

**Representative Kay L. McIff** proposes the following substitute bill:

**SURVIVAL ACTION UPON INJURY OR  
DEATH**

2009 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Kay L. McIff**

Senate Sponsor: Michael G. Waddoups

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**LONG TITLE**

**General Description:**

This bill allows the heirs of a person injured by a wrongful act to receive from the wrongdoer, as part of a settlement or judgment, specific types of damages.

**Highlighted Provisions:**

This bill:

- ▶ allows heirs of a person injured by a wrongdoer to receive damages; and
- ▶ sets parameters for claims when a person dies from a cause unrelated to the wrongdoer.

**Monies Appropriated in this Bill:**

None

**Other Special Clauses:**

None

**Utah Code Sections Affected:**

AMENDS:

**78B-3-107**, as renumbered and amended by Laws of Utah 2008, Chapter 3

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



26 Section 1. Section **78B-3-107** is amended to read:

27 **78B-3-107. Survival of action for injury to person or death upon death of**  
 28 **wrongdoer or injured person -- Exception and restriction to out-of-pocket expenses.**

29 (1) (a) A cause of action arising out of personal injury to a person, or death caused by  
 30 the wrongful act or negligence of another, does not abate upon the death of the wrongdoer or  
 31 the injured person. The injured person, or the personal representatives or heirs of the person  
 32 who died, has a cause of action against the wrongdoer or the personal representatives of the  
 33 wrongdoer for special and general damages, subject to Subsection (1)(b).

34 (b) If, prior to judgment or settlement, the injured person dies as a result of a cause  
 35 other than the injury received as a result of the wrongful act or negligence of the wrongdoer,  
 36 the personal representatives or heirs of the person have a cause of action against the wrongdoer  
 37 or personal representatives of the wrongdoer ~~[only]~~ for special ~~Ĥ→~~ **damages, ←Ĥ** and  
 37a general damages ~~Ĥ→~~ **not to exceed \$100,000, ←Ĥ** [occurring  
 38 ~~prior to death~~] which resulted from the injury caused by the wrongdoer~~[-including income~~  
 39 ~~loss]~~ and which occurred prior to death of the injured party from the unrelated cause.

40 [~~(c) "Special damages" does not include pain and suffering, loss of enjoyment of life,~~  
 41 ~~and other not readily quantifiable damages frequently referred to as general damages.~~]

42 (c) If the death of the injured party from an unrelated cause occurs more than six  
 43 months after the incident giving rise to the claim for damages, the claim shall be limited to  
 44 special damages unless, prior to the expiration of the six months, written notice of intent to  
 45 hold the wrongdoer responsible has been given or is the subject of ongoing negotiations  
 46 between the parties or persons representing the parties or their insurers.

47 (2) Under Subsection (1) neither the injured person nor the personal representatives or  
 48 heirs of the person who dies may recover judgment except upon competent satisfactory  
 49 evidence other than the testimony of the injured person.

50 (3) This section may not be construed to be retroactive.

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**H.B. 294 1st Sub. (Buff) - Survival Action upon Injury or Death**

**Fiscal Note**

2009 General Session

State of Utah

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**State Impact**

Enactment of this bill will not require additional appropriations.

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**Individual, Business and/or Local Impact**

Enactment of this bill likely will not result in direct, measurable costs and/or benefits for businesses, or local governments. The bill allows instances in which heirs of individuals injured by wrongdoers may benefit.

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