

## CHAPTER 154

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**EDUCATION - PUBLIC SCHOOLS**

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**HOUSE BILL 03-1127**

BY REPRESENTATIVE(S) Smith, Boyd, Carroll, Cloer, Coleman, Frangas, Garcia, Johnson R., Lee, Merrifield, Mitchell, Paccione, Pommer, Spence, Weddig, Wiens, Williams S., and Williams T.;  
also SENATOR(S) Arnold, Hagedorn, Hanna, Lamborn, and Tupa.

**AN ACT**

**CONCERNING ALLEGATIONS AGAINST EDUCATION PROVIDERS.**

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

**SECTION 1.** Title 22, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW ARTICLE to read:

**ARTICLE 12**  
**Teacher and School Administrator Protection Act**

**22-12-101. Short title.** THIS ARTICLE SHALL BE KNOWN AND MAY BE CITED AS THE "TEACHER AND SCHOOL ADMINISTRATOR PROTECTION ACT".

**22-12-102. Legislative declaration.** (1) THE GENERAL ASSEMBLY HEREBY FINDS THAT:

(a) PROMOTING THE QUALITY OF PRIMARY AND SECONDARY PUBLIC EDUCATION IS A COMPELLING STATE INTEREST;

(b) MAINTAINING A SAFE ENVIRONMENT IS AN IMPORTANT COMPONENT OF LEARNING. AT TIMES, EDUCATORS MAY FEEL THEY LACK THE AUTHORITY TO MAINTAIN SAFETY AND DISCIPLINE IN THE PUBLIC SCHOOL CLASSROOM OR THEY MAY HESITATE TO EXERCISE THIS AUTHORITY BECAUSE OF THE THREAT OF A LAWSUIT RESULTING FROM THEIR ACTIONS.

(c) THE FILING OF MERITLESS LAWSUITS AGAINST SCHOOL DISTRICTS, TEACHERS, ADMINISTRATORS, AND OTHER SCHOOL DISTRICT EMPLOYEES INTERFERES WITH ATTEMPTS TO ENSURE THE QUALITY OF PUBLIC EDUCATION, PARTICULARLY WHERE

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*Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.*

THE LAWSUITS ARISE OUT OF THE GOOD-FAITH EFFORTS OF EDUCATORS TO MAINTAIN CLASSROOM DISCIPLINE OR ADDRESS THREATS TO STUDENT SAFETY;

(d) MERITLESS LITIGATION ALSO DIVERTS FINANCIAL AND PERSONNEL RESOURCES TO LITIGATION DEFENSE ACTIVITIES, AND REDUCES THE AVAILABILITY OF THESE RESOURCES FOR EDUCATIONAL OPPORTUNITIES FOR STUDENTS.

(2) THE GENERAL ASSEMBLY FINDS THAT LEGISLATION TO DETER MERITLESS LAWSUITS AND SANCTION DELIBERATELY FALSE REPORTS AGAINST EDUCATORS IS A RATIONAL AND APPROPRIATE METHOD TO ADDRESS THE COMPELLING PUBLIC INTEREST IN PROTECTING SCHOOL DISTRICTS AND SCHOOL DISTRICT EMPLOYEES FROM UNNECESSARY AND HARMFUL LITIGATION.

(3) IT IS THE INTENT OF THE GENERAL ASSEMBLY THAT THE PROVISIONS OF THIS ARTICLE AND THOSE OF THE "COLORADO GOVERNMENTAL IMMUNITY ACT", ARTICLE 10 OF TITLE 24, C.R.S., BE READ TOGETHER AND HARMONIZED TO GIVE THE GREATEST PROTECTION FROM LIABILITY IN TORT POSSIBLE FOR EDUCATIONAL ENTITIES AND THEIR EMPLOYEES. IF THE PROVISIONS OF THIS ARTICLE AND THOSE OF THE "COLORADO GOVERNMENTAL IMMUNITY ACT" ARE INTERPRETED AS BEING IN CONFLICT, THE PROVISION THAT GRANTS THE GREATEST IMMUNITY AND PROTECTION TO AN EDUCATIONAL ENTITY AND ITS EMPLOYEES SHALL PREVAIL.

**22-12-103. Definitions.** AS USED IN THIS ARTICLE, UNLESS THE CONTEXT OTHERWISE REQUIRES:

(1) "EDUCATIONAL ENTITY" MEANS THE STATE BOARD OF EDUCATION, A SCHOOL DISTRICT BOARD OF EDUCATION, AND A GOVERNING BODY OF A CHARTER SCHOOL.

