a particular dangerous accumulation of snow, ice, sand, or gravel from being found to constitute a dangerous condition in the surface of a public roadway when the entity fails to use existing means available to it for removal or mitigation of such accumulation and when the public entity had actual notice through the proper public official responsible for the roadway and had a reasonable time to act.

(II) A dangerous condition caused by the failure to realign a stop sign or yield sign which was turned, without authorization of the public entity, in a manner which reassigned the right-of-way upon intersecting public highways, roads, or streets, or the failure to repair a traffic control signal on which conflicting directions are displayed;

(III) A dangerous condition caused by an accumulation of snow and ice which physically interferes with public access on walks leading to a public building open for public business when a public entity fails to use existing means available to it for removal or mitigation of such accumulation and when the public entity had actual notice of such condition and a reasonable time to act.

(e) A dangerous condition of any public hospital, jail, public facility located in any park or recreation area maintained by a public entity, or public water, gas, sanitation, electrical, power, or swimming facility. Nothing in this paragraph (e) or in paragraph (d) of this subsection (1) shall be construed to prevent a public entity from asserting sovereign immunity for an injury caused by the natural condition of any unimproved property, whether or not such property is located in a park or recreation area or on a highway, road, or street right-of-way.

(f) The operation and maintenance of any public water facility, gas facility, sanitation facility, electrical facility, power facility, or swimming facility by such public entity;

(g) The operation and maintenance of a qualified state capital asset that is the subject of a leveraged leasing agreement pursuant to the provisions of part 10 of article 82 of this title;

(h) Failure to perform an education employment required background check as described in section 13-80-103.9, C.R.S.;

(i) An action brought pursuant to section 13-21-128; or

(j) An action brought pursuant to part 12 of article 20 of title 13, whether the conduct alleged occurred before, on, or after January 1, 2022.

(1.5) (a) The waiver of sovereign immunity created in paragraphs (b) and (e) of subsection (1) of this section does not apply to claimants who have been convicted of a crime and incarcerated in a correctional facility or jail pursuant to such conviction, and such correctional facility or jail shall be immune from liability as set forth in subsection (1) of this section.

(b) The waiver of sovereign immunity created in paragraphs (b) and (e) of subsection (1) of this section does apply to claimants who are incarcerated but not yet convicted of the crime for which such claimants are being incarcerated if such claimants can show injury due to negligence.

(c) The waiver of sovereign immunity created in paragraph (e) of subsection (1) of this section does not apply to any backcountry landing facility located in whole or in part within any park or recreation area maintained by a public entity. For purposes of this paragraph (c), "backcountry landing facility" means any area of land or water that is unpaved, unlighted, and in a primitive condition and is used or intended for the landing and takeoff of aircraft, and includes any land or water appurtenant to such area.

(2) Nothing in this section or in section 24-10-104 shall be construed to constitute a waiver of sovereign immunity where the injury arises from the act, or failure to act, of a public employee where the act is the type of act for which the public employee would be or heretofore has been personally immune from liability.

(3) In addition to the immunity provided in subsection (1) of this section, a public entity 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.

(4) No rule of law imposing absolute or strict liability shall be applied in any action against a public entity or a public employee for an injury resulting from a dangerous condition of, or the operation and maintenance of, a public water facility or public sanitation facility. No liability shall be imposed in any such action unless negligence is proven.

(5) The immunity from liability granted in subsection (1) of this section shall not apply to the university of Colorado hospital authority except for any hospital, clinic, surgery

center, department, or other facility owned or operated by the authority that is located on the Anschutz medical campus or that is a facility operating under the hospital license issued to the university hospital pursuant to part 1 of article 3 of title 25, including off-campus locations. The "Health Care Availability Act", article 64 of title 13, is applicable to health-care institutions as defined in section 13-64-202 (3) that are not immune from liability under this section because of this section.

(6) Notwithstanding any other provision of law, nothing in subsections (4) or (5) of this section shall be construed to grant any additional immunity from liability beyond that which is otherwise provided in this article 10.

Source: L. 71: p. 1206, § 1. **C.R.S. 1963:** § 130-11-6. **L. 79:** (1)(b) amended, p. 702, § 76, effective June 21. **L. 86:** IP(1), (1)(b), (1)(d), (1)(e), (1)(f), and (2) amended and (3) added, p. 875, § 5, effective July 1. **L. 87:** (4) added, p. 931, § 1, effective May 13. **L. 92:** (1)(d) amended, p. 1116, § 2, effective July 1. **L. 94:** (1.5) added, p. 2087, § 1, effective July 1; (1)(a) amended, p. 2556, § 53, effective January 1, 1995. **L. 2002:** (1.5)(c) added, p. 63, § 1, effective March 22. **L. 2004:** (1)(g) added, p. 1056, § 1, effective May 21. **L. 2008:** (1)(h) added, p. 2226, § 4, effective June 5. **L. 2015:** (1)(i) added, (HB 15-1290), ch. 212, p. 776, § 3, effective May 20, 2016. **L. 2020:** (5) and (6) added, (HB 20-1330), ch. 230, p. 1119, § 2, effective September 14. **L. 2021:** (1)(i) amended and (1)(j) added, (SB 21-088), ch. 442, p. 2927, § 3, effective January 1, 2022.

Cross references: For the legislative declaration in SB 21-088, see section 1 of chapter 442, Session Laws of Colorado 2021.

