

Part 1
Actions - Right to Sue and Be Sued

78B-3-101 Husband and wife -- Actions -- Defense -- Absent spouse.

- (1) If a husband and wife are sued jointly, either or both may defend in each one's own right or for both parties.
- (2) Either party to a marriage may sue and be sued in the same manner as if the person is unmarried.
- (3) When a spouse has deserted the family, the remaining spouse may prosecute or defend in the absent spouse's name any action which the absent spouse might have prosecuted or defended. All powers and rights the absent spouse might have shall be extended to the remaining spouse.

Enacted by Chapter 3, 2008 General Session

78B-3-102 Injury of a child -- Suit by parent or guardian.

- (1) Except as provided in Title 34A, Chapter 2, Workers' Compensation Act, a parent or guardian may bring an action for the injury of a minor child when the injury is caused by the wrongful act or neglect of another.
- (2) A civil action may be maintained against the person causing the injury or, if the person is employed by another person who is responsible for that person's conduct, also against the employer.
- (3) If a parent, stepparent, adoptive parent, or legal guardian is the alleged defendant in an action for the injury of a child, a guardian ad litem may be appointed for the injured child according to the procedures outlined in Sections 78A-2-703 and 78A-2-705.

Amended by Chapter 267, 2014 General Session

78B-3-103 Successive actions on same contract.

Successive actions may be maintained upon the same contract or transaction if, after a former action, a new cause of action arises from it.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-3-104 Actions against officers -- Bond required -- Costs and attorney fees.

- (1) A person may not file an action against a law enforcement officer acting within the scope of the officer's official duties unless the person has posted a bond in an amount determined by the court.
- (2) The bond shall cover all estimated costs and attorney fees the officer may be expected to incur in defending the action, in the event the officer prevails.
- (3) The prevailing party shall recover from the losing party all costs and attorney fees allowed by the court.
- (4) In the event the plaintiff prevails, the official bond of the officer shall be liable for the plaintiff's costs and attorney fees.

Enacted by Chapter 3, 2008 General Session

78B-3-105 Definition of heir.

As used in Sections 78B-3-106 and 78B-3-107, "heirs" means:

- (1) the following surviving persons:
 - (a) the decedent's spouse;
 - (b) the decedent's children as provided in Section 75-2-114;
 - (c) the decedent's natural parents, or if the decedent was adopted, then his adoptive parents;
 - (d) the decedent's stepchildren who:
 - (i) are in their minority at the time of decedent's death; and
 - (ii) are primarily financially dependent on the decedent.
- (2) "Heirs" means any blood relative as provided by the law of intestate succession if the decedent is not survived by a person under Subsections (1)(a), (b), or (c).

Renumbered and Amended by Chapter 3, 2008 General Session

78B-3-106 Death of a person -- Suit by heir or personal representative.

- (1) Except as provided in Title 34A, Chapter 2, Workers' Compensation Act, when the death of a person is caused by the wrongful act or neglect of another, his heirs, or his personal representatives for the benefit of his heirs, may maintain an action for damages against the person causing the death, or, if the person is employed by another person who is responsible for his conduct, then against the other person.
- (2) If the adult person has a guardian at the time of his death, only one action may be maintained for the person's injury or death.
- (3) The action may be brought by either the personal representatives of the adult deceased person, for the benefit of the person's heirs, or by the guardian for the benefit of the heirs, as defined in Section 78B-3-105.
- (4) In every action under this section and Section 78B-3-105 damages may be given as under all the circumstances of the case may be just.

