

Second Regular Session
Seventy-third General Assembly
STATE OF COLORADO

PREAMENDED

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

LLS NO. 22-0234.01 Shelby Ross x4510

SENATE BILL 22-115

SENATE SPONSORSHIP

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A BILL FOR AN ACT

101 **CONCERNING CLARIFYING CERTAIN TERMS AS THE TERMS RELATE TO**
102 **A LANDOWNER'S LIABILITY.**

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://leg.colorado.gov>.)

The bill clarifies the meaning of terms related to landowner liability and declares that the Colorado court of appeals and supreme court decisions in *Rocky Mountain Planned Parenthood, Inc. v. Wagner* should not be relied upon to the extent that those decisions determined:

- The foreseeability of third-party criminal conduct based upon whether the goods or services offered by a landowner

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
Capital letters or bold & italic numbers indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.

SENATE
3rd Reading Unamended
February 23, 2022

SENATE
2nd Reading Unamended
February 22, 2022

- are controversial; and
- That a landowner could be held liable as a substantial factor in causing harm without considering whether a third-party criminal act was the predominant cause of that harm.

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

2 **SECTION 1. Legislative declaration.** (1) The general assembly
3 finds and declares that:

4 (a) *Rocky Mountain Planned Parenthood, Inc. v. Wagner*, 2020
5 CO 51, 467 P.3d 287 and *Wagner v. Planned Parenthood Federation of*
6 *America, Inc.*, 2019 COA 26, 471 P.3d 1089, are contrary to the stated
7 purpose of the landowner liability statute to the extent that they do not
8 create a legal climate that will promote private property rights and
9 commercial enterprise and foster the availability and affordability of
10 insurance; and

11 (b) In light of the Colorado court of appeals and supreme court
12 decisions in *Wagner*, and solely to the extent that *Wagner* contravenes
13 existing Colorado law and public policy, the general assembly finds it
14 necessary and appropriate to amend the landowner liability statute to
15 clarify its scope and meaning. In doing so, the general assembly does not
16 intend to expand or constrict the protections afforded to landowners and
17 invitees under the landowner liability statute, or any other statute,
18 including but not limited to the "Claire Davis School Safety Act", or to
19 reject or otherwise disturb any judicial decision other than *Wagner*.

20 **SECTION 2.** In Colorado Revised Statutes, **amend** 13-21-115 as
21 follows:

22 **13-21-115. Actions against landowners - short title - legislative**
23 **declaration - definitions.** (1) ~~For the purposes of this section,~~

1 "landowner" includes, without limitation, ~~an authorized agent or a person~~
2 ~~in possession of real property and a person legally responsible for the~~
3 ~~condition of real property or for the activities conducted or circumstances~~
4 ~~existing on real property.~~

5 (1.5) THE SHORT TITLE OF THIS SECTION IS THE "COLORADO
6 PREMISES LIABILITY ACT".

7 (2) The general assembly hereby finds and declares THAT:

8 (a) ~~That~~ The provisions of this section were enacted in 1986 to
9 promote a state policy of responsibility by both landowners and those
10 upon the land as well as to assure ENSURE that the ability of an injured
11 party to recover is correlated with his THE INJURED PARTY'S status as a
12 trespasser, licensee, or invitee;

13 (b) ~~That~~ These objectives were characterized by the Colorado
14 supreme court as "legitimate governmental interests" in *Gallegos v.*
15 *Phipps*, No. 88 SA 141 (~~September 18, 1989~~) 779 P.2d 856 (COLO. 1989);

16 (c) ~~That~~ The purpose of amending this section in the 1990
17 legislative session is WAS to:

18 (I) ~~Assure~~ ENSURE that the language of this section effectuates
19 these legitimate governmental interests by imposing on landowners a
20 higher standard of care with respect to an invitee than a licensee and a
21 higher standard of care with respect to a licensee than a trespasser; AND

22 (d) ~~That the purpose of this section is also to~~

23 (II) Create a legal climate ~~which~~ THAT will promote private
24 property rights and commercial enterprise and ~~will~~ foster the availability
25 and affordability of insurance;

26 (e) (d) ~~That~~ The general assembly recognizes that by amending
27 this section it is not reinstating the common law status categories as they

1 existed immediately prior to *Mile Hi Fence v. Radovich*, 175 Colo. 537,
2 489 P.2d 308 (1971) but that its purpose is to protect landowners from
3 liability in some circumstances when they were not protected at common
4 law and to define the instances when liability will be imposed in the
5 manner most consistent with the policies set forth in paragraphs (a), (c),
6 and (d) of this subsection (1.5) SUBSECTIONS (2)(a) AND (2)(c) OF THIS
7 SECTION; AND

8 (e) (I) THE *ROCKY MOUNTAIN PLANNED PARENTHOOD, INC. V.*
9 *WAGNER*, 2020 CO 51, 467 P.3d 287, AND *WAGNER V. PLANNED*
10 *PARENTHOOD FEDERATION OF AMERICA, INC.*, 2019 COA 26, 471 P.3d
11 1089, DECISIONS DO NOT ACCURATELY REFLECT THE INTENT OF THE
12 GENERAL ASSEMBLY REGARDING LANDOWNER LIABILITY AND MUST NOT
13 BE RELIED UPON IN APPLYING THIS SECTION TO THE EXTENT THAT THE
14 MAJORITY OPINIONS DETERMINED:

15 (A) THE FORESEEABILITY OF THIRD-PARTY CRIMINAL CONDUCT
16 BASED UPON WHETHER THE GOODS OR SERVICES OFFERED BY A
17 LANDOWNER ARE CONTROVERSIAL; AND

18 (B) THAT A LANDOWNER COULD BE HELD LIABLE AS A
19 SUBSTANTIAL FACTOR IN CAUSING HARM WITHOUT CONSIDERING WHETHER
20 A THIRD-PARTY CRIMINAL ACT WAS THE PREDOMINANT CAUSE OF THAT
21 HARM, AS NOTED BY THE DISSENTING JUSTICES AND JUDGE.