24-10-106.1. Immunity and partial waiver - claims against the state - injuries from prescribed fire - on or after January 1, 2012. (1) Notwithstanding any other provision of this article, the state shall be 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 provided otherwise in this section or section 24-10-106. In addition to any other claims for which the state waives immunity under this article, sovereign immunity is waived by the state in an action for injuries resulting from a prescribed fire started or maintained by the state or any of its employees on or after January 1, 2012.

(2) Nothing in this section shall be construed to constitute a waiver of sovereign immunity if the injury arises from any act, or failure to act, of a state employee if the act is

the type of act for which the state employee would be or heretofore has been personally immune from liability.

(3) In addition to the immunity provided under subsection (1) of this section, the state shall also have the same immunity as a state employee for any act or failure to act for which a state employee would be or heretofore has been personally immune from liability.

(4) No rule of law imposing absolute or strict liability shall be applied in any action against the state for an injury resulting from a prescribed fire started or maintained by the state or any of its employees. No liability shall be imposed in any such action unless negligence is proven.

Source: L. 2012: Entire section added, (HB 12-1361), ch. 242, p. 1145, § 2, effective June 4.

24-10-106.3. Immunity and partial waiver - claims for serious bodily injury or death on public school property or at school-sponsored events resulting from incidents of school violence - short title - definitions. (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 June 3, 2015, 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) Repealed.

(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.

Source: L. 2015: Entire section added, (SB 15-213), ch. 266, p. 1036, § 2, effective June 3.

Editor's note: Subsection (9)(b)(II) provided for the repeal of subsection (9)(b), effective July 1, 2018. (See L. 2015, p. 1036.)

Cross references: For the legislative declaration in SB 15-213, see section 1 of chapter 266, Session Laws of Colorado 2015.

24-10-106.5. Duty of care. (1) In order to encourage the provision of services to protect the public health and safety and to allow public entities to allocate their limited fiscal resources, a public entity or public employee shall not be deemed to have assumed a duty of care where none otherwise existed by the performance of a service or an act of assistance for the benefit of any person. The adoption of a policy or a regulation to protect any person's health or safety shall not give rise to a duty of care on the part of a public entity or

public employee where none otherwise existed. In addition, the enforcement of or failure to enforce any such policy or regulation or the mere fact that an inspection was conducted in the course of enforcing such policy or regulation shall not give rise to a duty of care where none otherwise existed; however, in a situation in which sovereign immunity has been waived in accordance with the provisions of this article, nothing shall be deemed to foreclose the assumption of a duty of care by a public entity or public employee when the public entity or public employee requires any person to perform any act as the result of such an inspection or as the result of the application of such policy or regulation. Nothing in this section shall be construed to relieve a public entity of a duty of care expressly imposed under other statutory provision.

(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.

Source: L. 86: Entire section added, p. 876, § 6, effective July 1. **L. 2015:** (2) amended, (SB 15-213), ch. 266, p. 1039, § 3, effective June 3.

Cross references: For the legislative declaration in SB 15-213, see section 1 of chapter 266, Session Laws of Colorado 2015.

24-10-107. Determination of liability. Except as otherwise provided in this article, where sovereign immunity is not a bar under section 24-10-106, liability of the public entity shall be determined in the same manner as if the public entity were a private person.

Source: L. 71: p. 1207, § 1. **C.R.S. 1963:** § 130-11-7. **L. 86:** Entire section amended, p. 877, § 7, effective July 1.

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.

Source: L. 71: p. 1207, § 1. **C.R.S. 1963:** § 130-11-8. **L. 86:** Entire section amended, p. 877, § 8, effective July 1. **L. 92:** Entire section amended, p. 1117, § 3, effective July 1. **L. 2015:** Entire section amended, (SB 15-213), ch. 266, p. 1039, § 4, effective June 3.

Cross references: For the legislative declaration in SB 15-213, see section 1 of chapter 266, Session Laws of Colorado 2015.

24-10-109. Notice required - contents - to whom given - limitations. (1) Any person claiming to have suffered an injury by a public entity or by an employee thereof while in the course of such employment, whether or not by a willful and wanton act or omission, shall file a written notice as provided in this section within one hundred eighty-two days after the date of the discovery of the injury, regardless of whether the person then knew all of the elements of a claim or of a cause of action for such injury. Compliance with the provisions of this section shall be a jurisdictional prerequisite to any action brought under the provisions of this article, and failure of compliance shall forever bar any such action.

(2) The notice shall contain the following:

(a) The name and address of the claimant and the name and address of his attorney, if any;

(b) A concise statement of the factual basis of the claim, including the date, time, place, and circumstances of the act, omission, or event complained of;

(c) The name and address of any public employee involved, if known;

(d) A concise statement of the nature and the extent of the injury claimed to have been suffered;

(e) A statement of the amount of monetary damages that is being requested.

(3) (a) If the claim is against the state or an employee thereof, the notice shall be filed with the attorney general. If the claim is against any other public entity or an employee thereof, the notice shall be filed with the governing body of the public entity or the attorney representing the public entity. Such notice shall be effective upon mailing by registered or certified mail, return receipt requested, or upon personal service.

(b) A notice required under this section that is properly filed with a public entity's agent listed in the inventory of local governmental entities pursuant to section 24-32-116, is deemed to satisfy the requirements of this section.

(4) When the claim is one for death by wrongful act or omission, the notice may be presented by the personal representative, surviving spouse, or next of kin of the deceased.

(5) Any action brought pursuant to this article shall be commenced within the time period provided for that type of action in articles 80 and 81 of title 13, C.R.S., relating to limitation of actions, or it shall be forever barred; except that, if compliance with the provisions of subsection (6) of this section would otherwise result in the barring of an action, such time period shall be extended by the time period required for compliance with the provisions of subsection (6) of this section.

