

CHAPTER 75

COURTS

SENATE BILL 22-115

BY SENATOR(S) Jaquez Lewis and Gardner, Bridges, Buckner, Coleman, Coram, Ginal, Gonzales, Hisey, Kirkmeyer, Kolker, Lee, Liston, Lundeen, Moreno, Priola, Simpson, Smallwood, Winter, Woodward, Zenzinger;
also REPRESENTATIVE(S) Soper and Tipper, Bockenfeld, Esgar, Roberts.

AN ACT**CONCERNING CLARIFYING CERTAIN TERMS AS THE TERMS RELATE TO A LANDOWNER'S LIABILITY.**

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

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

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

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

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

13-21-115. Actions against landowners - short title - legislative declaration - definitions. (1) ~~For the purposes of this section, "landowner" includes, without limitation, an authorized agent or a person in possession of real property and a~~

Capital letters or bold & italic numbers indicate new material added to existing law; dashes through words or numbers indicate deletions from existing law and such material is not part of the act.

person legally responsible for the condition of real property or for the activities conducted or circumstances existing on real property. THE SHORT TITLE OF THIS SECTION IS THE "COLORADO PREMISES LIABILITY ACT".

~~(1.5)~~ (2) The general assembly hereby finds and declares THAT:

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

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

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

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

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

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

~~(e)~~ (d) ~~That~~ The general assembly recognizes that by amending this section it is not reinstating the common law status categories as they existed immediately prior to *Mile Hi Fence v. Radovich*, 175 Colo. 537, 489 P.2d 308 (1971) but that its purpose is to protect landowners from liability in some circumstances when they were not protected at common law and to define the instances when liability will be imposed in the manner most consistent with the policies set forth in paragraphs (a), (c), and (d) of this subsection (1.5) SUBSECTIONS (2)(a) AND (2)(c) OF THIS SECTION; AND

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

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

(B) 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, AS NOTED BY THE DISSENTING

JUSTICES AND JUDGE.

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

~~(2)~~ (3) In any civil action brought against a landowner by a person who alleges injury occurring while on the real property of another and by reason of the condition of such property, or activities conducted or circumstances existing on such property, the landowner ~~shall be~~ is liable only as provided in ~~subsection (3)~~ SUBSECTION (4) of this section. Sections 13-21-111, 13-21-111.5, and 13-21-111.7 ~~shall~~ apply to an action to which this section applies. This ~~subsection (2) shall~~ SUBSECTION (3) MUST not be construed to abrogate the doctrine of attractive nuisance as applied to persons under fourteen years of age. A person who is at least fourteen years of age but is less than eighteen years of age ~~shall be~~ is presumed competent for purposes of the application of this section.

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

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

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

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

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

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

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

~~(4)~~ (6) In any action to which this section applies, the ~~judge~~ COURT shall determine whether the plaintiff is a trespasser, a licensee, or an invitee, in accordance with the definitions set forth in ~~subsection (5)~~ SUBSECTION (7) of this

section. If two or more landowners are ~~parties defendant~~ PARTY DEFENDANTS to the action, the ~~judge~~ COURT shall determine the application of this section to each ~~such~~ landowner. The issues of liability and damages in any such action ~~shall~~ MUST be determined by the jury or, if there is no jury, by the ~~judge~~ COURT.

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

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

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

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

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

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

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

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

Approved: April 7, 2022