

**PERSONAL INJURY CLAIMS BY PERSONAL
REPRESENTATIVE**

2011 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Todd E. Kiser

Senate Sponsor: Lyle W. Hillyard

LONG TITLE

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:

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

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;

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

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

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

41 ~~(a)~~ (i) the person presenting the affidavit is the presumptive personal representative;

42 ~~(b)~~ (ii) 45 days have elapsed since the death of the decedent;

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

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

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

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

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

57 ~~(5)~~ (4) Any insurer and its insured paying a claim arising out of the wrongful death of

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

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

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