(6) No action brought pursuant to this article shall be commenced until after the claimant who has filed timely notice pursuant to subsection (1) of this section has received notice from the public entity that the public entity has denied the claim or until after ninety days has passed following the filing of the notice of claim required by this section, whichever occurs first.

(7) The notice required pursuant to this section does not apply to claims made pursuant to the waiver of governmental immunity described in section 24-10-106 (1)(j) and any action brought pursuant to part 12 of article 20 of title 13 thereto is not barred under this section.

Source: L. 71: p. 1207, § 1. **C.R.S. 1963:** § 130-11-9. **L. 79:** (1) amended, p. 862, § 2, effective July 1. **L. 86:** (1), (2)(b), (3), and (5) amended and (6) added, p. 877, § 9, effective July 1. **L. 92:** (1) amended, p. 1117, § 4, effective July 1. **L. 2009:** (3) amended, (HB 09-1248), ch. 252, p. 1136, § 21, effective May 14. **L. 2012:** (1) amended, (SB 12-175), ch. 208, p. 881, § 145, effective July 1; (3) amended, (HB 12-1244), ch. 172, p. 616, § 1, effective August 8. **L. 2021:** (7) added, (SB 21-088), ch. 442, p. 2927, § 4, effective January 1, 2022.

Cross references: For the legislative declaration in SB 21-088, see section 1 of chapter 442, Session Laws of Colorado 2021.

24-10-110. Defense of public employees - payment of judgments or settlements against public employees. (1) A public entity shall be liable for:

(a) The costs of the defense of any of its public employees, whether such defense is assumed by the public entity or handled by the legal staff of the public entity or by other counsel, in the discretion of the public entity, where the claim against the public employee arises out of injuries sustained from an act or omission of such employee occurring during the performance of his duties and within the scope of his employment, except where such act or omission is willful and wanton;

(b) (I) The payment of all judgments and settlements of claims against any of its public employees where the claim against the public employee arises out of injuries sustained from an act or omission of such employee occurring during the performance of his duties and within the scope of his employment, except where such act or omission is willful and wanton or where sovereign immunity bars the action against the public entity, if the employee does not compromise or settle the claim without the consent of the public entity; and

(II) The payment of all judgments and settlements of claims against any of its public employees where the claim against the public employee arises out of injuries sustained from an act or omission of such employee occurring during the performance of his or her duties and within the scope of employment, except where such act or omission is willful and wanton, even though sovereign immunity would otherwise bar the action, when the public employee is operating an emergency vehicle within the provisions of section 42-4-108 (2) and (3), C.R.S., if the employee does not compromise or settle the claim without the consent of the public entity.

(1.5) Where a claim against a public employee arises out of injuries sustained from an act or omission of such employee which occurred or is alleged in the complaint to have occurred during the performance of his duties and within the scope of his employment, the public entity shall be liable for the reasonable costs of the defense and reasonable attorney fees of its public employee unless:

(a) It is determined by a court that the injuries did not arise out of an act or omission of such employee occurring during the performance of his duties and within the scope of his employment or that the act or omission of such employee was willful and wanton. If it is so determined, the public entity may request and the court shall order such employee to reimburse the public entity for reasonable costs and reasonable attorney fees incurred in the defense of such employee; or

(b) The public employee compromises or settles the claim without the consent of the public entity.

(2) The provisions of subsection (1) of this section shall not apply where a public entity is not made a party defendant in an action and such public entity is not notified of the existence of such action in writing by the plaintiff or such employee within fifteen days after

commencement of the action. In addition, the provisions of subsection (1) of this section shall not apply where such employee willfully and knowingly fails to notify the public entity of the incident or occurrence which led to the claim within a reasonable time after such incident or occurrence, if such incident or occurrence could reasonably have been expected to lead to a claim.

(3) Repealed.

(4) Where the public entity is made a codefendant with its public employee, it shall notify such employee in writing within fifteen days after the commencement of such action whether it will assume the defense of such employee. Where the public entity is not made a codefendant, it shall notify such employee whether it will assume such defense within fifteen days after receiving written notice from the public employee of the existence of such action.

(5) (a) In any action in which allegations are made that an act or omission of a public employee was willful and wanton, the specific factual basis of such allegations shall be stated in the complaint.

(b) Failure to plead the factual basis of an allegation that an act or omission of a public employee was willful and wanton shall result in dismissal of the claim for failure to state a claim upon which relief can be granted.

(c) In any action against a public employee in which exemplary damages are sought based on allegations that an act or omission of a public employee was willful and wanton, if the plaintiff does not substantially prevail on his claim that such act or omission was willful and wanton, the court shall award attorney fees against the plaintiff or the plaintiff's attorney or both and in favor of the public employee.

(6) The provisions of subsection (5) of this section are in addition to and not in lieu of the provisions of article 17 of title 13, C.R.S.

Source: L. 71: p. 1207, § 1. **C.R.S. 1963:** § 130-11-10. **L. 79:** (2) amended, p. 863, § 3, effective July 1. **L. 81:** (1), (3)(b)(I), and (3)(c) amended and (5) added, p. 1150, § 1, effective July 1. **L. 82:** (1)(b) amended, p. 366, § 1, effective January 1. **L. 85, 1st Ex. Sess.:** (4) amended, (1.5) added, and (3)(b) repealed, pp. 9, 11, §§ 5, 9, effective September 17. **L. 86:** (1)(b), IP(1.5), (1.5)(a), and (5) amended, (6) added, and (3)(a) and (3)(c) repealed, pp. 878, 882, §§ 10, 17, effective April 17. **L. 92:** (5) amended, p. 1117, § 5, effective July 1. **L. 94:** (1)(b)(II) amended, p. 2556, § 54, effective January 1, 1995.