Amended by Chapter 79, 2009 General Session

Amended by Chapter 146, 2009 General Session

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 the decedent not alleged to have contributed to the death of the decedent; or
 - (c) if the spouse and all children of the decedent are incapacitated, or are alleged to have contributed to the death of the decedent, then a parent of the decedent.
- (2)
 - (a) Forty-five days after the death of a person, including a minor, caused by the wrongful act or neglect of another, the presumptive personal representative may present to an insurer and resolve with the insurer a claim for policy limits up to \$25,000 for liability and uninsured motorist claims, \$10,000 for underinsured motorist claims, and execute any applicable release of liability upon presentation of an affidavit, properly notarized, stating that:
 - (i) the person presenting the affidavit is the presumptive personal representative;
 - (ii) 45 days have elapsed since the death of the decedent;

- (iii) no application or petition for the appointment of a personal representative is pending or has been granted in any jurisdiction; and
- (iv) notice of intent to resolve the claim has been sent to the last-known addresses of all heirs as defined by Section 78B-3-102 or 78B-3-105.
- (b) Claims for personal injury protection benefits resulting from the death of an insured are exempt from the 45-day waiting requirement, but shall include all information required in Subsections (2)(a)(i), (iii), and (iv).
- (3) The presumptive personal representative's claim shall be on behalf of all heirs of the decedent as defined by Section 78B-3-102 or 78B-3-105. The personal representative shall have the same duties toward other heirs as those duties provided in Sections 75-3-701 through 75-3-720.
- (4) Any insurer and its insured paying a claim arising out of the wrongful death of a person, including a minor, including but not limited to claims for uninsured or underinsured motorist coverage as provided in Section 31A-22-305, to a presumptive personal representative upon presentation of an affidavit as described in Subsection (2) are discharged and released to the same extent as if the insurer and its insured dealt with a personal representative of the decedent. The insurer and its insured are not required to inquire into the truth of any statement in the affidavit.
- (5) Nothing in this section affects or prevents, to the limits of insurance protection only, any claim for first party benefits or a proceeding to establish the liability of a tortfeasor insured under any policy of insurance in addition to the policy under which the claim was presented and paid under Subsection (2).
- (6) If any heirs are minors, the presumptive personal representative may not distribute more than 50% of the proceeds of the settlement until the distribution has been approved by a court approved settlement in which a conservator is appointed for any minor heirs.

Amended by Chapter 50, 2011 General Session

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

78B-3-108 Shoplifting -- Merchant's rights -- Civil liability for shoplifting by adult or minor -- Criminal conviction not a prerequisite for civil liability -- Written notice required for penalty demand.

- (1) As used in this section:
- (a) "Merchandise" has the same meaning as provided in Section 76-6-601.
 - (b) "Merchant" has the same meaning as provided in Section 76-6-601.
 - (c) "Minor" has the same meaning as provided in Section 76-6-601.
 - (d) "Premises" has the same meaning as "retail mercantile establishment" found in Section 76-6-601.
- (2) A merchant may request an individual on the merchant's premises to place or keep in full view any merchandise the individual may have removed, or which the merchant has reason to believe the individual may have removed, from its place of display or elsewhere, whether for examination, purchase, or for any other reasonable purpose. The merchant may not be criminally or civilly liable for having made the request.
- (3) A merchant who has reason to believe that an individual has committed any of the offenses listed in Subsection 76-6-412(1)(b)(ii)(A), (B), or (C) and that the merchant can recover the merchandise by taking the individual into custody and detaining the individual may, for the purpose of attempting to recover the merchandise or for the purpose of informing a peace officer of the circumstances of the detention, take the individual into custody and detain the individual in a reasonable manner and for a reasonable length of time. Neither the merchant nor the merchant's employee may be criminally or civilly liable for false arrest, false imprisonment, slander, or unlawful detention or for any other type of claim or action unless the custody and detention are unreasonable under all the circumstances.
- (4)
- (a) A merchant may prohibit an individual who has committed any of the offenses listed in Subsection 76-6-412(1)(b)(ii) from reentering the premises on which the individual has committed the offense.
 - (b) The merchant shall give written notice of this prohibition to the individual under Subsection (4)
 - (a). The notice may be served by:
 - (i) delivering a copy to the individual personally;
 - (ii) sending a copy through registered or certified mail addressed to the individual at the individual's residence or usual place of business;

