

CHAPTER 128

COURTS

HOUSE BILL 01-1167

BY REPRESENTATIVE(S) Paschall, King, Rhodes, and Saliman;
also SENATOR(S) Gordon, Hagedorn, Lamborn, and Perlmutter.

AN ACT

CONCERNING DAMAGES IN WRONGFUL DEATH CASES.

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

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

13-21-203. Limitation on damages. (1) 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 circumstances attending any such wrongful act, neglect, or default; except that, if the decedent left neither a widow, A widower, ~~or~~ 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

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

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.

(2) This section shall apply to a cause of action based on a wrongful act, neglect, or default occurring on or after July 1, 1969. A cause of action based on a wrongful act, neglect, or default occurring prior to July 1, 1969, shall be governed by the law in force and effect at the time of such wrongful act, neglect, or default.

(3) (a) IN ALL ACTIONS BROUGHT UNDER SECTION 13-21-201 OR 13-21-202 IN WHICH DAMAGES ARE ASSESSED BY THE TRIER OF FACT, AND THE DEATH COMPLAINED OF IS ATTENDED BY CIRCUMSTANCES OF FRAUD, MALICE, OR WILLFUL AND WANTON CONDUCT, THE TRIER OF FACT, IN ADDITION TO THE ACTUAL DAMAGES, MAY AWARD REASONABLE EXEMPLARY DAMAGES. THE AMOUNT OF SUCH REASONABLE EXEMPLARY DAMAGES SHALL NOT EXCEED AN AMOUNT THAT IS EQUAL TO THE AMOUNT OF THE ACTUAL DAMAGES AWARDED TO THE INJURED PARTY.

(b) FOR PURPOSES OF THIS SUBSECTION (3), "WILLFUL AND WANTON CONDUCT" SHALL HAVE THE SAME MEANING AS SET FORTH IN SECTION 13-21-102 (1) (b).

(c) (I) A CLAIM FOR EXEMPLARY DAMAGES IN AN ACTION GOVERNED BY THIS SECTION MAY NOT BE INCLUDED IN ANY INITIAL CLAIM FOR RELIEF. A CLAIM FOR EXEMPLARY DAMAGES IN AN ACTION GOVERNED BY THIS SECTION SHALL BE ALLOWED BY AMENDMENT TO THE PLEADINGS ONLY AFTER THE PASSAGE OF SIXTY DAYS FOLLOWING THE EXCHANGE OF INITIAL DISCLOSURES PURSUANT TO RULE 26 OF THE COLORADO RULES OF CIVIL PROCEDURE AND THE PLAINTIFF ESTABLISHES PRIMA FACIE PROOF OF A TRIABLE ISSUE. AFTER THE PLAINTIFF ESTABLISHES THE EXISTENCE OF A TRIABLE ISSUE OF EXEMPLARY DAMAGES, THE COURT MAY, IN ITS DISCRETION, ALLOW ADDITIONAL DISCOVERY ON THE ISSUE OF EXEMPLARY DAMAGES AS THE COURT DEEMS APPROPRIATE.

(II) A CLAIM FOR EXEMPLARY DAMAGES IN AN ACTION GOVERNED BY THIS SECTION SHALL NOT BE TIME BARRED BY THE APPLICABLE PROVISIONS OF LAW FOR THE COMMENCEMENT OF ACTIONS, SO LONG AS:

(A) THE CLAIM FOR EXEMPLARY DAMAGES ARISES, PURSUANT TO PARAGRAPH (a) OF THIS SUBSECTION (3), FROM THE CLAIM IN SUCH ACTION THAT IS BROUGHT UNDER SECTION 13-21-201 OR 13-21-202; AND

(B) THE CLAIM IN SUCH ACTION THAT IS BROUGHT UNDER SECTION 13-21-201 OR 13-21-202 IS NOT TIME BARRED.

(III) THE ASSERTION OF A CLAIM FOR EXEMPLARY DAMAGES IN AN ACTION GOVERNED BY THIS SECTION SHALL NOT BE RENDERED INEFFECTIVE SOLELY BECAUSE THE ASSERTION WAS MADE AFTER THE APPLICABLE DEADLINE CONTAINED IN THE COURT'S CASE MANAGEMENT ORDER, SO LONG AS THE PLAINTIFF ESTABLISHES THAT HE OR SHE DID NOT DISCOVER, AND COULD NOT HAVE REASONABLY DISCOVERED PRIOR TO SUCH DEADLINE, THE GROUNDS FOR ASSERTING THE EXEMPLARY DAMAGES CLAIM.

(4) NOTWITHSTANDING THE PROVISIONS OF SUBSECTION (3) OF THIS SECTION, THE

COURT MAY REDUCE OR DISALLOW THE AWARD OF EXEMPLARY DAMAGES TO THE EXTENT THAT:

- (a) THE DETERRENT EFFECT OF THE DAMAGES HAS BEEN ACCOMPLISHED; OR
- (b) THE CONDUCT THAT RESULTED IN THE AWARD HAS CEASED; OR
- (c) THE PURPOSE OF SUCH DAMAGES HAS OTHERWISE BEEN SERVED.

(5) NOTWITHSTANDING THE PROVISIONS OF SUBSECTION (3) OF THIS SECTION, THE COURT MAY INCREASE ANY AWARD OF EXEMPLARY DAMAGES TO A SUM NOT TO EXCEED THREE TIMES THE AMOUNT OF ACTUAL DAMAGES, IF IT IS SHOWN THAT:

(a) THE DEFENDANT HAS CONTINUED THE BEHAVIOR OR REPEATED THE ACTION THAT IS THE SUBJECT OF THE CLAIM AGAINST THE DEFENDANT IN A WILLFUL AND WANTON MANNER AGAINST ANOTHER PERSON OR PERSONS DURING THE PENDENCY OF THE CASE; OR

(b) THE DEFENDANT HAS ACTED IN A WILLFUL AND WANTON MANNER DURING THE PENDENCY OF THE ACTION IN A MANNER THAT HAS FURTHER AGGRAVATED THE DAMAGES OF THE PLAINTIFF WHEN THE DEFENDANT KNEW OR SHOULD HAVE KNOWN SUCH ACTION WOULD PRODUCE AGGRAVATION.

(6) THE PROVISIONS OF THIS SECTION SHALL NOT APPLY TO ANY LEVEL OF PEACE OFFICER, AS DEFINED IN SECTION 18-1-901 (3) (1), C.R.S., OR TO ANY FIREFIGHTER, AS DEFINED IN SECTION 18-3-201 (1), C.R.S., FOR CLAIMS ARISING OUT OF INJURIES SUSTAINED FROM AN ACT OR OMISSION OF SUCH PEACE OFFICER OR FIREFIGHTER ACTING IN THE PERFORMANCE OF HIS OR HER DUTIES AND WITHIN THE SCOPE OF HIS OR HER EMPLOYMENT.

(7) NOTHING IN THIS SECTION SHALL BE CONSTRUED TO ALTER OR AMEND THE PROVISIONS OF SECTION 13-64-302.5 OR THE PROVISIONS OF PART 1 OF ARTICLE 10 OF TITLE 24, C.R.S.

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 all causes of action accruing on or after the applicable effective date of this act.

Approved: April 16, 2001