

CHAPTER 271

COURTS

HOUSE BILL 03-1007

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also SENATOR(S) Hillman, Andrews, Arnold, Caims, Chlouber, Evans, Johnson S., Jones, Kester, May R., Owen, Taylor, and
Teck.

AN ACT

**CONCERNING THE LIMITATION ON NONECONOMIC DAMAGES FOR CERTAIN PHYSICAL INJURIES IN
MEDICAL MALPRACTICE ACTIONS.**

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

SECTION 1. 13-21-102.5 (3) (a), Colorado Revised Statutes, is amended to read:

13-21-102.5. Limitations on damages for noneconomic loss or injury.

(3) (a) In any civil action OTHER THAN MEDICAL MALPRACTICE ACTIONS in which damages for noneconomic loss or injury may be awarded, the total of such damages shall not exceed the sum of two hundred fifty thousand dollars, unless the court finds justification by clear and convincing evidence therefor. In no case shall the amount of ~~such~~ NONECONOMIC LOSS OR INJURY damages exceed five hundred thousand dollars. THE DAMAGES FOR NONECONOMIC LOSS OR INJURY IN A MEDICAL MALPRACTICE ACTION SHALL NOT EXCEED THE LIMITATIONS ON NONECONOMIC LOSS OR INJURY SPECIFIED IN SECTION 13-64-302.

SECTION 2. 13-21-203 (1), Colorado Revised Statutes, is amended to read:

13-21-203. Limitation on damages. (1) (a) All damages accruing under section 13-21-202 shall be sued for and recovered by the same parties and in the same manner as provided in section 13-21-201, and in every such action the jury may give such damages as they may deem fair and just, with reference to the necessary injury resulting from such death, including damages for noneconomic loss or injury as defined in section 13-21-102.5 and subject to the limitations of this section and including within noneconomic loss or injury damages for grief, loss of companionship, pain and suffering, and emotional stress, to the surviving parties who may be entitled to sue; and also having regard to the mitigating or aggravating

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

circumstances attending any such wrongful act, neglect, or default; except that, if the decedent left neither a widow, a widower, minor children, nor a dependent father or mother, the damages recoverable in any such action shall not exceed the limitations for noneconomic loss or injury set forth in section 13-21-102.5, unless the wrongful act, neglect, or default causing death constitutes a felonious killing, as defined in section 15-11-803 (1) (b), C.R.S., and as determined in the manner described in section 15-11-803 (7), C.R.S., in which case there shall be no limitation on the damages for noneconomic loss or injury recoverable in such action. No action shall be brought and no recovery shall be had under both section 13-21-201 and section 13-21-202, and in all cases the plaintiff is required to elect under which section he or she will proceed. There shall be only one civil action under this part 2 for recovery of damages for the wrongful death of any one decedent. Notwithstanding anything in this section or in section 13-21-102.5 to the contrary, there shall be no recovery under this part 2 for noneconomic loss or injury in excess of two hundred fifty thousand dollars, unless the wrongful act, neglect, or default causing death constitutes a felonious killing, as defined in section 15-11-803 (1) (b), C.R.S., and as determined in the manner described in section 15-11-803 (7), C.R.S.

(b) THE DAMAGES RECOVERABLE FOR NONECONOMIC LOSS OR INJURY IN ANY MEDICAL MALPRACTICE ACTION SHALL NOT EXCEED THE LIMITATIONS ON NONECONOMIC LOSS OR INJURY SET FORTH IN SECTION 13-64-302.

SECTION 3. 13-64-102, Colorado Revised Statutes, is amended to read:

13-64-102. Legislative declaration. (1) The general assembly determines and declares that it is in the best interests of the citizens of this state to assure the continued availability of adequate health care services to the people of this state by containing the significantly increasing costs of malpractice insurance for medical care institutions and licensed medical care professionals, and that such is rationally related to a legitimate state interest. To attain this goal and in recognition of the exodus of professionals from health care practice or from certain portions or specialties thereof, the general assembly finds it necessary to enact this article limited to the area of medical malpractice to preserve the public peace, health, and welfare.