24-10-111. Judgment against public entity or public employee - effect. (1) Any judgment against a public entity shall constitute a complete bar to any action for injury by the claimant, by reason of the same subject matter, against any public employee whose act or omission gave rise to the claim.

(2) Any judgment against any public employee whose act or omission gave rise to the claim shall constitute a complete bar to any action for injury by the claimant, by reason of the same subject matter, against a public entity.

(3) Nothing contained in the provisions of this section shall be construed as preventing the joinder of any public entity or employee of such public entity in the same action.

Source: L. 71: p. 1209, § 1. **C.R.S. 1963:** § 130-11-11.

24-10-112. Compromise of claims - settlement of actions. (1) (a) (I) A claim against the state may be compromised or settled for and on behalf of the state by the attorney general, with the concurrence of the head of the affected department, agency, board, commission, institution, hospital, college, university, or other instrumentality thereof, except as provided in part 15 of article 30 of this title.

(II) Repealed.

(b) Repealed.

(2) Claims against public entities, other than the state, may be compromised or settled by the governing body of the public entity or in such manner as the governing body may designate.

Source: L. 71: p. 1209, § 1. **C.R.S. 1963:** § 130-11-12. **L. 85, 1st Ex. Sess.:** (1) amended, p. 10, § 6, effective September 27. **L. 86:** (1)(a)(II) and (1)(b) repealed, p. 894, § 10, effective April 17.

24-10-113. Payment of judgments. (1) A public entity or designated insurer shall pay any compromise, settlement, or final judgment in the manner provided in this section, and an action pursuant to the Colorado rules of civil procedure shall be an appropriate remedy to compel a public entity to perform an act required under this section.

(2) The state and the governing body of any other public entity shall pay, to the extent funds are available in the fiscal year in which it becomes final, any judgment out of any funds to the credit of the public entity that are available from any or all of the following:

(a) A self-insurance reserve fund;

(b) Funds that are unappropriated for any other purpose unless the use of such funds is restricted by law or contract to other purposes;

(c) Funds that are appropriated for the current fiscal year for the payment of such judgments and not previously encumbered.

(3) If a public entity is unable to pay a judgment during the fiscal year in which it becomes final because of lack of available funds, the public entity shall levy a tax, in a separate item to cover such judgment, sufficient to discharge such judgment in the next fiscal year or in the succeeding fiscal year if the budget of the public entity has been finally adopted for the fiscal year in which the judgment becomes final before such judgment becomes final; but in no event shall such annual levy for one or more judgments exceed a total of ten mills, exclusive of existing mill levies. The public entity shall continue to levy such tax, not to exceed a total annual levy of ten mills, exclusive of existing mill levies, but in no event less than ten mills if such judgment will not be discharged by a lesser levy, until such judgment is discharged. In the event that more than one judgment is unsatisfied and a ten-mill levy is insufficient to satisfy the judgments in one year, the proceeds of the ten-mill levy shall be prorated annually among the judgment creditors in the proportion that each outstanding judgment bears to the total judgments outstanding.

Source: L. 71: p. 1209, § 1. **C.R.S. 1963:** § 130-11-13.

Cross references: For the appropriate remedy to compel public entity to perform an act, see C.R.C.P. 106.

24-10-113.5. Attorney general to notify general assembly. (1) If a final money judgment is obtained against the state, payment of which requires an appropriation, and the appropriate appellate remedies have been exhausted or the time limit for such remedies has expired, the attorney general, within twenty days after such occurrence, shall certify to the speaker of the house of representatives and the president of the senate, or the director of the office of legislative legal services if the general assembly is not in session, the title of the action, the civil action number, and the amount of money due and owing for the payment in full satisfaction of the final judgment.

(2) If a claim against the state is settled and such settlement requires an appropriation by the general assembly, the attorney general, within twenty days after such settlement, shall make the certification required by subsection (1) of this section, which certification shall state the names of the parties and the amount of money necessary for the settlement.

Source: L. 79: Entire section added, p. 866, § 1, effective May 25. **L. 88:** (1) amended, p. 312, § 20, effective May 23.

24-10-114. Limitations on judgments - recommendation to general assembly - authorization of additional payment - lower north fork wildfire claims. (1) (a) The maximum amount that may be recovered under this article in any single occurrence, whether from one or more public entities and public employees, shall be:

(I) For any injury to one person in any single occurrence, the sum of three hundred fifty thousand dollars;

(II) For an injury to two or more persons in any single occurrence, the sum of nine hundred ninety thousand dollars; except that, in such instance, no person may recover in excess of three hundred fifty thousand dollars.

(b) The amounts specified in subsection (1)(a) of this section shall be adjusted by an amount reflecting the percentage change over a four-year period in the United States department of labor, bureau of labor statistics, consumer price index for Denver-Aurora-Lakewood for all items and all urban consumers, or its applicable predecessor or successor index. On or before January 1, 2018, and by January 1 every fourth year thereafter, the secretary of state shall calculate the adjusted dollar amount for the immediately preceding four-year period as of the date of the calculation. The adjusted amount shall be rounded upward to the nearest one-thousand-dollar increment. The secretary of state shall certify the amount of the adjustment for the particular four-year period and shall publish the amount of the adjustment on the secretary of state's website.

