

SENATE JOURNAL
Sixty-fourth General Assembly
STATE OF COLORADO
Second Regular Session

Forty-ninth Legislative Day

Tuesday, February 24, 2004

Prayer By the chaplain, Pastor Joell Suel, Glory to Glory Christian Center.

Pledge By Senator Groff.

Call to Order By the President at 9:00 a.m.

Roll Call Present--32.
Absent/Excused--3; Evans, Hillman, Nichol.
Present later--Evans, Hillman.

Quorum The President announced a quorum present.

Reading of Journal On motion of Senator Tapia, reading of the Journal of February 23, 2004, was dispensed with and the Journal was approved as corrected by the Secretary.

INTRODUCTION OF BILLS--FIRST READING

The following bills were read by title and referred to the committees indicated:

SB04-194 by Senator(s) Jones, Dyer, McElhany, May R., Cairns, Andrews, Arnold, Chlouber, Entz, Evans, Johnson S., Kester, Lamborn, Owen, Taylor, Teck; also Representative(s) Mitchell, Harvey, Brophy, Cadman, Crane, Hefley, King, Lee, May M., Wiens--Concerning the requirement that a public entity treat people equally in the operation of certain public functions, and, in connection therewith, creating the "Colorado Civil Rights Act".
Education

HB04-1054 by Representative(s) Brophy; also Senator(s) Hillman--Concerning the duties of occupants of vehicles involved in accidents resulting in personal harm.
Transportation

HB04-1216 by Representative(s) Rhodes, Hefley; also Senator(s) Dyer--Concerning the repeal of authority to provide pre-birth notice to the parent of a child whose other parent is relinquishing the parent-child legal relationship by means of the expedited relinquishment process.
Judiciary

HB04-1232 by Representative(s) Spradley, Briggs, Decker, Fairbank, Hall, Hoppe, King, McCluskey, Paccione, Rippy, Rose, Tochtrop, White, Wiens, Williams T.; also Senator(s) Kester--Concerning guidelines for when enhanced motor vehicle insurance coverage is offered.
Business Affairs & Labor

THIRD READING--FINAL PASSAGE OF BILLS

On Third Reading, the titles of the following bills were publicly read, the reading at length having been dispensed with by unanimous consent:

SB04-137 by Senator(s) Johnson S.; also Representative(s) Rhodes--Concerning the rights of persons providing care to children in out-of-home placement, and, in connection therewith, requiring the provision of notice to such persons of, and the opportunity to provide information at, a court hearing involving the child; and maintaining the confidentiality of personally identifiable information about a foster parent without the written consent of the foster parent.

The question being "Shall the bill pass?", the roll call was taken with the following result:

YES	33	NO	0	EXCUSED	2	ABSENT	0
Anderson	Y	Groff	Y	Kester	Y	Takis	Y
Arnold	Y	Grossman	Y	Lamborn	Y	Tapia	Y
Cairns	Y	Hagedorn	Y	May	Y	Taylor	Y
Chlouber	Y	Hanna	Y	McElhany	Y	Teck	Y
Dyer	Y	Hillman	Y	Nichol	E	Tupa	Y
Entz	Y	Isgar	Y	Owen	Y	Veiga	Y
Evans	E	Johnson	Y	Phillips	Y	Windels	Y
Fitz-Gerald	Y	Jones	Y	Reeves	Y	Mr. President	Y
Gordon	Y	Keller	Y	Sandoval	Y		

A majority of all members elected to the Senate having voted in the affirmative, the bill was declared **passed**.

Co-sponsors added: Windels.

HB04-1055 by Representative(s) Rhodes, Coleman, Williams T.; also Senator(s) Tupa, Anderson, Takis, Taylor--Concerning the modification of the process used to make matching grants for school district capital construction from the school construction and renovation fund.

The question being "Shall the bill pass?", the roll call was taken with the following result:

YES	33	NO	0	EXCUSED	2	ABSENT	0
Anderson	Y	Groff	Y	Kester	Y	Takis	Y
Arnold	Y	Grossman	Y	Lamborn	Y	Tapia	Y
Cairns	Y	Hagedorn	Y	May	Y	Taylor	Y
Chlouber	Y	Hanna	Y	McElhany	Y	Teck	Y
Dyer	Y	Hillman	Y	Nichol	E	Tupa	Y
Entz	Y	Isgar	Y	Owen	Y	Veiga	Y
Evans	E	Johnson	Y	Phillips	Y	Windels	Y
Fitz-Gerald	Y	Jones	Y	Reeves	Y	Mr. President	Y
Gordon	Y	Keller	Y	Sandoval	Y		

A majority of all members elected to the Senate having voted in the affirmative, the bill was declared **passed**.

HB04-1088 by Representative(s) Salazar; also Senator(s) Entz--Concerning the weight of a motor vehicle that may be issued special military license plates without paying a fee.

