

1 **PERSONAL INJURY DAMAGES AMENDMENTS**

2 2015 GENERAL SESSION

3 STATE OF UTAH

4 **Chief Sponsor: Kay L. McIff**

5 Senate Sponsor: Stephen H. Urquhart

7 **LONG TITLE**

8 **General Description:**

9 This bill limits the amount of damages recoverable in certain personal injury actions.

10 **Highlighted Provisions:**

11 This bill:

12 ▶ limits the amount of damages recoverable in personal injury actions when the
13 injured person dies before judgment or settlement of causes unrelated to the action.

14 **Money Appropriated in this Bill:**

15 None

16 **Other Special Clauses:**

17 None

18 **Utah Code Sections Affected:**

19 AMENDS:

20 **78B-3-107**, as last amended by Laws of Utah 2014, Chapter 220

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

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

24 **78B-3-107. Survival of action for injury or death to person, upon death of**
25 **wrongdoer or injured person -- Exception and restriction to out-of-pocket expenses.**

26 (1) (a) A cause of action arising out of personal injury to a person, or death caused by
27 the wrongful act or negligence of a wrongdoer, does not abate upon the death of the wrongdoer
28 or the injured person. The injured person, or the personal representatives or heirs of the person
29 who died, has a cause of action against the wrongdoer or the personal representatives of the

30 wrongdoer for special and general damages, subject to Subsection (1)(b).

31 (b) If, prior to judgment or settlement, the injured person dies as a result of a cause
32 other than the injury received as a result of the wrongful act or negligence of the wrongdoer,
33 the personal representatives or heirs of the person have a cause of action against the wrongdoer
34 or personal representatives of the wrongdoer for special and general damages which resulted
35 from the injury caused by the wrongdoer and which occurred prior to death of the injured party
36 from the unrelated cause. [~~General damages may not exceed \$100,000.~~]

37 (c) If the death of the injured party from an unrelated cause occurs more than six
38 months after the incident giving rise to the claim for damages, the claim shall be limited to
39 special damages unless, prior to the injured party's death:

40 (i) written notice of intent to hold the wrongdoer responsible has been mailed to or
41 served upon the wrongdoer or the wrongdoer's insurance carrier or the uninsured motorist
42 carrier of the injured party, and proof of mailing or service can be produced upon request; or

43 (ii) a claim for damages against the wrongdoer or against the uninsured motorist carrier
44 of the injured party is the subject of ongoing negotiations between the parties or persons
45 representing the parties or their insurers.

46 (d) A subsequent claim against an underinsured motorist carrier for which the injured
47 party was a covered person is not subject to the notice requirement described in Subsection
48 (1)(c).

49 (e) In no event shall ~~[the]~~ an award of general [damage award] damages available
50 under the circumstances described in Subsection (1)(b) or (1)(c) against an wrongdoer or any
51 insurer exceed \$100,000 regardless of available liability, uninsured or underinsured motor
52 vehicle coverage.

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

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