(1.5) For purposes of subsection (1) of this section, an assignment or subrogation to recover damages paid or payable for an injury shall not be deemed to be a separate occurrence.

(2) The governing body of a public entity, by resolution, may increase any maximum amount set out in subsection (1) of this section that may be recovered from the public entity for the type of injury described in the resolution. The amount of the recovery that may be had shall not exceed the amount set out in such resolution for the type of injury described

therein. Any such increase may be reduced, increased, or repealed by the governing body by resolution. A resolution adopted pursuant to this subsection (2) shall apply only to injuries occurring subsequent to the adoption of such resolution.

(3) Nothing in this section shall be construed to permit the recovery of damages for types of actions authorized under part 2 of article 21 of title 13, C.R.S., in an amount in excess of the amounts specified in said article.

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

(b) A railroad operating in interstate commerce that sells to a public entity, or allows the public entity to use, such railroad's property or tracks for the provision of public passenger rail service shall not be liable either directly or by indemnification for punitive or exemplary damages or for damages for outrageous conduct to any person for any accident or injury arising out of the operation and maintenance of the public passenger rail service by a public entity.

(5) Notwithstanding the maximum amounts that may be recovered from a public entity set forth in subsection (1) of this section, an amount may be recovered from the state under this article in excess of the maximum amounts only if paragraph (a) or (b) of this subsection (5) applies:

(a) The general assembly acting by bill authorizes payment of all or a portion of any judgment against the state that exceeds the maximum amount. Any claimant may present either proof of judgment or an order of a district court granting a claimant's request for entry of judgment in the amount of an award of damages recommended by a special master or a comparable order to the general assembly and request payment of that portion of the judgment or order that exceeds the maximum amount. Any such judgment or order approved for payment by the general assembly shall be paid from the general fund.

(b) (I) Except as otherwise provided in subparagraphs (II) and (III) of this paragraph (b), the state claims board created in section 24-30-1508 (1), referred to in this paragraph (b) as the board, acting in accordance with its authority under section 24-30-1515, compromises or settles a claim on behalf of the state for the maximum liability limits under this article and determines, in its sole discretion, to recommend to the general assembly that an additional payment be made and the general assembly, by bill, authorizes all or any portion of the additional payment. In determining whether to make such recommendation, the board shall consider interests of fairness, the public interest, and the interests of the state. A recommendation made under this paragraph (b) shall not include payment for noneconomic loss or injury and shall be reduced to the extent the claimant's loss is or will be covered by another source, including, without limitation, any insurance proceeds that have been paid or

will be paid, and no insurer has a right of subrogation, assignment, or any other right against the claimant or the state for any additional payment or any portion of such payment that is approved by the general assembly. Any additional payment or any portion of such payment approved by the general assembly shall be paid from the general fund. For purposes of this paragraph (b), an "additional payment" means the payment to a claimant in excess of the maximum liability limits pursuant to this paragraph (b) that may be authorized by the general assembly upon a recommendation from the board.

(II) In connection with a recommendation made by the board under subparagraph (I) of this paragraph (b) to make an additional payment to one or more claimants resulting from a claim of an injury arising out of the lower north fork wildfire in March 2012 that is received by the general assembly while the general assembly is adjourned sine die, upon certification from the department of law that the requirements of this paragraph (b) have been satisfied and on or after July 1, 2013, the office of the state controller may pay one or more additional payments to such claimants from moneys previously appropriated by bill until such specifically appropriated moneys are exhausted or replenished.

(III) In connection with any claim arising out of an injury occurring on or after May 25, 2013, that is not described in subparagraph (II) of this paragraph (b), where the board has made a recommendation to the general assembly for an additional payment under this paragraph (b) while the general assembly is adjourned sine die, the payment is authorized where all of the members of the joint budget committee have voted to authorize the additional payment; except that payment in accordance with the recommendation shall not be made until the general assembly has ratified by bill the authorization to make the payment.

Source: L. 71: p. 1210, § 1. **C.R.S. 1963:** § 130-11-14. **L. 79:** (1)(a) and (1)(b) amended, p. 863, § 4, effective July 1. **L. 81:** (2) amended, p. 1152, § 1, effective April 30. **L. 86:** IP(1) and (4) amended, p. 879, §§ 11, 12, effective July 1. **L. 92:** (1) amended and (5) added, p. 1118, § 6, effective January 1, 1993. **L. 2006:** (1.5) added, p. 455, § 3, effective April 18. **L. 2007:** (4) amended, p. 1025, § 2, effective July 1. **L. 2012:** (5) amended, (HB 12-1361), ch. 242, p. 1146, § 3, effective June 4. **L. 2013:** (5)(b) amended, (SB 13-288), ch. 291, p. 1560, § 1, effective May 25; (1) amended, (SB 13-023), ch. 134, p. 443, § 1, effective July 1. **L. 2014:** (5)(a) amended, (SB 14-223), ch. 399, p. 2007, § 1, effective June 6. **L. 2015:** (1) amended, (SB 15-264), ch. 259, p. 959, § 64, effective August 5. **L. 2018:** (1)(b) amended, (HB 18-1375), ch. 274, p. 1705, § 36, effective May 29.

Cross references: (1) For the legislative declaration contained in the 2006 act enacting subsection (1.5), see section 1 of chapter 132, Session Laws of Colorado 2006.