The question being "Shall the bill pass?", the roll call was taken with the following result:

YES	33	NO	0	EXCUSED	2	ABSENT	0
Anderson	Y	Groff	Y	Kester	Y	Takis	Y
Arnold	Y	Grossman	Y	Lamborn	Y	Tapia	Y
Cairns	Y	Hagedorn	Y	May	Y	Taylor	Y
Chlouber	Y	Hanna	Y	McElhany	Y	Teck	Y
Dyer	Y	Hillman	Y	Nichol	E	Tupa	Y
Entz	Y	Isgar	Y	Owen	Y	Veiga	Y
Evans	E	Johnson	Y	Phillips	Y	Windels	Y
Fitz-Gerald	Y	Jones	Y	Reeves	Y	Mr. President	Y
Gordon	Y	Keller	Y	Sandoval	Y		

A majority of all members elected to the Senate having voted in the affirmative, the bill was declared **passed**.

Co-sponsors added: Arnold, Chlouber, Isgar, Johnson, Jones, Keller, Kester, Lamborn, May, Sandoval, Tapia, Taylor, and Teck.

HB04-1019 by Representative(s) Borodkin, McFadyen, Stafford; also Senator(s) Takis, Isgar--Concerning an increase in the maximum dollar amount of a contract that a public airport authority may execute without using a competitive bidding process that awards the contract to the lowest responsible bidder.

The question being "Shall the bill pass?", the roll call was taken with the following result:

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YES	33	NO	0	EXCUSED	2	ABSENT	0
Anderson	Y	Groff	Y	Kester	Y	Takis	Y
Arnold	Y	Grossman	Y	Lamborn	Y	Tapia	Y
Cairns	Y	Hagedorn	Y	May	Y	Taylor	Y
Chlouber	Y	Hanna	Y	McElhany	Y	Teck	Y
Dyer	Y	Hillman	Y	Nichol	E	Tupa	Y
Entz	Y	Isgar	Y	Owen	Y	Veiga	Y
Evans	E	Johnson	Y	Phillips	Y	Windels	Y
Fitz-Gerald	Y	Jones	Y	Reeves	Y	Mr. President	Y
Gordon	Y	Keller	Y	Sandoval	Y		

A majority of all members elected to the Senate having voted in the affirmative, the bill was declared **passed**.

Co-sponsors added: Chlouber, Entz, Jones, May, Taylor, and Teck.

HB04-1126 by Representative(s) McCluskey, Coleman, Harvey, Hodge, Hoppe, Larson, Marshall, Paccione, Rhodes, White, Wiens, Williams T.; also Senator(s) Taylor--Concerning the continued regulation of institutions by the division of financial services, and, in connection therewith, extending the division of financial services.

The question being "Shall the bill pass?", the roll call was taken with the following result:

YES	33	NO	0	EXCUSED	2	ABSENT	0
Anderson	Y	Groff	Y	Kester	Y	Takis	Y
Arnold	Y	Grossman	Y	Lamborn	Y	Tapia	Y
Cairns	Y	Hagedorn	Y	May	Y	Taylor	Y
Chlouber	Y	Hanna	Y	McElhany	Y	Teck	Y
Dyer	Y	Hillman	Y	Nichol	E	Tupa	Y
Entz	Y	Isgar	Y	Owen	Y	Veiga	Y
Evans	E	Johnson	Y	Phillips	Y	Windels	Y
Fitz-Gerald	Y	Jones	Y	Reeves	Y	Mr. President	Y
Gordon	Y	Keller	Y	Sandoval	Y		

A majority of all members elected to the Senate having voted in the affirmative, the bill was declared **passed**.

HB04-1154 by Representative(s) Jahn; also Senator(s) McElhany--Concerning the authority of the division of insurance to retain certain professionals for purposes of market conduct examinations.

The question being "Shall the bill pass?", the roll call was taken with the following result:

YES	33	NO	0	EXCUSED	2	ABSENT	0
Anderson	Y	Groff	Y	Kester	Y	Takis	Y
Arnold	Y	Grossman	Y	Lamborn	Y	Tapia	Y
Cairns	Y	Hagedorn	Y	May	Y	Taylor	Y
Chlouber	Y	Hanna	Y	McElhany	Y	Teck	Y
Dyer	Y	Hillman	Y	Nichol	E	Tupa	Y
Entz	Y	Isgar	Y	Owen	Y	Veiga	Y
Evans	E	Johnson	Y	Phillips	Y	Windels	Y
Fitz-Gerald	Y	Jones	Y	Reeves	Y	Mr. President	Y
Gordon	Y	Keller	Y	Sandoval	Y		

A majority of all members elected to the Senate having voted in the affirmative, the bill was declared **passed**.

Co-sponsors added: Jones and Owen.

HB04-1053 by Representative(s) Hall; also Senator(s) Groff--Concerning allowing the loss of a license if a person licensed to sell motor vehicles does not timely notify a consumer regarding the outcome of an attempt to secure financing for the purchase of a motor vehicle.

