

1 **PERSONAL INJURY PROTECTION COVERAGE**

2 **AMENDMENTS**

3 2009 GENERAL SESSION

4 STATE OF UTAH

5 **Chief Sponsor: Todd E. Kiser**

6 Senate Sponsor: Gregory S. Bell

8 **LONG TITLE**

9 **General Description:**

10 This bill allows a presumptive personal representative to present and resolve a claim
11 for applicable benefits payable under personal injury protection coverage resulting
12 from the death of an insured.

13 **Highlighted Provisions:**

14 This bill:

15 ▶ allows a presumptive personal representative to present and resolve a claim for
16 applicable benefits payable under personal injury protection coverage resulting
17 from the death of an insured.

18 **Monies Appropriated in this Bill:**

19 None

20 **Other Special Clauses:**

21 None

22 **Utah Code Sections Affected:**

23 AMENDS:

24 **78B-3-106.5**, as enacted by Laws of Utah 2008, Chapter 259

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

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

28 **78B-3-106.5. Claims brought by presumptive personal representative.**

29 (1) "Presumptive personal representative" means:

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

32 (b) if no spouse exists, the spouse of the decedent is incapacitated, or if the spouse of
33 the decedent is alleged to have contributed to the death of the decedent, then an adult child of
34 the decedent not alleged to have contributed to the death of the decedent; or

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

37 (2) Forty-five days after the death of a person, including a minor, caused by the
38 wrongful act or neglect of another, the presumptive personal representative may present and
39 resolve a claim for policy limits up to \$25,000 for liability and uninsured motorist claims, and
40 \$10,000 for underinsured motorist claims, arising out of that death to an insurer and may
41 execute a release of liability upon presentation of an affidavit, properly notarized, stating that:

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

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

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

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

48 (3) The presumptive personal representative may also present and resolve a claim for
49 any applicable benefits payable under personal injury protection coverage, resulting from the
50 death of an insured.

51 [~~3~~] (4) The presumptive personal representative's claim shall be on behalf of all heirs
52 of the decedent as defined by Section 78B-3-102 or 78B-3-105. The personal representative
53 shall have the same duties toward other heirs as those duties provided in Sections 75-3-701
54 through 75-3-720.

55 [~~4~~] (5) Any insurer and its insured paying a claim arising out of the wrongful death
56 of a person, including a minor, including but not limited to claims for uninsured or
57 underinsured motorist coverage as provided in Section 31A-22-305, to a presumptive personal

58 representative upon presentation of an affidavit as described in Subsection (2) are discharged
59 and released to the same extent as if the insurer and its insured dealt with a personal
60 representative of the decedent. The insurer and its insured are not required to inquire into the
61 truth of any statement in the affidavit.

62 ~~[(5)]~~ (6) Nothing in this section affects or prevents, to the limits of insurance
63 protection only, any claim for first party benefits or a proceeding to establish the liability of a
64 tort feisor insured under any policy of insurance in addition to the policy under which the
65 claim was presented and paid under Subsection (2).

66 ~~[(6)]~~ (7) If any heirs are minors, the presumptive personal representative may not
67 distribute more than 50% of the proceeds of the settlement until the distribution has been
68 approved by a court approved settlement in which a conservator is appointed for any minor
69 heirs.

70 ~~[(7) (a) During the 2008 interim, the Judiciary Interim Committee shall study the~~
71 ~~results of implementing the use of presumptive personal representatives in wrongful death~~
72 ~~claims as provided in this section.]~~

73 ~~[(b) The Judiciary Interim Committee shall:]~~

74 ~~[(i) study the impact of claims brought by presumptive personal representatives~~
75 ~~authorized under this section; and]~~

76 ~~[(ii) consider any other issues regarding presumptive personal representatives.]~~