

Second Regular Session
Sixty-sixth General Assembly
STATE OF COLORADO

ENGROSSED

*This Version Includes All Amendments Adopted
on Second Reading in the House of Introduction*

LLS NO. 08-0821.02 Brita Darling

SENATE BILL 08-164

SENATE SPONSORSHIP

Groff,

HOUSE SPONSORSHIP

Carroll T.,

Senate Committees
State, Veterans & Military Affairs

House Committees

A BILL FOR AN ACT

101 **CONCERNING THE ALIGNMENT OF THE LIMITATION ON DAMAGES FOR**
102 **NONECONOMIC LOSS OR INJURY IN ACTIONS BROUGHT**
103 **PURSUANT TO THE "HEALTH CARE AVAILABILITY ACT" WITH**
104 **THE LIMITATION ON DAMAGES FOR NONECONOMIC LOSS OR**
105 **INJURY IN GENERAL CIVIL ACTIONS.**

Bill Summary

(Note: This summary applies to this bill as introduced and does not necessarily reflect any amendments that may be subsequently adopted.)

Amends the definition of "direct noneconomic loss or injury" in actions brought under the "Health Care Availability Act" to exclude physical impairment or disfigurement.

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
Capital letters indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.

SENATE
Amended 2nd Reading
February 28, 2008

Aligns limitations on damages for noneconomic loss or injury in a medical malpractice case with the limitations for noneconomic loss or injury in other civil cases for acts or omissions occurring on or after July 1, 2008.

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

2 **SECTION 1.** 13-64-302 (1) (a) and (1) (c), Colorado Revised
3 Statutes, are amended, and the said 13-64-302 (1) is further amended BY
4 THE ADDITION OF A NEW PARAGRAPH, to read:

5 **13-64-302. Limitation of liability - interest on damages.**

6 (1) (a) As used in this section:

7 (I) "Derivative noneconomic loss or injury" means noneconomic
8 loss or injury to persons other than the person suffering the direct or
9 primary loss or injury. "Derivative noneconomic loss or injury" does not
10 include punitive or exemplary damages.

11 (II) (A) "Direct noneconomic loss or injury" means nonpecuniary
12 harm for which damages are recoverable by the person suffering the
13 direct or primary loss or injury, including pain and suffering,
14 inconvenience, emotional stress, ~~physical impairment or disfigurement,~~
15 and impairment of the quality of life. "Direct noneconomic loss or
16 injury" does not include punitive or exemplary damages, OR DAMAGES
17 FOR PHYSICAL IMPAIRMENT OR DISFIGUREMENT.

18 (B) Nothing in this section shall be construed to prohibit a
19 recovery for economic damages, whether past or future, resulting from
20 physical impairment or disfigurement.

21 (c) ~~Effective~~ FOR ACTS OR OMISSIONS OCCURRING BETWEEN July
22 1, 2003, AND JUNE 30, 2008, the damages limitation of two hundred fifty
23 thousand dollars described in paragraph (b) of this subsection (1) shall be

1 increased to three hundred thousand dollars. ~~which increased amount~~
2 ~~shall apply to acts or omissions occurring on or after said date.~~ It is the
3 intent of the general assembly that the increase reflect an adjustment for
4 inflation to the damages limitation.

5 (d) FOR ACTS OR OMISSIONS OCCURRING ON OR AFTER JULY 1,
6 2008, THE DAMAGES LIMITATION ON DIRECT OR DERIVATIVE
7 NONECONOMIC LOSS OR INJURY DESCRIBED IN PARAGRAPH (b) OF THIS
8 SUBSECTION (1) SHALL BE AS PROVIDED IN SECTION 13-21-102.5 (3).

9 **SECTION 2.** 13-21-102.5 (3) (a) and (3) (c) (IV), Colorado
10 Revised Statutes, are amended to read:

11 **13-21-102.5. Limitations on damages for noneconomic loss or**
12 **injury.** (3) (a) In any civil action ~~other than medical malpractice actions~~
13 in which damages for noneconomic loss or injury may be awarded, the
14 total of such damages shall not exceed the sum of two hundred fifty
15 thousand dollars. unless DAMAGES IN CIVIL ACTIONS OTHER THAN
16 MEDICAL MALPRACTICE ACTIONS MAY EXCEED SUCH LIMITATION IF the
17 court finds justification by clear and convincing evidence; therefor
18 EXCEPT THAT in no case shall the amount of noneconomic loss or injury
19 damages exceed five hundred thousand dollars. The damages for
20 noneconomic loss or injury in a medical malpractice action shall not
21 exceed the limitations on noneconomic loss or injury specified in section
22 13-64-302.

23 (c) (IV) Nothing in this subsection (3) shall change the limitations
24 on damages set forth in section 13-64-302, or the limitation on damages
25 set forth in section 33-44-113, C.R.S.

26 **SECTION 3.** 13-21-102.5 (3) (c), Colorado Revised Statutes, is
27 amended BY THE ADDITION OF A NEW SUBPARAGRAPH to read:

1 **13-21-102.5. Limitations on damages for noneconomic loss or**
2 **injury. (3) (c) (V) NOTHING IN THIS SUBSECTION (3) SHALL CHANGE THE**
3 **LIMITATIONS ON DAMAGES FOR ACTIONS AGAINST PUBLIC EMPLOYEES OR**
4 **PUBLIC ENTITIES SET FORTH IN SECTION 24-10-114, C.R.S., OF THE**
5 **COLORADO GOVERNMENTAL IMMUNITY ACT, ARTICLE 10 OF TITLE 24,**
6 **C.R.S.**

7 **SECTION 4. 10-4-403 (2.1) (a), Colorado Revised Statutes, is**
8 **amended to read:**

9 **10-4-403. Standards for rates - competition - procedure -**
10 **requirement for independent actuarial opinions regarding 1991**
11 **legislation. (2.1) (a) (I) In setting rates for medical malpractice**
12 **insurance, rates shall not be excessive or inadequate, as defined in this**
13 **section, nor shall they be unfairly discriminatory. No rate shall be held**
14 **to be excessive unless such rate is unreasonably high for the insurance**
15 **provided and a reasonable degree of competition does not exist in the area**
16 **with respect to the classification to which such rate is applicable.**

17 **(II) No rate shall be held to be inadequate unless such rate is**
18 **unreasonably low for the insurance provided and the continued use of**
19 **such rate endangers the solvency of the insurer using the same, or unless**
20 **such rate is unreasonably low for the insurance provided and the use of**
21 **rate by the insurer using the same has, or if continued will have, the effect**
22 **of destroying competition or creating a monopoly. NO RATE SHALL BE**
23 **HELD TO BE INADEQUATE DUE TO THE PROVISIONS OF SENATE BILL 08-164,**
24 **ENACTED AT THE SECOND REGULAR SESSION OF SIXTY-SIXTH GENERAL**
25 **ASSEMBLY, UNLESS A MEDICAL MALPRACTICE INSURER CAN SHOW THAT,**
26 **SOLELY AS A RESULT OF THE STATUTORY CHANGES CONTAINED IN SENATE**
27 **BILL 08-164, THE INSURER'S SURPLUS FALLS BELOW TWO HUNDRED**

1 PERCENT OF THE AUTHORIZED CONTROL LEVEL AS CALCULATED BY THE
2 NATIONAL ASSOCIATION OF INSURANCE COMMISSIONERS.

3 **SECTION 5. Effective date - applicability.** This act shall take
4 effect February 1, 2009, and shall apply to acts or omissions occurring on
5 or after the effective date of this act.

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