The question being "Shall the bill pass?", the roll call was taken with the following result:

YES	33	NO	0	EXCUSED	2	ABSENT	0
Anderson	Y	Groff	Y	Kester	Y	Takis	Y
Arnold	Y	Grossman	Y	Lamborn	Y	Tapia	Y
Cairns	Y	Hagedorn	Y	May	Y	Taylor	Y
Chlouber	Y	Hanna	Y	McElhany	Y	Teck	Y
Dyer	Y	Hillman	Y	Nichol	E	Tupa	Y
Entz	Y	Isgar	Y	Owen	Y	Veiga	Y
Evans	E	Johnson	Y	Phillips	Y	Windels	Y
Fitz-Gerald	Y	Jones	Y	Reeves	Y	Mr. President	Y
Gordon	Y	Keller	Y	Sandoval	Y		

A majority of all members elected to the Senate having voted in the affirmative, the bill was declared **passed**.

Co-sponsors added: Fitz-Gerald, Jones, Keller, Kester, Tapia, and Tupa.

HB04-1068 by Representative(s) Marshall; also Senator(s) Veiga--Concerning actions for damages on behalf of an employee for injuries that arise from the negligent conduct of a stranger.

The question being "Shall the bill pass?", the roll call was taken with the following result:

YES	33	NO	0	EXCUSED	2	ABSENT	0
Anderson	Y	Groff	Y	Kester	Y	Takis	Y
Arnold	Y	Grossman	Y	Lamborn	Y	Tapia	Y
Cairns	Y	Hagedorn	Y	May	Y	Taylor	Y
Chlouber	Y	Hanna	Y	McElhany	Y	Teck	Y
Dyer	Y	Hillman	Y	Nichol	E	Tupa	Y
Entz	Y	Isgar	Y	Owen	Y	Veiga	Y
Evans	E	Johnson	Y	Phillips	Y	Windels	Y
Fitz-Gerald	Y	Jones	Y	Reeves	Y	Mr. President	Y
Gordon	Y	Keller	Y	Sandoval	Y		

A majority of all members elected to the Senate having voted in the affirmative, the bill was declared **passed**.

HB04-1195 by Representative(s) Stengel; also Senator(s) Dyer--Concerning criminal history record checks for use in court proceedings.

The question being "Shall the bill pass?", the roll call was taken with the following result:

YES	33	NO	0	EXCUSED	2	ABSENT	0
Anderson	Y	Groff	Y	Kester	Y	Takis	Y
Arnold	Y	Grossman	Y	Lamborn	Y	Tapia	Y
Cairns	Y	Hagedorn	Y	May	Y	Taylor	Y
Chlouber	Y	Hanna	Y	McElhany	Y	Teck	Y
Dyer	Y	Hillman	Y	Nichol	E	Tupa	Y
Entz	Y	Isgar	Y	Owen	Y	Veiga	Y
Evans	E	Johnson	Y	Phillips	Y	Windels	Y
Fitz-Gerald	Y	Jones	Y	Reeves	Y	Mr. President	Y
Gordon	Y	Keller	Y	Sandoval	Y		

A majority of all members elected to the Senate having voted in the affirmative, the bill was declared **passed**.

Co-sponsors added: Arnold and Grossman.

SB04-182 by Senator(s) Dyer; also Representative(s) Stengel--Concerning the release of funds placed into escrow by a tobacco product manufacturer that is not a participating manufacturer under the terms of the tobacco litigation master settlement agreement.

The question being "Shall the bill pass?", the roll call was taken with the following result:

YES	33	NO	0	EXCUSED	2	ABSENT	0
Anderson	Y	Groff	Y	Kester	Y	Takis	Y
Arnold	Y	Grossman	Y	Lamborn	Y	Tapia	Y
Cairns	Y	Hagedorn	Y	May	Y	Taylor	Y
Chlouber	Y	Hanna	Y	McElhany	Y	Teck	Y
Dyer	Y	Hillman	Y	Nichol	E	Tupa	Y
Entz	Y	Isgar	Y	Owen	Y	Veiga	Y
Evans	E	Johnson	Y	Phillips	Y	Windels	Y
Fitz-Gerald	Y	Jones	Y	Reeves	Y	Mr. President	Y
Gordon	Y	Keller	Y	Sandoval	Y		

A majority of all members elected to the Senate having voted in the affirmative, the bill was declared **passed**.

Co-sponsors added: Arnold, Entz, Isgar, Teck, and Tupa.

HB04-1148 by Representative(s) Rippy; also Senator(s) McElhany--Concerning the crime of defacing a cave.