(2) For information concerning payments to claimants in connection with the Lower North Fork Wildfire, see section 2 of chapter 399, Session Laws of Colorado 2014.

24-10-114.5. Limitation on attorney fees in class action litigation. If the plaintiffs prevail in any class action litigation brought against any public entity, the amount of attorney fees which the plaintiffs' attorney is entitled to receive out of any award to the plaintiffs shall be determined by the court; except that such amount shall not exceed two hundred fifty thousand dollars. Such limitation shall apply where the public entity pays the attorney fees directly to the plaintiffs' attorneys or where the public entity is required to pay the attorney fees indirectly through any program it administers by reducing the benefits or amounts due to the individual plaintiffs.

Source: L. 92: Entire section added, p. 272, § 2, effective April 28.

Cross references: For provisions relating to limitations on attorney fees in class action litigation against public entities, see § 13-17-203.

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

(a) Insure against all or any part of its liability for an injury for which it might be liable under this article;

(b) Insure any public employee acting within the scope of his employment against all or any part of such liability for an injury for which he might be liable under this article;

(c) Insure against the expense of defending a claim for injury against the public entity or its employees, whether or not liability exists on such claim;

(d) Insure against all or part of its liability or the liability of a railroad for claims arising from the passenger rail operations of a public entity on property or tracks owned by, or purchased from, a railroad.

(2) The insurance authorized by subsection (1) of this section may be provided by:

(a) Self-insurance, which may be funded by appropriations to establish or maintain reserves for self-insurance purposes;

(b) An insurance company authorized to do business in this state which meets all of the requirements of the division of insurance for that purpose;

(c) A combination of the methods of obtaining insurance authorized in paragraphs (a) and (b) of this subsection (2);

(d) Any risk management pool of public passenger rail services authorized to be created pursuant to the federal "Product Liability Risk Retention Act of 1981", 15 U.S.C. sec. 3901 et seq., as amended.

(3) A public entity, other than the state and other than a school district, may establish and maintain an insurance reserve fund for self-insurance purposes and may include in the annual tax levy of the public entity such amounts as are determined by its governing body to be necessary for the uses and purposes of the insurance reserve fund, subject to the limitations imposed by section 29-1-301, C.R.S., or such public entity may appropriate from any unexpended balance in the general fund such amounts as the governing body shall deem necessary for the purposes and uses of the insurance reserve fund, or both. A school district shall establish and maintain an insurance reserve fund in accordance with the provisions of section 22-45-103 (1)(e), C.R.S., for liability and property damage self-insurance purposes, including workers' compensation pursuant to section 8-44-204 (2), C.R.S., using moneys allocated thereto pursuant to the provisions of section 22-54-105 (2), C.R.S. The fund established pursuant to this subsection (3) shall be kept separate and apart from all other funds and shall be used only for the payment of administrative and legal expenses necessary for the operation of the fund and for the payment of claims against the public entity which have been settled or compromised or judgments rendered against the public entity for injury under the provisions of this article and for attorney fees and for the costs of defense of claims and to secure and pay for premiums on insurance as provided in this article.

(4) Policies written pursuant to this section and section 24-10-116 shall insure all of the risks and liabilities arising under this article, including costs of defense, unless the public entity requests in writing and obtains lesser coverage, in which event the policy issued shall conspicuously itemize the risks and liabilities not covered.

(5) A self-insurance fund established by a public entity which is subject to section 29-1-108, C.R.S., shall not be construed to be unexpended funds for budgetary purposes and shall be accumulated and held over for use in subsequent years.

(6) Repealed.

(7) Policies written, self-insurance funds established, or risk management pools entered into by a public entity for the purpose of insuring a public entity as described in paragraph (d) of subsection (1) of this section shall maintain such levels of insurance as are

sufficient to insure against the maximum liability permitted against a railroad or its indemnitor pursuant to 49 U.S.C. sec. 28103.

Source: L. 71: p. 1210, § 1. **C.R.S. 1963:** § 130-11-15. **L. 77:** (5) added, p. 1160, § 1, effective February 16. **L. 79:** (1)(a) and (1)(b) amended, p. 863, § 5, effective July 1. **L. 80:** (3) amended, p. 581, § 1, effective April 30. **L. 86:** (3), (4), and (5) R&RE and (3) amended, pp. 511, 880, 1028, §§ 2, 13, 10, effective July 1. **L. 88:** (3) R&RE, p. 821, § 30, effective May 24. **L. 89:** (6) added, p. 1004, § 5, effective October 1. **L. 90:** (3) amended, p. 567, § 45, effective July 1; (5) amended, p. 1435, § 2, effective January 1, 1991. **L. 94:** (3) amended, p. 822, § 49, effective April 27. **L. 97:** (6) repealed, p. 1015, § 24, effective August 6. **L. 2007:** (1)(d), (2)(d), and (7) added, p. 1026, §§ 3, 4, 5, effective July 1.

Editor's note: Subsection (6) was enacted in House Bill No. 1143, enacted by the General Assembly at its first regular session in 1989, as a conforming amendment necessitated by the authorization for the operation of the university of Colorado university hospital by a nonprofit-nonstock corporation. The Colorado Supreme Court subsequently declared House Bill No. 1143 unconstitutional in its entirety. See Colorado Association of Public Employees v. Board of Regents, 804 P.2d 138 (Colo. 1990). Senate Bill 91-225, enacted by the General Assembly at its first regular session in 1991, authorized the operation of university hospital by a newly created university of Colorado hospital authority. For further explanation of the circumstances surrounding the enactment of Senate Bill 91-225, see the legislative declaration contained in section 1 of chapter 99, Session Laws of Colorado 1991.