22 (II) IN MAKING THIS DECLARATION, THE GENERAL ASSEMBLY DOES
23 NOT INTEND TO REJECT OR OTHERWISE DISTURB ANY JUDICIAL DECISION
24 OTHER THAN THE *WAGNER* DECISIONS.

25 (2) (3) In any civil action brought against a landowner by a person
26 who alleges injury occurring while on the real property of another and by
27 reason of the condition of such property, or activities conducted or

1 circumstances existing on such property, the landowner ~~shall be~~ IS liable
2 only as provided in ~~subsection (3)~~ SUBSECTION (4) of this section.
3 Sections 13-21-111, 13-21-111.5, and 13-21-111.7 ~~shall~~ apply to an
4 action to which this section applies. This ~~subsection (2)~~ ~~shall~~ SUBSECTION
5 (3) MUST not be construed to abrogate the doctrine of attractive nuisance
6 as applied to persons under fourteen years of age. A person who is at least
7 fourteen years of age but is less than eighteen years of age ~~shall be~~ IS
8 presumed competent for purposes of the application of this section.

9 ~~(3)~~ (4) (a) A trespasser may ONLY recover ~~only for~~ damages
10 willfully or deliberately caused by the landowner.

11 (b) A licensee may ONLY recover ~~only for~~ damages caused:

12 (I) By the landowner's unreasonable failure to exercise reasonable
13 care with respect to dangers created by the landowner ~~of which~~ THAT the
14 landowner actually knew ABOUT; or

15 (II) By the landowner's unreasonable failure to warn of dangers
16 not created by the landowner ~~which~~ THAT are not ordinarily present on
17 property of the type involved and ~~of which~~ THAT the landowner actually
18 knew ABOUT.

19 (c) (I) Except as otherwise provided in ~~subparagraph (II)~~ of this
20 ~~paragraph (c)~~ SUBSECTION (4)(c)(II) OF THIS SECTION, an invitee may
21 recover for damages caused by the landowner's unreasonable failure to
22 exercise reasonable care to protect against dangers ~~of which he~~ THE
23 LANDOWNER actually knew ABOUT or should have known ABOUT.

24 (II) If the landowner's real property is classified for property tax
25 purposes as agricultural land or vacant land, an invitee may recover for
26 damages caused by the landowner's unreasonable failure to exercise
27 reasonable care to protect against dangers ~~of which he~~ THE LANDOWNER

1 actually knew ABOUT.

2 ~~(3.5)~~ (5) It is the intent of the general assembly in enacting the
3 provisions of ~~subsection (3)~~ SUBSECTION (4) of this section that the
4 circumstances under which a licensee may recover include all of the
5 circumstances under which a trespasser could recover and that the
6 circumstances under which an invitee may recover include all of the
7 circumstances under which a trespasser or a licensee could recover.

8 ~~(4)~~ (6) In any action to which this section applies, the ~~judge~~
9 COURT shall determine whether the plaintiff is a trespasser, a licensee, or
10 an invitee, in accordance with the definitions set forth in ~~subsection (5)~~
11 SUBSECTION (7) of this section. If two or more landowners are ~~parties~~
12 ~~defendant~~ PARTY DEFENDANTS to the action, the ~~judge~~ COURT shall
13 determine the application of this section to each ~~such~~ landowner. The
14 issues of liability and damages in any such action ~~shall~~ MUST be
15 determined by the jury or, if there is no jury, by the ~~judge~~ COURT.

16 ~~(5)~~ (7) As used in this section, UNLESS THE CONTEXT OTHERWISE
17 REQUIRES:

18 (a) "Invitee" means a person who enters or remains on the land of
19 another to transact business in which the parties are mutually interested
20 or who enters or remains on such land in response to the landowner's
21 express or implied representation that the public is requested, expected,
22 or intended to enter or remain.

23 (b) "LANDOWNER" MEANS, WITHOUT LIMITATION, AN AUTHORIZED
24 AGENT OR A PERSON IN POSSESSION OF REAL PROPERTY AND A PERSON
25 LEGALLY RESPONSIBLE FOR THE CONDITION OF REAL PROPERTY OR FOR
26 THE ACTIVITIES CONDUCTED OR CIRCUMSTANCES EXISTING ON REAL
27 PROPERTY.

1 ~~(b)~~ (c) "Licensee" means a person who enters or remains on the
2 land of another for the licensee's own convenience or to advance ~~his~~ THE
3 LICENSEE'S own interests, pursuant to the landowner's permission or
4 consent. "Licensee" includes a social guest.

5 ~~(c)~~ (d) "Trespasser" means a person who enters or remains on the
6 land of another without the landowner's consent.

7 ~~(6)~~ (8) If any provision of this section is found by a court of
8 competent jurisdiction to be unconstitutional, the remaining provisions of
9 the section ~~shall be~~ ARE deemed valid.

10 **SECTION 3. Applicability.** This act applies to actions pending
11 on or after the effective date of this act.

12 **SECTION 4. Safety clause.** The general assembly hereby finds,
13 determines, and declares that this act is necessary for the immediate
14 preservation of the public peace, health, or safety.