The question being "Shall the bill pass?", the roll call was taken with the following result:

YES	33	NO	0	EXCUSED	2	ABSENT	0
Anderson	Y	Groff	Y	Kester	Y	Takis	Y
Arnold	Y	Grossman	Y	Lamborn	Y	Tapia	Y
Cairns	Y	Hagedorn	Y	May	Y	Taylor	Y
Chlouber	Y	Hanna	Y	McElhany	Y	Teck	Y
Dyer	Y	Hillman	Y	Nichol	E	Tupa	Y
Entz	Y	Isgar	Y	Owen	Y	Veiga	Y
Evans	E	Johnson	Y	Phillips	Y	Windels	Y
Fitz-Gerald	Y	Jones	Y	Reeves	Y	Mr. President	Y
Gordon	Y	Keller	Y	Sandoval	Y		

A majority of all members elected to the Senate having voted in the affirmative, the bill was declared **passed**.

Co-sponsors added: Andrews, Arnold, Chlouber, Entz, Fitz-Gerald, Isgar, Jones, Lamborn, Phillips, Sandoval, Taylor, and Tupa.

SB04-185 by Senator(s) Entz; also Representative(s) Hoppe--Concerning requirements for a permit for a nonexempt ground water well located outside of the boundaries of any designated ground water basin.

The question being "Shall the bill pass?", the roll call was taken with the following result:

YES	33	NO	0	EXCUSED	2	ABSENT	0
Anderson	Y	Groff	Y	Kester	Y	Takis	Y
Arnold	Y	Grossman	Y	Lamborn	Y	Tapia	Y
Cairns	Y	Hagedorn	Y	May	Y	Taylor	Y
Chlouber	Y	Hanna	Y	McElhany	Y	Teck	Y
Dyer	Y	Hillman	Y	Nichol	E	Tupa	Y
Entz	Y	Isgar	Y	Owen	Y	Veiga	Y
Evans	E	Johnson	Y	Phillips	Y	Windels	Y
Fitz-Gerald	Y	Jones	Y	Reeves	Y	Mr. President	Y
Gordon	Y	Keller	Y	Sandoval	Y		

A majority of all members elected to the Senate having voted in the affirmative, the bill was declared **passed**.

Co-sponsors added: Arnold, Groff, Grossman, Tapia, and Taylor.

SB04-118 by Senator(s) Entz, Taylor, Isgar; --Concerning the exclusion of lands within a designated ground water basin from a water conservancy district.

Laid over until Wednesday, February 25, retaining its place on the calendar.

HB04-1002 by Representative(s) Crane; also Senator(s) Lamborn--Concerning conforming amendments to the pledge of allegiance statute to make the statute constitutional as required by the United States court of appeals for the seventh circuit in the 1992 decision entitled Sherman versus Community Consolidated School District 21 of Wheeling Township.

The question being "Shall the bill pass?", the roll call was taken with the following result:

YES	33	NO	0	EXCUSED	2	ABSENT	0
Anderson	Y	Groff	Y	Kester	Y	Takis	Y
Arnold	Y	Grossman	Y	Lamborn	Y	Tapia	Y
Cairns	Y	Hagedorn	Y	May	Y	Taylor	Y
Chlouber	Y	Hanna	Y	McElhany	Y	Teck	Y
Dyer	Y	Hillman	Y	Nichol	E	Tupa	Y
Entz	Y	Isgar	Y	Owen	Y	Veiga	Y
Evans	E	Johnson	Y	Phillips	Y	Windels	Y
Fitz-Gerald	Y	Jones	Y	Reeves	Y	Mr. President	Y
Gordon	Y	Keller	Y	Sandoval	Y		

A majority of all members elected to the Senate having voted in the affirmative, the bill was declared **passed**.

Co-sponsors added: Andrews, Arnold, Cairns, Chlouber, Dyer, Hanna, Hillman, Isgar, Johnson, Jones, Keller, Kester, May, McElhany, Teck, and Windels.

HB04-1013 by Representative(s) Johnson R.; also Senator(s) Johnson S.--Concerning changing the name of the division of prevention and intervention services for children and youth to the prevention services division.

The question being "Shall the bill pass?", the roll call was taken with the following result:

YES	33	NO	0	EXCUSED	2	ABSENT	0
Anderson	Y	Groff	Y	Kester	Y	Takis	Y
Arnold	Y	Grossman	Y	Lamborn	Y	Tapia	Y
Cairns	Y	Hagedorn	Y	May	Y	Taylor	Y
Chlouber	Y	Hanna	Y	McElhany	Y	Teck	Y
Dyer	Y	Hillman	Y	Nichol	E	Tupa	Y
Entz	Y	Isgar	Y	Owen	Y	Veiga	Y
Evans	E	Johnson	Y	Phillips	Y	Windels	Y
Fitz-Gerald	Y	Jones	Y	Reeves	Y	Mr. President	Y
Gordon	Y	Keller	Y	Sandoval	Y		

A majority of all members elected to the Senate having voted in the affirmative, the bill was declared **passed**.

HB04-1092 by Representative(s) Spence; also Senator(s) Arnold--Concerning teachers serving in administrative capacities.

