

## CHAPTER 232

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**COURTS**

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**SENATE BILL 04-115**

BY SENATOR(S) Dyer, Andrews, Arnold, Chlouber, May R., and McElhany;  
also REPRESENTATIVE(S) Mitchell, Brophy, Cloer, Crane, Hall, Harvey, Hoppe, King, Miller, Rose, Schultheis, Spence,  
Spradley, Stafford, Welker, and Williams T.

**AN ACT****CONCERNING A LIMITATION ON THE RECOVERY OF NONECONOMIC DAMAGES IN BREACH OF CONTRACT CLAIMS.**

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

**SECTION 1. Legislative declaration.** (1) The general assembly hereby finds, determines, and declares that:

(a) It is the public policy of this state to preserve the predictability, stability, and economic efficiency of commercial contracts in order for those agreements to be reliable and useful; and

(b) Permitting the award of noneconomic damages, including but not limited to emotional harm, in all contractual disputes undermines the predictability and stability of contracts; and

(c) Permitting the award of such damages in contractual disputes also fundamentally blurs the distinction between tort and contract law; and

(d) Awarding noneconomic damages for breach of contract is an outdated concept and no longer useful because modern statutory law and case law concerning torts provide a full range of remedies for noneconomic damages, including but not limited to bad faith breach of contract and other remedies.

(2) The general assembly therefore finds and declares that in any claim for breach of contract, noneconomic damages should be recoverable only if specifically authorized in the contract that is the subject of the claim or if the defendant under certain circumstances willfully and wantonly breached the contract.

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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.*

**SECTION 2.** 13-21-102.5, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SUBSECTION to read:

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

(6) (a) (I) IN ANY CLAIM FOR BREACH OF CONTRACT, DAMAGES FOR NONECONOMIC LOSS OR INJURY OR FOR DERIVATIVE NONECONOMIC LOSS OR INJURY ARE RECOVERABLE ONLY IF:

(A) THE RECOVERY FOR SUCH DAMAGES IS SPECIFICALLY AUTHORIZED IN THE CONTRACT THAT IS THE SUBJECT OF THE CLAIM; OR

(B) IN ANY FIRST-PARTY CLAIM BROUGHT AGAINST AN INSURER FOR BREACH OF AN INSURANCE CONTRACT, THE PLAINTIFF DEMONSTRATES BY CLEAR AND CONVINCING EVIDENCE THAT THE DEFENDANT COMMITTED WILLFUL AND WANTON BREACH OF CONTRACT.

(II) FOR PURPOSES OF THIS PARAGRAPH (a), "WILLFUL AND WANTON BREACH OF CONTRACT" MEANS THAT:

(A) THE DEFENDANT INTENDED TO BREACH THE CONTRACT;

(B) THE DEFENDANT BREACHED THE CONTRACT WITHOUT ANY REASONABLE JUSTIFICATION; AND

(C) THE CONTRACT CLEARLY INDICATED THAT DAMAGES FOR NONECONOMIC LOSS OR INJURY OR FOR DERIVATIVE NONECONOMIC DAMAGES OR LOSS WERE WITHIN THE CONTEMPLATION OR EXPECTATION OF THE PARTIES.

(b) EXCEPT FOR THE BREACH OF CONTRACT DAMAGES THAT ARE PERMITTED PURSUANT TO SUB-SUBPARAGRAPH (B) OF SUBPARAGRAPH (I) OF PARAGRAPH (a) OF THIS SUBSECTION (6), NOTHING IN THIS SUBSECTION (6) SHALL BE CONSTRUED TO PROHIBIT ONE OR MORE PARTIES FROM WAIVING THE RECOVERY OF DAMAGES FOR NONECONOMIC LOSS OR INJURY OR FOR DERIVATIVE NONECONOMIC LOSS OR INJURY ON A BREACH OF CONTRACT CLAIM SO LONG AS THE WAIVER IS EXPLICIT AND IN WRITING.

(c) THE LIMITATIONS ON DAMAGES SET FORTH IN SUBSECTION (3) OF THIS SECTION SHALL APPLY IN ANY CIVIL ACTION TO THE AGGREGATE SUM OF ANY NONECONOMIC DAMAGES AWARDED UNDER THIS SECTION FOR BREACH OF CONTRACT INCLUDING BUT NOT LIMITED TO BAD FAITH BREACH OF CONTRACT.

(d) IN ANY CIVIL ACTION IN WHICH AN AWARD OF DAMAGES FOR NONECONOMIC LOSS OR INJURY OR FOR DERIVATIVE NONECONOMIC LOSS OR INJURY IS MADE ON A BREACH OF CONTRACT CLAIM, THE COURT SHALL STATE SUCH AWARD IN THE JUDGMENT SEPARATELY FROM ANY OTHER DAMAGES AWARD.

(e) EXCEPT AS OTHERWISE PROVIDED IN PARAGRAPH (c) OF THIS SUBSECTION (6), NOTHING IN THIS SUBSECTION (6) SHALL BE CONSTRUED TO GOVERN THE RECOVERY OF NONECONOMIC DAMAGES ON A TORT CLAIM FOR BAD FAITH BREACH OF CONTRACT.

**SECTION 3. Effective date - applicability.** This act shall take effect July 1, 2004, and shall apply to civil actions filed on or after said date.

**SECTION 4. 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 17, 2004