

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 tort feisor 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