The question being "Shall the bill pass?", the roll call was taken with the following result:

YES	33	NO	0	EXCUSED	2	ABSENT	0
Anderson	Y	Groff	Y	Kester	Y	Takis	Y
Arnold	Y	Grossman	Y	Lamborn	Y	Tapia	Y
Cairns	Y	Hagedorn	Y	May	Y	Taylor	Y
Chlouber	Y	Hanna	Y	McElhany	Y	Teck	Y
Dyer	Y	Hillman	Y	Nichol	E	Tupa	Y
Entz	Y	Isgar	Y	Owen	Y	Veiga	Y
Evans	E	Johnson	Y	Phillips	Y	Windels	Y
Fitz-Gerald	Y	Jones	Y	Reeves	Y	Mr. President	Y
Gordon	Y	Keller	Y	Sandoval	Y		

A majority of all members elected to the Senate having voted in the affirmative, the bill was declared **passed**.

Co-sponsors added: Groff.

HB04-1124 by Representative(s) Spence, Coleman, Crane, Hefley, King, Rose, White, Wiens, Williams S.; also Senator(s) Arnold, Evans--Concerning changes to the state school accountability report to add information on adequate yearly progress.

The question being "Shall the bill pass?", the roll call was taken with the following result:

YES	33	NO	0	EXCUSED	2	ABSENT	0
Anderson	Y	Groff	Y	Kester	Y	Takis	Y
Arnold	Y	Grossman	Y	Lamborn	Y	Tapia	Y
Cairns	Y	Hagedorn	Y	May	Y	Taylor	Y
Chlouber	Y	Hanna	Y	McElhany	Y	Teck	Y
Dyer	Y	Hillman	Y	Nichol	E	Tupa	Y
Entz	Y	Isgar	Y	Owen	Y	Veiga	Y
Evans	E	Johnson	Y	Phillips	Y	Windels	Y
Fitz-Gerald	Y	Jones	Y	Reeves	Y	Mr. President	Y
Gordon	Y	Keller	Y	Sandoval	Y		

A majority of all members elected to the Senate having voted in the affirmative, the bill was declared **passed**.

HB04-1035 by Representative(s) Hoppe, Miller, Rippey, Salazar, White; also Senator(s) Entz, Dyer, Isgar, Tapia, Taylor--Concerning a prohibition on proxy voting by members of the Colorado water conservation board.

The question being "Shall the bill pass?", the roll call was taken with the following result:

YES	33	NO	0	EXCUSED	2	ABSENT	0
Anderson	Y	Groff	Y	Kester	Y	Takis	Y
Arnold	Y	Grossman	Y	Lamborn	Y	Tapia	Y
Cairns	Y	Hagedorn	Y	May	Y	Taylor	Y
Chlouber	Y	Hanna	Y	McElhany	Y	Teck	Y
Dyer	Y	Hillman	Y	Nichol	E	Tupa	Y
Entz	Y	Isgar	Y	Owen	Y	Veiga	Y
Evans	E	Johnson	Y	Phillips	Y	Windels	Y
Fitz-Gerald	Y	Jones	Y	Reeves	Y	Mr. President	Y
Gordon	Y	Keller	Y	Sandoval	Y		

A majority of all members elected to the Senate having voted in the affirmative, the bill was declared **passed**.

Co-sponsors added: Arnold, Fitz-Gerald, Hanna, May, and Phillips.

Committee of the Whole

On motion of Senator Entz, the Senate resolved itself into the Committee of the Whole for consideration of General Orders--Second Reading of Bills and Senator Entz was called to the Chair to act as Chairman.

GENERAL ORDERS--SECOND READING OF BILLS

The Committee of the Whole having risen, the Chairman reported that the following bills, reading at length having been dispensed with by unanimous consent, had been considered and action taken thereon as follows:

SB04-132 by Senator(s) Arnold; also Representative(s) Young, Hoppe, Weddig, Williams S., Williams T.--Concerning the modification of existing benefit plans for members of the public employees' retirement association.

Laid over until Tuesday, March 2, retaining its place on the calendar.

SB04-115 by Senator(s) Dyer; also Representative(s) Mitchell--Concerning a limitation on the recovery of noneconomic damages in breach of contract claims.

Amendment No. 1(L.004), by Senator Dyer.

Amend printed bill, page 2, strike lines 8 through 10.

Re-letter succeeding paragraphs accordingly.

Page 2, line 23, strike "describes the" and substitute "correctly describes the noneconomic";

strikes lines 26 and 27 and substitute the following:

"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."

Page 3, strike lines 4 through 9 and substitute the following:

"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."

As amended, ordered engrossed and placed on the calendar for Third Reading and Final Passage.

(For further action, see Amendments to the Report of the Committee of the Whole.)

SB04-001 by Senator(s) Cairns, Hillman, Andrews, Lamborn; also Representative(s) Spradley, Schultheis, Crane, Harvey, Lundberg, May M., Mitchell, Welker, Williams T.--Concerning the exemption of business personal property from property taxation.