Cross references: For authorization for state and counties to procure insurance against liability, see § 24-14-102.

24-10-115.5. Authority for public entities to pool insurance coverage. (1) Public entities may cooperate with one another to form a self-insurance pool to provide all or part of the insurance coverage authorized by this article or by section 29-5-111, C.R.S., for the cooperating public entities. Any such self-insurance pool may provide such coverage by the methods authorized in sections 24-10-115 (2) and 24-10-116 (2), by any different methods if approved by the commissioner of insurance, or by any combination thereof. Any such insurance pool shall be formed pursuant to the provisions of part 2 of article 1 of title 29,

C.R.S. The provisions of articles 10.5 and 47 of title 11, C.R.S., shall apply to moneys of such self-insurance pool.

(2) Any self-insurance pool authorized by subsection (1) of this section shall not be construed to be an insurance company nor otherwise subject to the laws of this state regulating insurance or insurance companies; except that the pool shall comply with the applicable provisions of sections 10-1-203 and 10-1-204 (1) to (5).

(3) Prior to the formation of a self-insurance pool, there shall be submitted to the commissioner of insurance a complete written proposal of the pool's operation, including, but not limited to, the administration, claims adjusting, membership, and capitalization of the pool. The commissioner shall review the proposal within thirty days after receipt to assure that proper insurance techniques and procedures are included in the proposal. After such review, the commissioner shall have the right to approve or disapprove the proposal. If the commissioner approves the proposal, he shall issue a certificate of authority. The costs of such review shall be paid by the public entities desiring to form such a pool. Any such payment received by the commissioner is hereby appropriated to the division of insurance in addition to any other funds appropriated for its normal operation.

(4) Each self-insurance pool for public entities created in this state shall file, with the commissioner of insurance on or before March 30 of each year, a written report in a form prescribed by the commissioner, signed and verified by its chief executive officer as to its condition. Such report shall include a detailed statement of assets and liabilities, the amount and character of the business transacted, and the moneys reserved and expended during the year.

(5) The commissioner of insurance, or any person authorized by him, shall conduct an insurance examination at least once a year to determine that proper underwriting techniques and sound funding, loss reserves, and claims procedures are being followed. This examination shall be paid for by the self-insurance pool out of its funds at the same rate as provided for foreign insurance companies under section 10-1-204 (9), C.R.S.

(6) (a) The certificate of authority issued to a public entity under this section may be revoked or suspended by the commissioner of insurance for any of the following reasons:

(I) Insolvency or impairment;

(II) Refusal or failure to submit an annual report as required by subsection (4) of this section;

(III) Failure to comply with the provisions of its own ordinances, resolutions, contracts, or other conditions relating to the self-insurance pool;

(IV) Failure to submit to examination or any legal obligation relative thereto;

(V) Refusal to pay the cost of examination as required by subsection (5) of this section;

(VI) Use of methods which, although not otherwise specifically proscribed by law, nevertheless render the operation of the self-insurance pool hazardous, or its condition unsound, to the public;

(VII) Failure to otherwise comply with the law of this state, if such failure renders the operation of the self-insurance pool hazardous to the public.

(b) If the commissioner of insurance finds upon examination, hearing, or other evidence that any participating public entity has committed any of the acts specified in paragraph (a) of this subsection (6) or any act otherwise prohibited in this section, the commissioner may suspend or revoke such certificate of authority if he deems it in the best interest of the public. Notice of any revocation shall be published in one or more daily newspapers in Denver which have a general state circulation. Before suspending or revoking any certificate of authority of a public entity, the commissioner shall grant the public entity fifteen days in which to show cause why such action should not be taken.

(7) Any public entity pool formed under this article and under article 13 of title 29, C.R.S., and the members thereof, may combine and commingle all funds appropriated by the members and received by the pool for liability or property insurance or self-insurance or for other purposes of the pool.

(8) (a) Any self-insurance pool organized pursuant to this section may invest in securities meeting the investment requirements established in part 6 of article 75 of this title and may also invest in membership claim deductibles and in any other security or other investment authorized for such pools by the commissioner of insurance.

(b) Any public entity which is a member of a self-insurance pool which is organized pursuant to this section or any instrumentality formed by two or more of such members may invest in subordinated debentures issued by such self-insurance pool.

(9) In addition to liability coverage pursuant to subsection (1) of this section and property coverage pursuant to section 29-13-102, C.R.S., a self-insurance pool authorized by subsection (1) of this section may provide workers' compensation coverage pursuant to section 8-44-204, C.R.S., and firefighter heart and circulatory malfunction benefits pursuant to section 29-5-302, C.R.S.

Source: L. 77: Entire section added, p. 1161, § 1, effective March 16. **L. 79:** (2), (3), and (4) amended and (6) added, p. 863, § 6, effective July 1. **L. 86:** (1) amended, p. 880, § 14, effective July 1. **L. 88:** (1) amended, p. 427, § 2, effective April 20. **L. 89:** (9) added, p.

1019, § 1, effective April 4; (8) added, p. 1106, § 4, effective July 1. **L. 90:** (9) amended, p. 568, § 46, effective July 1. **L. 92:** (2) and (5) amended, pp. 1500, 1613, §§ 37, 169, effective July 1. **L. 99:** (4) amended, p. 686, § 4, effective August 4. **L. 2014:** (9) amended, (SB 14-172), ch. 325, p. 1427, § 3, effective January 1, 2015. **L. 2017:** (2) amended, (HB 17-1231), ch. 284, p. 1576, § 15, effective January 1, 2018.

