

2022 AMENDMENTS TO THE COLORADO PREMISES LIABILITY ACT

Effective April 7, 2022, the Colorado General Assembly amended the Colorado Premises Liability Act, C.R.S. 13-21-115, to address the opinions in *Rocky Mountain Planned Parenthood, Inc. v. Wagner*, 467 P.3d 287 (Colo. 2020) and *Wagner v. Planned Parenthood Federation of America, Inc.*, 471 P.3d 1089 (Colo. App. 2019) (“Wagner cases”). The legislature specifically rejected the decisions in the Wagner cases to the extent they determined 1) the foreseeability of third-party criminal conduct may be based upon whether the goods or services offered by the landowner are controversial, and 2) 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 the harm.

The revisions are expressly intended to address the majority opinions in the Wagner cases and do not reject or disturb any other judicial decisions or statutes. The consequences of the revisions, however, are far-reaching.

For actions on or after April 7, 2022, any time a landowner is claimed liable in connection with a third-party criminal act, a plaintiff cannot prove causation without a jury first determining whether a third-party criminal act was the predominant cause of the plaintiff’s harm. If one of the causes of a plaintiff’s harm has such a predominant effect in bringing about the harm to make the effect of the landowner’s actions or inactions insignificant, and, thus, not a

substantial factor, the landowner cannot be liable. Although proximate cause is normally a question for a jury, a court may conclude that as a matter of law, a predominant cause exists such that there cannot be any other substantial factors in bringing about a plaintiff’s harm. Although the Wagner cases arose in the context of a mass-shooting, the predominant cause analysis should be evaluated in a premises liability case any time a third-party criminal act is a cause of a plaintiff’s harm.

Additionally, the amendments clarify that the foreseeability of the third-party criminal conduct may not be premised on the controversial nature of landowner’s business. This applies to analysis under the Colorado Premises Liability Act of whether a landowner should have known of a dangerous condition and of proximate cause. Therefore, beyond women’s health clinics, other “controversial” businesses should not face greater risk of liability under the Colorado Premises Liability Act than non-controversial businesses simply due to their controversial status.

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