

Effective 5/12/2015

78B-3-107 Survival of action for injury or death to person, upon death of wrongdoer or injured person -- Exception and restriction to out-of-pocket expenses.

- (1)
 - (a) A cause of action arising out of personal injury to a person, or death caused by the wrongful act or negligence of a wrongdoer, does not abate upon the death of the wrongdoer or the injured person. The injured person, or the personal representatives or heirs of the person who died, has a cause of action against the wrongdoer or the personal representatives of the wrongdoer for special and general damages, subject to Subsection (1)(b).
 - (b) If, prior to judgment or settlement, the injured person dies as a result of a cause other than the injury received as a result of the wrongful act or negligence of the wrongdoer, the personal representatives or heirs of the person have a cause of action against the wrongdoer or personal representatives of the wrongdoer for special and general damages which resulted from the injury caused by the wrongdoer and which occurred prior to death of the injured party from the unrelated cause.
 - (c) If the death of the injured party from an unrelated cause occurs more than six months after the incident giving rise to the claim for damages, the claim shall be limited to special damages unless, prior to the injured party's death:
 - (i) written notice of intent to hold the wrongdoer responsible has been mailed to or served upon the wrongdoer or the wrongdoer's insurance carrier or the uninsured motorist carrier of the injured party, and proof of mailing or service can be produced upon request; or
 - (ii) a claim for damages against the wrongdoer or against the uninsured motorist carrier of the injured party is the subject of ongoing negotiations between the parties or persons representing the parties or their insurers.
 - (d) A subsequent claim against an underinsured motorist carrier for which the injured party was a covered person is not subject to the notice requirement described in Subsection (1)(c).
 - (e) In no event shall an award of general damages available under the circumstances described in Subsection (1)(b) or (1)(c) against any wrongdoer or any insurer exceed \$100,000 regardless of available liability, uninsured or underinsured motor vehicle coverage.
- (2) Under Subsection (1) neither the injured person nor the personal representatives or heirs of the person who dies may recover judgment except upon competent satisfactory evidence other than the testimony of the injured person.
- (3) This section may not be construed to be retroactive.

Amended by Chapter 382, 2015 General Session