(2) THE GENERAL ASSEMBLY FURTHER DETERMINES AND DECLARES:

(a) THE PURPOSE OF ENACTING THE "HEALTH CARE AVAILABILITY ACT" AND AMENDMENTS THERETO IS TO CLEARLY AND UNEQUIVOCALLY STATE THE INTENT OF THE GENERAL ASSEMBLY THAT, IN ORDER TO PROMOTE THE PURPOSES SET FORTH IN SUBSECTION (1) OF THIS SECTION, THE LIMITATIONS OF LIABILITY SET FORTH IN SECTION 13-64-302 ARE HEREBY REAFFIRMED; AND

(b) ALL NONECONOMIC DAMAGES OF ANY KIND WHATSOEVER, WHETHER DIRECT OR DERIVATIVE, INCLUDING BUT NOT LIMITED TO GRIEF, LOSS OF COMPANIONSHIP, PAIN AND SUFFERING, INCONVENIENCE, EMOTIONAL STRESS, IMPAIRMENT OF QUALITY OF LIFE, PHYSICAL IMPAIRMENT, DISFIGUREMENT, AND DAMAGES FOR ANY OTHER NONPECUNIARY HARM AWARDED IN A MEDICAL MALPRACTICE ACTION, SHALL NOT EXCEED THE LIMITATIONS ON NONECONOMIC LOSS OR INJURY SPECIFIED IN SECTION 13-64-302.

SECTION 4. 13-64-302 (1), Colorado Revised Statutes, is amended to read:

13-64-302. Limitation of liability - interest on damages. (1) (a) AS USED IN THIS SECTION:

(I) "DERIVATIVE NONECONOMIC LOSS OR INJURY" MEANS NONECONOMIC LOSS OR INJURY TO PERSONS OTHER THAN THE PERSON SUFFERING THE DIRECT OR PRIMARY LOSS OR INJURY.

(II) (A) "NONECONOMIC LOSS OR INJURY" MEANS NONPECUNIARY HARM FOR WHICH DAMAGES ARE RECOVERABLE BY THE PERSON SUFFERING THE DIRECT OR PRIMARY LOSS OR INJURY, INCLUDING PAIN AND SUFFERING, INCONVENIENCE, EMOTIONAL STRESS, PHYSICAL IMPAIRMENT OR DISFIGUREMENT, AND IMPAIRMENT OF THE QUALITY OF LIFE. "NONECONOMIC LOSS OR INJURY" DOES NOT INCLUDE PUNITIVE OR EXEMPLARY DAMAGES.

(B) NOTHING IN THIS SECTION SHALL BE CONSTRUED TO PROHIBIT A RECOVERY FOR ECONOMIC DAMAGES, WHETHER PAST OR FUTURE, RESULTING FROM PHYSICAL IMPAIRMENT OR DISFIGUREMENT.

(b) The total amount recoverable for all damages for a course of care for all defendants in any civil action for damages in tort brought against a health care professional, as defined in section 13-64-202, or a health care institution, as defined in section 13-64-202, or as a result of binding arbitration, whether past damages, future damages, or a combination of both, shall not exceed one million dollars, present value per patient, including any ~~derivative~~ claim FOR DERIVATIVE NONECONOMIC LOSS OR INJURY by any other claimant, of which not more than two hundred fifty thousand dollars, present value per patient, including any derivative claim by any other claimant, shall be attributable to noneconomic loss or injury, ~~as defined in section 13-21-102.5 (2) (a) and (2) (b)~~; whether past damages, future damages, or a combination of both; except that if, upon good cause shown, the court determines that the present value of the amount of lost past earnings and the present value of lost future earnings, or the present value of the amount of past medical and other health care costs and the present value of the amount of future medical and other health care costs, or both, when added to the present value of other past damages and the present value of other future damages, would exceed such limitation and that the application of such limitation would be unfair, the court may award the present value of additional future damages only for loss of such excess future earnings, or such excess future medical and other health care costs, or both. The limitations of this section are not applicable to a health care professional who is a public employee under the "Colorado Governmental Immunity Act" and are not applicable to a certified health care institution which is a public entity under the "Colorado Governmental Immunity Act". For purposes of this section, "present value" has the same meaning as that set forth in section 13-64-202 (7). The existence of the limitations and exceptions thereto provided in this section shall not be disclosed to a jury.

(c) EFFECTIVE JULY 1, 2003, THE DAMAGES LIMITATION OF TWO HUNDRED FIFTY THOUSAND DOLLARS DESCRIBED IN PARAGRAPH (b) OF THIS SUBSECTION (1) SHALL BE INCREASED TO THREE HUNDRED THOUSAND DOLLARS WHICH INCREASED AMOUNT SHALL APPLY TO ACTS OR OMISSIONS OCCURRING ON OR AFTER SAID DATE. IT IS THE INTENT OF THE GENERAL ASSEMBLY THAT THE INCREASE REFLECT AN ADJUSTMENT FOR INFLATION TO THE DAMAGES LIMITATION.

SECTION 5. Effective date - applicability. This act shall take effect July 1, 2003, and shall apply to acts or omissions occurring on or after said date.

SECTION 6. Safety clause. The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.

Approved: May 20, 2003