

PRESUMPTIVE PERSONAL REPRESENTATIVE

2008 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Gregory S. Bell

House Sponsor: Stephen H. Urquhart

LONG TITLE

General Description:

This bill defines presumptive personal representative.

Highlighted Provisions:

This bill:

► provides that presumptive personal representatives may present and resolve claims for wrongful death, liability, and uninsured motorist claims.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

ENACTS:

78B-3-106.5, Utah Code Annotated 1953

Be it enacted by the Legislature of the state of Utah:

Section 1. Section **78B-3-106.5** is enacted to read:

78B-3-106.5. Claims brought by presumptive personal representative.

(1) "Presumptive personal representative" means:

(a) the spouse of the decedent not alleged to have contributed to the death of the decedent;

(b) if no spouse exists, the spouse of the decedent is incapacitated, or if the spouse of the decedent is alleged to have contributed to the death of the decedent, then an adult child of

30 the decedent not alleged to have contributed to the death of the decedent; or

31 (c) if the spouse and all children of the decedent are incapacitated, or are alleged to
32 have contributed to the death of the decedent, then a parent of the decedent.

33 (2) Forty-five days after the death of a person, including a minor, caused by the
34 wrongful act or neglect of another, the presumptive personal representative may present and
35 resolve a claim for policy limits up to \$25,000 for liability and uninsured motorist claims, and
36 \$10,000 for underinsured motorist claims, arising out of that death to an insurer and may
37 execute a release of liability upon presentation of an affidavit, properly notarized, stating that:

38 (a) the person presenting the affidavit is the presumptive personal representative;

39 (b) 45 days have elapsed since the death of the decedent;

40 (c) no application or petition for the appointment of a personal representative is pending
41 or has been granted in any jurisdiction; and

42 (d) notice of intent to resolve the claim has been sent to the last-known addresses of all
43 heirs as defined by Section 78B-3-102 or 78B-3-105.

44 (3) The presumptive personal representative's claim shall be on behalf of all heirs of the
45 decedent as defined by Section 78B-3-102 or 78B-3-105. The personal representative shall
46 have the same duties toward other heirs as those duties provided in Sections 75-3-701 through
47 75-3-720.

48 (4) Any insurer and its insured paying a claim arising out of the wrongful death of a
49 person, including a minor, including but not limited to claims for uninsured or underinsured
50 motorist coverage as provided in Section 31A-22-305, to a presumptive personal representative
51 upon presentation of an affidavit as described in Subsection (2) are discharged and released to
52 the same extent as if the insurer and its insured dealt with a personal representative of the
53 decedent. The insurer and its insured are not required to inquire into the truth of any statement
54 in the affidavit.

55 (5) Nothing in this section affects or prevents, to the limits of insurance protection only,
56 any claim for first party benefits or a proceeding to establish the liability of a tortfeasor insured
57 under any policy of insurance in addition to the policy under which the claim was presented and

58 paid under Subsection (2).

59 (6) If any heirs are minors, the presumptive personal representative may not distribute
60 more than 50% of the proceeds of the settlement until the distribution has been approved by a
61 court approved settlement in which a conservator is appointed for any minor heirs.

62 (7) (a) During the 2008 interim, the Judiciary Interim Committee shall study the results
63 of implementing the use of presumptive personal representatives in wrongful death claims as
64 provided in this section.

65 (b) The Judiciary Interim Committee shall:

66 (i) study the impact of claims brought by presumptive personal representatives
67 authorized under this section; and

68 (ii) consider any other issues regarding presumptive personal representatives.