Laid over until Tuesday, March 2, retaining its place on the calendar.

SB04-164 by Senator(s) Owen; also Representative(s) Berry--Concerning the retention of state revenues in excess of the constitutional limitation on state fiscal year spending for the purposes of funding state infrastructure needs, and, in connection therewith, requiring excess state revenues retained to be used first to fund state and local transportation needs and next to fund other state capital construction needs.

Laid over until Tuesday, March 2, retaining its place on the calendar.

SB04-151 by Senator(s) Evans, Hillman, Kester, Arnold, Cairns, Johnson S., Jones, Lamborn, May R.; also Representative(s) Lee, Clapp, Decker, Hefley, King, May M., Spence, Stengel--Concerning judicial evaluations by commissions on judicial performance.

Laid over until Tuesday, March 2, retaining its place on the calendar.

HB04-1087 by Representative(s) Rhodes; also Senator(s) Johnson S.--Concerning the establishment of the highest degree of care in the defense of a negligence claim under the high voltage power line statutes by proof of compliance with an applicable standard of the national electrical code.

Ordered revised and placed on the calendar for Third Reading and Final Passage.

SB04-180 by Senator(s) Hillman, Anderson, Andrews, Arnold, Chlouber, Dyer, Kester; also Representative(s) Cadman, Hefley, Miller, White, Wiens--Concerning a motion to dismiss for forum non conveniens.

Amendment No. 1(L.001), by Senator Hillman.

Amend printed bill, page 4, line 6, after "FINDS", insert "THAT THE

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FACTOR SPECIFIED IN PARAGRAPH (a) OF SUBSECTION (1) OF THIS SECTION IS PRESENT AND";

line 16, after "(4)", insert "(a)";

after line 17, insert the following:

"(b) IF THE STATUTE OF LIMITATIONS IN THE ALTERNATIVE FORUM EXPIRES WHILE THE CLAIM IS PENDING IN A COURT IN COLORADO, THE COURT SHALL GRANT A DISMISSAL UNDER THIS SECTION ONLY IF EACH DEFENDANT WAIVES ALL DEFENSES THAT THE STATUTE OF LIMITATION IN THE ALTERNATIVE FORUM HAS EXPIRED."

As amended, ordered engrossed and placed on the calendar for Third Reading and Final Passage.

SB04-166

by Senator(s) Lamborn; also Representative(s) Stengel--Concerning a one-time adjustment for inflation to the one-million-dollar damages limitation contained in the statute governing medical negligence recovery in accordance with the consumer price index of the United States bureau of labor statistics.

Amendment No. 1, Business Affairs and Labor Committee Amendment.
(Printed in Senate Journal, February 6, page 194 and placed in members' bill files.)

Amendment No. 2(L.008), by Senator Hillman.

Amend printed bill, strike everything below the enacting clause and substitute the following:

"SECTION 1. Legislative declaration. The general assembly hereby finds, determines, and declares that the provisions of this act affect the operation of section 13-64-302 (1) (a) (I), (1) (a) (II) (A), and (1) (b), Colorado Revised Statutes. It is not the intent of the general assembly that the provisions of this act affect either the effective date or operation of section 13-64-302 (1) (c), Colorado Revised Statutes.

SECTION 2. 13-64-302 (1) (a) (I), (1) (a) (II) (A), and (1) (b), Colorado Revised Statutes, are 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. "DERIVATIVE NONECONOMIC LOSS OR INJURY" DOES NOT INCLUDE PUNITIVE OR EXEMPLARY DAMAGES.

(II) (A) "DIRECT 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. "DIRECT noneconomic loss or injury" does not include punitive or exemplary damages.

(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 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 DIRECT OR DERIVATIVE noneconomic loss or injury; ~~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,~~

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~~or both, when added to the present value of other past damages and the present value of other future damages,~~ PAST AND FUTURE ECONOMIC DAMAGES would exceed such limitation and that the application of such limitation would be unfair, the court may award IN EXCESS OF THE LIMITATION the present value of additional PAST AND future ECONOMIC 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.

SECTION 3. Effective date - applicability. This act shall take effect January 1, 2005, and shall apply to acts or omissions occurring 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."

As amended, ordered engrossed and placed on the calendar for Third Reading and Final Passage.

HB04-1212 by Representative(s) Mitchell, Berry, Borodkin, Boyd, Briggs, Carroll, Cerbo, Cloer, Coleman, Crane, Decker, Frangas, Hodge, Jahn, Johnson R., Judd, Larson, Madden, Marshall, May M., McGihon, Ragsdale, Rippey, Romanoff, Sinclair, Smith, Spence, Stafford, Vigil, Weddig, White, Wiens, Williams S., Williams T.; also Senator(s) Anderson, Arnold, Entz, Fitz-Gerald, Gordon, Groff, Grossman, Hagedorn, Isgar, Johnson S., Jones, Keller, Kester, Phillips, Reeves, Sandoval, Takis, Taylor, Windels--Concerning the scientific and cultural facilities district, and, in connection therewith, amending the ballot question concerning the extension of the district that will be submitted to the voters and modifying statutory provisions concerning the administration of the district.