24-10-116. State required to obtain insurance. (1) The state shall obtain insurance to:

(a) Insure itself against all or any part of any liability for an injury for which it might be liable under this article;

(b) Insure any of its public employees acting within the scope of their employment against all or any part of his liability for injury for which he might be liable under this article;

(c) Insure against the expense of defending a claim for injury against the state or its public employees, whether or not liability exists on such claim.

(2) The insurance required under subsection (1) of this section may be provided by:

(a) Self-insurance, which may be funded by appropriations to establish or maintain reserves for self-insurance purposes;

(b) An insurance company authorized to do business in this state which meets all the requirements of the division of insurance for that purpose;

(c) A combination of the methods of obtaining insurance authorized in paragraphs (a) and (b) of this subsection (2).

Source: L. 71: p. 1211, § 1. **C.R.S. 1963:** § 130-11-16.

Cross references: For creation of the state risk management fund to provide self-insurance for claims against the state, see part 15 of article 30 of this title.

24-10-117. Execution and attachment not to issue. Neither execution nor attachment shall issue against a public entity in any action for injury or proceeding initiated under the provisions of this article.

Source: L. 71: p. 1211, § 1. **C.R.S. 1963:** § 130-11-17.

24-10-118. Actions against public employees - requirements and limitations. (1) Any action against a public employee, whether brought pursuant to this article, section 29-5-111, C.R.S., the common law, or otherwise, 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 the claimant and which arises out of injuries sustained from an act or omission of such employee which occurred or is alleged in the complaint to have occurred during the performance of his duties and within the scope of his employment, unless the act or omission causing such injury was willful and wanton, shall be subject to the following requirements and limitations, regardless of whether or not such action against a public employee is one for which the public entity might be liable for costs of defense, attorney fees, or payment of judgment or settlement under section 24-10-110:

(a) Compliance with the provisions of section 24-10-109, in the forms and within the times provided by section 24-10-109, shall be a jurisdictional prerequisite to any such action against a public employee, and shall be required whether or not the injury sustained is alleged in the complaint to have occurred as the result of the willful and wanton act of such employee, and failure of compliance shall forever bar any such action against a public employee. Any such action against a public employee shall be commenced within the time period provided for that type of action in articles 80 and 81 of title 13, C.R.S., relating to limitation of actions, or it shall be forever barred.

(b) The maximum amounts that may be recovered in any such action against a public employee shall be as provided in section 24-10-114 (1), (2), and (3).

(c) A public employee shall not be liable for punitive or exemplary damages arising out of an act or omission occurring during the performance of his duties and within the scope of his employment, unless such act or omission was willful and wanton.

(d) The fact that a plaintiff sues both a public entity and a public employee shall not be deemed to increase any of the maximum amounts that may be recovered in any such action as provided in this section or in section 24-10-114.

(2) (a) A public employee shall be immune from liability in any claim for injury, whether brought pursuant to this article, section 29-5-111, C.R.S., the common law, or otherwise, 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 and which arises out of an act or omission of such employee occurring during the performance of his duties and within the scope of his employment unless the act or omission causing such injury was willful and wanton;

except that no such immunity may be asserted in an action for injuries resulting from the circumstances specified in section 24-10-106 (1).

(b) Any member of any state board, commission, or other advisory body appointed pursuant to statute, executive order, or otherwise, and any other person acting as a consultant or witness before any such body, shall be immune from liability in any civil action brought against said person for acts occurring while the person was acting as such a member, consultant, or witness, if such person was acting in good faith within the scope of such person's respective capacity, makes a reasonable effort to obtain the facts of the matter as to which action was taken, and acts in the reasonable belief that the action taken by such person was warranted by the facts.

(2.5) If a public employee raises the issue of sovereign immunity prior to or after the commencement of discovery, the court shall suspend discovery; except that any discovery necessary to decide the issue of sovereign immunity shall be allowed to proceed, and the court 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.

(3) Nothing in this section shall be construed to allow any action which lies in tort or could lie in tort regardless of whether that may be the type of action or the form or relief chosen by a claimant to be brought against a public employee except in compliance with the requirements of this article.

(4) The immunities provided for in this article shall be in addition to any common-law immunity applicable to a public employee.

(5) Notwithstanding any provision of this article to the contrary, a public entity may, if it determines by resolution adopted at an open public meeting by the governing body of the public entity that it is in the public interest to do so, defend a public employee against a claim for punitive damages or pay or settle any punitive damage claim against a public employee.

Source: L. 79: Entire section added, p. 865, § 7, effective July 1. **L. 85, 1st Ex. Sess.:** IP(1) amended and (1)(c), (1)(d), (2), and (3) added, pp. 10, 11, §§ 7, 8, effective September 27. **L. 86:** Entire section added, p. 881, § 15, effective July 1 . **L. 92:** (1)(a) and (2) amended and (2.5) added, p. 1118, § 7, effective July 1.

24-10-119. Applicability of article to claims under federal law. The provisions of this article shall apply to any action against a public entity or a public employee in any court of this state having jurisdiction over any claim brought pursuant to any federal law, if such

action 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 the claimant.

Source: L. 86: Entire section added, p. 882, § 16, effective July 1 .

24-10-120. Severability. If any provision of this article or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of the article which can be given effect without the invalid provision or application, and to this end the provisions of this article are declared to be severable.

Source: L. 86: Entire section added, p. 882, § 16, effective July 1.