- (iii) leaving a copy with an individual of suitable age and discretion at either location under Subsection (4)(b)(ii) and mailing a copy to the individual at the individual's residence or place of business if the individual is absent from the residence or usual place of business; or
 - (iv) affixing a copy in a conspicuous place at the individual's residence or place of business.
 - (c) The individual serving the notice may authenticate service with the individual's signature, the method of service, and legibly documenting the date and time of service.
- (5) An adult who commits any of the offenses listed in Subsection 76-6-412(1)(b)(ii)(A), (B), or (C) is also liable in a civil action for:
- (a) actual damages;
 - (b) a penalty to the merchant in the amount of the retail price of the merchandise not to exceed \$1,000; and
 - (c) an additional penalty as determined by the court of not less than \$100 nor more than \$500, plus court costs and reasonable attorney fees.
- (6) A minor who commits any of the offenses listed in Subsection 76-6-412(1)(b)(ii)(A), (B), or (C) and the minor's parents or legal guardian are jointly and severally liable in a civil action to the merchant for:
- (a) actual damages;
 - (b) a penalty to be remitted to the merchant in the amount of the retail price of the merchandise not to exceed \$500 plus an additional penalty as determined by the court of not less than \$50 nor more than \$500; and
 - (c) court costs and reasonable attorney fees.
- (7) A parent or guardian is not liable for damages under this section if the parent or guardian made a reasonable effort to restrain the wrongful taking and reported it to the merchant involved or to the law enforcement agency having primary jurisdiction once the parent or guardian knew of the minor's unlawful act. A report is not required under this section if the minor was arrested or apprehended by a peace officer or by anyone acting on behalf of the merchant involved.
- (8) A conviction in a criminal action for any of the offenses listed in Subsection 76-6-412(1)(b)(ii)(A), (B), or (C) is not a condition precedent to a civil action authorized under Subsection (5) or (6).
- (9)
- (a) A merchant demanding payment of a penalty under Subsection (5) or (6) shall give written notice to the individual or individuals from whom the penalty is sought. The notice shall state:
"IMPORTANT NOTICE: The payment of any penalty demanded of you does not prevent criminal prosecution under a related criminal provision."
 - (b) This notice shall be boldly and conspicuously displayed, in at least the same size type as is used in the demand, and shall be sent with the demand for payment of the penalty described in Subsection (5) or (6).
- (10) The provision of Section 78B-8-201 requiring that compensatory or general damages be awarded in order to award punitive damages does not prohibit an award of a penalty under Subsection (5) or (6) whether or not restitution has been paid to the merchant either prior to or as part of a civil action.

Amended by Chapter 257, 2012 General Session

78B-3-109 Right to life -- State policy -- Act or omission preventing abortion not actionable -- Failure or refusal to prevent birth not a defense.

- (1) The Legislature finds and declares that it is the public policy of this state to encourage all persons to respect the right to life of all other persons, regardless of age, development, condition, or dependency, including all persons with a disability and all unborn persons.
- (2) A cause of action may not arise, and damages may not be awarded, on behalf of any person, based on the claim that but for the act or omission of another, a person would not have been permitted to have been born alive but would have been aborted.
- (3) The failure or refusal of any person to prevent the live birth of a person may not be a defense in any action, and may not be considered in awarding damages or child support, or imposing a penalty, in any action.

Enacted by Chapter 3, 2008 General Session

78B-3-110 Defense to civil action for damages resulting from commission of crime.

- (1) A person may not recover from the victim of a crime for personal injury or property damage if:
 - (a) the person entered the property of the victim or the victim's family with criminal intent and the injury or damage was inflicted by the victim or occurred while the person was on the victim's property; or
 - (b) the person committed a crime against the victim or the victim's family, during which the damage or injury occurred.
- (2) The provisions of Subsection (1) do not apply if the person can prove by clear and convincing evidence that the person's actions did not constitute a crime.
- (3) Subsection (1) applies to any next-of-kin, heirs, or personal representatives of the person if the person acquires a disability or is killed.
- (4) Subsections (1) and (2) do not apply if the person committing or attempting to commit the crime has clearly retreated from the criminal activity.
- (5) "Clearly retreated" means that the person committing the criminal act has fully, clearly, and immediately ceased all hostile, threatening, violent, or criminal behavior or activity.

Amended by Chapter 36, 2012 General Session