Ordered revised and placed on the calendar for Third Reading and Final Passage.

HB04-1076 by Representative(s) Madden, Brophy, Hodge, Rose; also Senator(s) Arnold--Concerning a prohibition on driving motor vehicles in the passing lane except when appropriate.

Ordered revised and placed on the calendar for Third Reading and Final Passage.

HB04-1197 by Representative(s) Weddig, Borodkin, Briggs, Cerbo, Crane, Garcia, Hodge, Lee, Madden, McGihon, Merrifield, Paccione, Pommer, Ragsdale, Sinclair, Spence, Vigil, Williams S.; also Senator(s) Evans, Takis--Concerning the use of devices on motor vehicles that interfere with the orderly regulation of traffic.

Amendment No. 1, Transportation Committee Amendment.

(Printed in Senate Journal, February 20, page 329 and placed in members' bill files.)

As amended, ordered revised and placed on the calendar for Third Reading and Final Passage.

HB04-1182 by Representative(s) Cloer, Boyd, Clapp, Coleman, Frangas, Jahn, Stafford, Tochtrop, White, Wiens; also Senator(s) Hillman, Sandoval--Concerning standards for the cleanup of illegal drug laboratories.

Laid over until Friday, February 27, retaining its place on the calendar.

HB04-1129 by Representative(s) Stafford; also Senator(s) Entz--Concerning property taken by a county for delinquent taxes.

Laid over until Wednesday, February 25, retaining its place on the calendar.

HB04-1029 by Representative(s) Boyd, Cloer, Coleman, Frangas, Johnson R., Stafford, Tochtrop; also Senator(s) Hagedorn, Hanna, Kester, Sandoval--Concerning authorization for counties to increase participation in vocational education by Colorado works participants.

Ordered revised and placed on the calendar for Third Reading and Final Passage.

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HB04-1027 by Representative(s) Vigil, Coleman, Rhodes, Williams T.; also Senator(s) Takis, Anderson, Taylor, Tupa--Concerning the role of the comprehensive primary and preventive care grant program's advisory council.

Ordered revised and placed on the calendar for Third Reading and Final Passage.

On motion of Senator Hillman, and with a majority of those elected to the Senate having voted in the affirmative, the balance of the General Orders -- Second Reading of Bills Calendar (HB04-1047, SB04-070) of February 24, was laid over until Wednesday, February 25, retaining its place on the calendar.

AMENDMENTS TO THE REPORT OF THE COMMITTEE OF THE WHOLE

SB04-115 by Senator(s) Dyer; also Representative(s) Mitchell--Concerning a limitation on the recovery of noneconomic damages in breach of contract claims.

Senator Phillips requested a roll call vote on **SB04-115**.

Senator Hillman moved a Call of the Senate.

Senator Hillman moved the Call of the Senate be raised.

SB04-115 was declared **passed** on the following roll call vote:

ROLL CALL VOTE ON SB04-115

YES	18	NO	16	EXCUSED	1	ABSENT	0
Anderson	Y	Groff	N	Kester	Y	Takis	N
Arnold	Y	Grossman	N	Lamborn	Y	Tapia	N
Cairns	Y	Hagedorn	N	May	Y	Taylor	Y
Chlouber	Y	Hanna	N	McElhany	Y	Teck	Y
Dyer	Y	Hillman	Y	Nichol	E	Tupa	N
Entz	Y	Isgar	N	Owen	Y	Veiga	N
Evans	Y	Johnson	Y	Phillips	N	Windels	N
Fitz-Gerald	N	Jones	Y	Reeves	N	Mr. President	Y
Gordon	N	Keller	N	Sandoval	N		

ADOPTION OF THE REPORT OF THE COMMITTEE OF THE WHOLE

On motion of Senator Entz, the Report of the Committee of the Whole was adopted and, a majority of all members elected to the Senate having voted in the affirmative, the following action was taken:

Passed on Second Reading: SB04-115 as amended, HB04-1087, SB04-180 as amended, SB04-166 as amended, HB04-1212, HB04-1076, HB04-1197 as amended, HB04-1029, HB04-1027.

Laid over until Wednesday, February 25: HB04-1129, HB04-1047, SB04-070.

Laid over until Friday, February 27: HB04-1182.

Laid over until Tuesday, March 2: SB04-132, SB04-001, SB04-164, SB04-151.

MESSAGE FROM THE HOUSE

February 24, 2004
Mr. President:

The House has passed on Third Reading and transmitted to the Revisor of Statutes HB04-1361.