(2) "EMPLOYEE" MEANS AN INDIVIDUAL ELECTED OR APPOINTED TO AN EDUCATIONAL ENTITY AND AN INDIVIDUAL WHO IS AN EMPLOYEE OF AN EDUCATIONAL ENTITY OR WHO PROVIDES STUDENT-RELATED SERVICES TO AN EDUCATIONAL ENTITY ON A CONTRACTUAL BASIS. "EMPLOYEE" INCLUDES AN AUTHORIZED VOLUNTEER WHO PROVIDES STUDENT-RELATED SERVICES TO AN EDUCATIONAL ENTITY.

**22-12-104. Liability.** (1) AN EDUCATIONAL ENTITY AND ITS EMPLOYEES ARE IMMUNE FROM SUIT FOR TAKING AN ACTION REGARDING THE SUPERVISION, GRADING, SUSPENSION, EXPULSION, OR DISCIPLINE OF A STUDENT WHILE THE STUDENT IS ON THE PROPERTY OF THE EDUCATIONAL ENTITY OR UNDER THE SUPERVISION OF THE EDUCATIONAL ENTITY OR ITS EMPLOYEES; EXCEPT THAT IMMUNITY SHALL NOT APPLY IF THE ACTION IS COMMITTED WILLFULLY AND WANTONLY AND VIOLATES A STATUTE, RULE, OR REGULATION OR A CLEARLY ARTICULATED POLICY OF THE EDUCATIONAL ENTITY. THE BURDEN OF PROVING THE VIOLATION SHALL REST WITH THE PLAINTIFF AND MUST BE ESTABLISHED BY CLEAR AND CONVINCING EVIDENCE TO THE COURT AS PART OF A SUMMARY PROCEEDING. IF AT THE SUMMARY PROCEEDING THE COURT FINDS A VIOLATION EXISTS, THE EDUCATIONAL ENTITY AND ITS EMPLOYEE MAY RAISE IMMUNITY AT TRIAL UNDER THE PROVISIONS OF THIS ARTICLE AND THE "COLORADO GOVERNMENTAL IMMUNITY ACT", ARTICLE 10 OF TITLE 24, C.R.S.

(2) AN EDUCATIONAL ENTITY AND ITS EMPLOYEES ARE IMMUNE FROM SUIT FOR MAKING A REPORT CONSISTENT WITH FEDERAL LAW TO THE APPROPRIATE LAW ENFORCEMENT AUTHORITIES OR OFFICIALS OF AN EDUCATIONAL ENTITY IF THE

INDIVIDUAL MAKING THE REPORT HAS REASONABLE GROUNDS TO SUSPECT THAT A STUDENT IS:

(a) UNDER THE INFLUENCE OF ALCOHOLIC BEVERAGES OR OF A CONTROLLED SUBSTANCE NOT LAWFULLY PRESCRIBED TO THE STUDENT;

(b) IN POSSESSION OF A FIREARM OR ALCOHOLIC BEVERAGES OR OF A CONTROLLED SUBSTANCE NOT LAWFULLY PRESCRIBED TO THE STUDENT;

(c) INVOLVED IN THE ILLEGAL SOLICITATION, SALE, OR DISTRIBUTION OF FIREARMS OR ALCOHOLIC BEVERAGES OR OF A CONTROLLED SUBSTANCE.

(3) A PERSON CLAIMING TO HAVE SUFFERED AN INJURY BY AN EDUCATIONAL ENTITY OR AN EMPLOYEE, WHETHER OR NOT BY A VIOLATION OF A STATUTE, RULE, OR REGULATION OR A CLEARLY ARTICULATED POLICY OF THE EDUCATIONAL ENTITY, SHALL FILE A WRITTEN NOTICE AS PROVIDED IN SECTION 24-10-109, C.R.S., WITHIN ONE HUNDRED EIGHTY DAYS AFTER THE DATE OF 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 THE INJURY. COMPLIANCE WITH THE PROVISIONS OF THIS SUBSECTION (3) 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.

**22-12-105. False reports - misdemeanor.** (1) EXCEPT AS OTHERWISE PROVIDED IN THIS SECTION, A PERSON EIGHTEEN YEARS OF AGE OR OLDER WHO INTENTIONALLY MAKES A FALSE ACCUSATION OF CRIMINAL ACTIVITY AGAINST AN EMPLOYEE OF AN EDUCATIONAL ENTITY TO LAW ENFORCEMENT AUTHORITIES, SCHOOL DISTRICT OFFICIALS OR PERSONNEL, OR BOTH, COMMITS A MISDEMEANOR AND UPON CONVICTION SHALL BE FINED UP TO TWO THOUSAND DOLLARS.

