



Governmental Immunity from Liability

An overview of Colorado statutes that limit government from civil liability lawsuits.

Governmental immunity from tort liability limits judgments against the government that would be paid from the public purse using taxpayer dollars. The Colorado Governmental Immunity Act (CGIA) was enacted in 1971 to establish statutory boundaries of governmental immunity following three Colorado Supreme Court decisions that substantially altered the common law doctrine of sovereign immunity and its application to state and local government. (C.R.S. 24-10-106)

Colorado residents pay taxes to state and local government with the expectation that those governments will perform or provide certain essential services, e.g., transportation, public safety and education. Without limitations on plaintiffs' ability to lay claim to taxpayer dollars, governments would have no choice but to spend a much greater portion of their budgets on litigation defense and judgments paid to plaintiffs. Greater litigation costs would mean greater inefficiencies in government, a reduction in essential services, and higher tax rates. The General Assembly, through the CGIA, sets damage limits that balance fair compensation to victims and protection for taxpayers.

CGIA governs all actions in which a tort (a "wrong") can be asserted against a governmental entity or its employees. In general, tort claims are barred except in the following circumstances in which claims are specifically allowed²:

1. Operation of a motor vehicle, owned by a public entity, by a public employee while in the course of employment.
2. Operation of a public hospital, correctional facility or jail.
3. Dangerous condition of a public building.
4. Dangerous conditions of a public highway, road or street; dangerous condition caused by the failure to realign or repair a stop sign, yield sign or traffic control signal; or dangerous condition caused by failure to remove snow or ice around a public building which is open for business.
5. Dangerous condition of a public hospital, jail, public facility in a park or recreational area maintained by a governmental entity, or public utility or swimming facility.
6. Operation and maintenance of a public utility or swimming facility.
7. Operation and maintenance of a qualified state capital asset that is the subject of a leveraged leasing agreement.
8. Failure to perform an educational employment background check.
9. Situations involving recording an incident involving a peace officer.
10. Starting a prescribed fire.

Plaintiffs claiming injury within the allowable exceptions must do so within 180 days of discovering the injury by providing written notice of the claim.

Claims allowed under CGIA may seek damages of up to \$350,000 per person and up to \$990,000 for an incident involving multiple people. (Adjusted every four years).

Liability Limits Facilitate Settlements

In Colorado, claims against state government are reviewed by the state division of risk management and the claims board¹, staffed by a team of experienced attorneys who represent the State of Colorado in tort cases. These officials assess the merits of the claim and consider a fair resolution.²

“If a case had clear merit, we would quickly settle for the maximum amount,” explained former Colorado Attorney General Gale Norton at a recent briefing. “In these cases, the state would avoid litigation costs, and a quick resolution also benefited the injured individuals by making more funds available for their injuries and less required for attorney fees.”

Conversely, increasing the damage caps, especially the cap on individual damages, can cause delays in settling the claim and make it more costly for the injured party to recover. Here’s why: In a given case, if the state is clearly liable and damages are about \$400,000, it’s rational for the state to admit liability and quickly settle the claim for the maximum allowable recovery of \$350,000. However, if the damage cap is raised to \$500,000 and the plaintiff is seeking the full amount but the State believes actual damages are closer to \$350,000, the State has cause to contest the claim in order to save \$100,000 in taxpayer funds.

Claims Against Government Employees

Public employees carrying out their job responsibilities are generally immune from actions against them. This protection exists to encourage people to take on the challenges of public jobs -- making tough choices or undertaking risky tasks. Otherwise, a police officer or parole officer or facility manager could face litigation alleging negligence if any mistaken decision caused harm. It shields employees from unlimited liability so they are not discouraged from providing services or “exercising the powers authorized or required by law,” C.R.S. 24-10-102. Thus the CGIA is intended to keep personal financial considerations from overshadowing public responsibilities.

¹ Created by C.R.S. 24-30-1508, and consisting of the state treasurer, attorney general, and executive director of the department of personnel.

² There are various levels of settlement authority, ranging from \$5000 for claims adjusters, to \$50,000 for the state risk manager, to the full statutory limit for the claims board. C.R.S. 24-30-1515.

The protection for employees maintains the integrity of the governmental immunity system. Without it, the burden of liability could shift to employees. Plaintiffs' attorneys could sue employees as the "deep pockets" to exceed their employer-government's liability limits.

If the employee acts in a particularly reckless or irresponsible way, then individual liability may be appropriate. Employees lose their protection if they act in a "willful and wanton" manner. C.R.S. 24-10-105. "Willful and wanton" is a well-established legal term to define conduct that merits a higher burden of liability. This is the same standard used in several Colorado statutes to determine when additional sanctions are appropriate. For example, C.R.S. 13-21-1-2 (1)(b) authorizes exemplary damages in (nongovernmental) civil suits for willful and wanton conduct, defining it to mean "conduct purposefully committed which the actor must have realized as dangerous, done heedlessly and recklessly, without regard to consequences, or of the rights and safety of others"

Notes

¹ *Evans v. Board of County Comm'rs*, 482 P.2d 968 (1971); *Flournoy v. School District No. 1*, 482 P.2d 966 (1971); and *Proffitt v. State*, 482 P.2d 965 (1971).

² C.R.S. 24-10-106(1).

³ C.R.S. 24-10-114