

**SURVIVAL ACTION UPON INJURY OR
DEATH**

2009 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Kay L. McIff

Senate Sponsor: Michael G. Waddoups

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

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

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

78B-3-107. Survival of action for injury to person or death 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

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 damages, and general damages
38 ~~[occurring prior to death]~~ not to exceed \$100,000, which resulted from the injury caused by
39 the wrongdoer[, including income loss] and which occurred prior to death of the injured party
40 from the unrelated cause.

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

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

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

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