(2) EXCEPT AS OTHERWISE PROVIDED IN THIS SECTION, A STUDENT ENROLLED IN A PUBLIC SCHOOL WHO IS AT LEAST TEN YEARS OF AGE BUT YOUNGER THAN EIGHTEEN YEARS OF AGE WHO INTENTIONALLY MAKES A FALSE ACCUSATION OF CRIMINAL ACTIVITY AGAINST AN EMPLOYEE OF AN EDUCATIONAL ENTITY TO LAW ENFORCEMENT AUTHORITIES, SCHOOL DISTRICT OFFICIALS OR PERSONNEL, OR BOTH, MAY, AT THE DISCRETION OF THE COURT, AND IN ACCORDANCE WITH THE PROVISIONS OF THE FEDERAL "INDIVIDUALS WITH DISABILITIES EDUCATION ACT", 20 U.S.C.A. SEC. 1400 ET SEQ., BE SUBJECT TO ANY OF THE FOLLOWING PENALTIES:

(a) COMMUNITY SERVICE OF A TYPE AND FOR A PERIOD OF TIME TO BE DETERMINED BY THE COURT;

(b) ANY OTHER SANCTION AS THE COURT IN ITS DISCRETION MAY DEEM APPROPRIATE.

(3) A SCHOOL DISTRICT MAY EXPEL OR SUSPEND A STUDENT WHO INTENTIONALLY MAKES A FALSE ACCUSATION OF CRIMINAL ACTIVITY AGAINST AN EMPLOYEE OF AN EDUCATIONAL ENTITY TO LAW ENFORCEMENT AUTHORITIES, SCHOOL DISTRICT OFFICIALS OR PERSONNEL, OR BOTH.

(4) THE PROVISIONS OF THIS SECTION DO NOT APPLY TO STATEMENTS REGARDING

INDIVIDUALS ELECTED OR APPOINTED TO A SCHOOL BOARD.

(5) THIS SECTION IS IN ADDITION TO AND DOES NOT LIMIT THE CIVIL OR CRIMINAL LIABILITY OF PERSONS WHO MAKE FALSE STATEMENTS ALLEGING CRIMINAL ACTIVITY BY OTHERS.

**22-12-106. Frivolous actions - attorney fees - costs.** (1) IN A CIVIL ACTION OR PROCEEDING AGAINST AN EDUCATIONAL ENTITY OR ITS EMPLOYEE IN WHICH THE COURT FINDS THE EDUCATIONAL ENTITY OR ITS EMPLOYEE IS IMMUNE FROM SUIT OR FROM LIABILITY PURSUANT TO THE PROVISIONS OF SECTION 22-12-104, THE COURT SHALL AWARD COSTS AND REASONABLE ATTORNEY FEES TO THE DEFENDANT OR DEFENDANTS. THE COURT IN ITS DISCRETION MAY DETERMINE WHETHER SUCH FEES AND COSTS ARE TO BE BORNE BY THE PLAINTIFF'S ATTORNEY, THE PLAINTIFF, OR BOTH.

(2) EXPERT WITNESS FEES MAY BE INCLUDED AS PART OF THE COSTS AWARDED UNDER THIS SECTION.

(3) THE PROVISIONS OF THIS SECTION SHALL BE DEEMED TO BE SUBSTANTIVE STATE LAW.

**22-12-107. Insurance.** UNLESS OTHERWISE PROVIDED BY STATUTE, THE EXISTENCE OF A POLICY OF INSURANCE INDEMNIFYING AN EDUCATIONAL ENTITY AGAINST LIABILITY FOR DAMAGES IS NOT A WAIVER OF A DEFENSE OTHERWISE AVAILABLE TO THE EDUCATIONAL ENTITY OR ITS EMPLOYEES IN THE DEFENSE OF A CLAIM.

**22-12-108. Applicability.** THIS ARTICLE SHALL BE SUPPLEMENTAL TO THE "COLORADO GOVERNMENTAL IMMUNITY ACT", ARTICLE 10 OF TITLE 24, C.R.S. AN ACTION THAT IS BARRED UNDER THE PROVISIONS OF THE "COLORADO GOVERNMENTAL IMMUNITY ACT", INCLUDING BUT NOT LIMITED TO SECTION 24-10-109, C.R.S., SHALL BE BARRED UNDER THE PROVISIONS OF THIS ARTICLE.

**22-12-109. Special rule.** THIS ARTICLE SHALL NOT INFRINGE ON ANY RIGHT PROVIDED UNDER THE FEDERAL "INDIVIDUALS WITH DISABILITIES EDUCATION ACT", 20 U.S.C.A. SEC. 1400 ET SEQ.

**SECTION 2. Effective date - applicability.** (1) This act shall take effect at 12:01 a.m. on the day following the expiration of the ninety-day period after final adjournment of the general assembly that is allowed for submitting a referendum petition pursuant to article V, section 1 (3) of the state constitution; except that, if a referendum petition is filed against this act or an item, section, or part of this act within such period, then the act, item, section, or part, if approved by the people, shall take effect on the date of the official declaration of the vote thereon by proclamation of the governor.

(2) The provisions of this act shall apply to offenses committed on or after the applicable effective date of this act.

Approved: April 18, 2003