

PERSONAL INJURY CLAIMS BY PERSONAL REPRESENTATIVE

2011 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Todd E. Kiser

Senate Sponsor: Lyle W. Hillyard

LONG TITLE

Committee Note:

The Judiciary, Law Enforcement, and Criminal Justice Interim Committee recommended this bill.

General Description:

This bill clarifies that the presumptive personal representative is still required to submit an affidavit in personal injury claims.

Highlighted Provisions:

This bill:

► makes it clear that presumptive personal representatives are required to submit affidavits in personal injury claims as required in other claims.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

78B-3-106.5, as last amended by Laws of Utah 2009, Chapter 46

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



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

29 **78B-3-106.5. Claims brought by presumptive personal representative.**

30 (1) "Presumptive personal representative" means:

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

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

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

38 (2) ~~Ĥ~~→ (a) ~~←Ĥ~~ Forty-five days after the death of a person, including a minor, caused by the
39 wrongful act or neglect of another, the presumptive personal representative may present to an
40 insurer and resolve with the insurer a claim for policy limits up to \$25,000 for liability and
41 uninsured motorist claims, ~~[and]~~ \$10,000 for underinsured motorist claims, ~~[arising out of that~~
42 ~~death to an insurer]~~ ~~Ĥ~~→ [claims for personal injury protection benefits resulting from the death of an
43 insured.] ~~←Ĥ~~ and ~~[may]~~ execute ~~[a]~~ any applicable release of liability upon presentation of an
44 affidavit, properly notarized, stating that:

45 ~~Ĥ~~→ ~~[(a)]~~ (i) ~~←Ĥ~~ the person presenting the affidavit is the presumptive personal representative;

46 ~~Ĥ~~→ ~~[(b)]~~ (ii) ~~←Ĥ~~ 45 days have elapsed since the death of the decedent;

47 ~~Ĥ~~→ ~~[(c)]~~ (iii) ~~←Ĥ~~ no application or petition for the appointment of a personal representative is
48 pending or has been granted in any jurisdiction; and

49 ~~Ĥ~~→ ~~[(d)]~~ (iv) ~~←Ĥ~~ notice of intent to resolve the claim has been sent to the last-known
49a addresses of all

50 heirs as defined by Section 78B-3-102 or 78B-3-105.

50a ~~Ĥ~~→ (b) Claims for personal injury protection benefits resulting from the death of an
50b insured are exempt from the 45-day waiting requirement, but shall include all information
50c required in Subsections (2)(a)(i), (iii) and (iv). ~~←Ĥ~~

51 ~~[(3)]~~ ~~The presumptive personal representative may also present and resolve a claim for~~
52 ~~any applicable benefits payable under personal injury protection coverage, resulting from the~~
53 ~~death of an insured.]~~

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

58 ~~[(5)]~~ (4) Any insurer and its insured paying a claim arising out of the wrongful death of

59 a person, including a minor, including but not limited to claims for uninsured or underinsured
60 motorist coverage as provided in Section 31A-22-305, to a presumptive personal representative
61 upon presentation of an affidavit as described in Subsection (2) are discharged and released to
62 the same extent as if the insurer and its insured dealt with a personal representative of the
63 decedent. The insurer and its insured are not required to inquire into the truth of any statement
64 in the affidavit.

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

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

Legislative Review Note
as of 11-17-10 4:41 PM

Office of Legislative Research and General Counsel

FISCAL NOTE

H.B. 12, 2011 General Session

SHORT TITLE: **Personal Injury Claims by Personal Representative**

SPONSOR: **Kiser, T.**

STATE OF UTAH

STATE GOVERNMENT (UCA 36-12-13(2)(b))

Enactment of this bill likely will not materially impact the state budget.

LOCAL GOVERNMENTS (UCA 36-12-13(2)(c))

Enactment of this bill likely will not result in direct, measurable costs and/or benefits for local governments.

DIRECT EXPENDITURES BY UTAH RESIDENTS AND BUSINESSES (UCA 36-12-13(2)(d))

Enactment of this bill likely will not result in direct, measurable expenditures by Utah residents or businesses.