The House has passed on Third Reading and transmitted to the Revisor of Statutes HB04-1173, amended as printed in House Journal, February 23, page 595.
HB04-1341, amended as printed in House Journal, February 23, page 600.
HB04-1274, amended as printed in House Journal, February 23, page 595.
HB04-1264, amended as printed in House Journal, February 23, pages 595-596.
HB04-1350, amended as printed in House Journal, February 23, page 596.

HB04-1298, amended as printed in House Journal, February 23, page 601.
 HB04-1307, amended as printed in House Journal, February 23, page 601.
 HB04-1343, amended as printed in House Journal, February 23, page 601.
 HB04-1354, amended as printed in House Journal, February 23, page 602.

MESSAGE FROM THE REVISOR OF STATUTES

February 24, 2004

We herewith transmit:

Without comment, HB04-1361.

Without comment, as amended, HB04-1173, 1341, 1274, 1264, 1350, 1298, 1307, 1343, 1354.

SIGNING OF BILLS--RESOLUTIONS--MEMORIALS

The President has signed: HB04-1111; HJR04-1014, 1016.

SENATE SERVICES REPORT

Correctly Printed: SB04-190, 191, 192 and 193.

Correctly Engrossed: SB04-118, 137, 182, and 185,

Correctly Reengrossed: SB04-125, 174, and 179.

Correctly Revised: HB04-1002, 1013, 1019, 1035, 1053, 1154, 1055, 1068, 1088, 1092, 1124, 1126, 1127, 1148, and 1195.

Correctly Enrolled: SB04-018 and 106.

CHANGE IN COMMITTEE OF REFERENCE

The President announced that the Committee of Reference for **HB04-1095** be changed from the Committee on State, Veterans and Military Affairs to the Committee on Judiciary.

Senate in recess.

Senate reconvened.

INTRODUCTION OF RESOLUTIONS

The following resolutions were read by title:

SJR04-020 by Senator(s) Windels; also Representative(s) Briggs--Concerning the designation of March 6, 2004, as Colorado Humane Society Day.
Laid over one day under Senate Rule 30(b).

SJR04-021 by Senator(s) Chlouber; also Representative(s) Miller--Concerning the celebration of the 125th birthday of St. Vincent Hospital in Leadville, Colorado.
Laid over one day under Senate Rule 30(b).

INTRODUCTION OF BILLS--FIRST READING

The following bills were read by title and referred to the committees indicated:

HB04-1173 by Representative(s) Garcia; also Senator(s) Johnson S.--Concerning the regulation of the use of mobile communication devices by permitted drivers in motor vehicles.
Transportation

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- HB04-1222** by Representative(s) Young, Plant, Witwer; also Senator(s) Owen, Reeves, Teck--
Concerning the elimination of the designated cash flow reserve within the controlled
maintenance trust fund, and, in connection therewith, transferring the balance of the reserve
to the state general fund.
Finance
- HB04-1264** by Representative(s) Young, Plant, Witwer; also Senator(s) Teck, Owen, Reeves--
Concerning billing cycles for payments to providers under the "Colorado Medical
Assistance Act".
Health, Environment, Welfare & Institutions
- HB04-1274** by Representative(s) Marshall; also Senator(s) Veiga--Concerning identity theft.
Judiciary
- HB04-1307** by Representative(s) Cloer, Marshall; also Senator(s) Lamborn--Concerning the
determination of premium rates for compulsory legal liability coverage for a motor vehicle.
Business Affairs & Labor
- HB04-1341** by Representative(s) Rose, Hefley; also Senator(s) Windels--Concerning prisoner
processing fees collected by a county.
Judiciary
- HB04-1343** by Representative(s) Jahn; also Senator(s) Johnson S.--Concerning the preclusion of the
issuance of a court order nunc pro tunc when the order contains determinations that
establish a child's eligibility under Title IV-E of the federal "Social Security Act".
Health, Environment, Welfare & Institutions
- HB04-1350** by Representative(s) Berry; also Senator(s) Anderson--Concerning state programs to assist
higher education students in paying tuition.
Education
- HB04-1361** by Representative(s) Frangas, Jahn; also Senator(s) Owen--Concerning area vocational
schools.
Education

TRIBUTES

Honoring Brian J. Feldhaus-McKee -- by Senator Ken Arnold.

On motion of Senator Hillman, and with a majority of those elected to the Senate having
voted in the affirmative, the balance of the calendar of February 24, 2004, was laid over
until Wednesday, February 25, 2004, retaining its place on the calendar.

Consideration of Resolutions: SJR04-011, SJR04-013, SJR04-014, SJR04-015,
SJR04-017, SJR04-019.

Consideration of Memorial: SJM04-001.

Consideration of Governor's Appointments:

Colorado Health Facilities Authority;
Members of the Colorado Commission on the Aging;
Member of the State Board of Nursing.

On motion of Senator Hillman, the Senate adjourned until 9:00 a.m., Wednesday,
February 25, 2004.

Approved:

John Andrews
President of the Senate

Attest:

Mona Heustis
Secretary of the Senate

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