PRESUMPTIVE PERSONAL REPRESENTATIVE

2007 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Gregory S. Bell

House Sponsor: Scott L Wyatt

LONG TITLE

General Description:

This bill defines presumptive personal representative.

Highlighted Provisions:

This bill:

- provides that presumptive personal representatives may present and resolve claims for wrongful death, liability, and uninsured motorist claims.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

ENACTS:

78-11-7.5, Utah Code Annotated 1953

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

Section 1. Section **78-11-7.5** is enacted to read:

78-11-7.5. 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;

28 (b) if no spouse exists, the spouse of the decedent is incapacitated, or if the spouse of
29 the decedent is alleged to have contributed to the death of the decedent, then an adult child of
30 the decedent not alleged to have contributed to the death of the decedent; or
31 (c) if the spouse and all children of the decedent are incapacitated, or are alleged to
32 have contributed to the death of the decedent, then a parent of the decedent.
33 (2) Forty-five days after the death of a person, including a minor, caused by the
34 wrongful act or neglect of another, the presumptive personal representative may present and
35 resolve a claim for Ŝ→ **[~~policy limits up to $25,000~~] the applicable minimum statutory limits** ←Ŝ
35a for liability Ŝ→ **[~~and~~] ,** ←Ŝ uninsured motorist claims, and
36 Ŝ→ **[~~$10,000~~]** ←Ŝ for underinsured motorist claims, arising out of that death to an insurer and may
37 execute a release of liability upon presentation of an affidavit, properly notarized, stating that:
38 (a) the person presenting the affidavit is the presumptive personal representative;
39 (b) 45 days have elapsed since the death of the decedent;
40 (c) no application or petition for the appointment of a personal representative is
41 pending or has been granted in any jurisdiction; and
42 (d) notice of intent to resolve the claim has been sent to the last-known addresses of all
43 heirs as defined by Section 78-11-6 or 78-11-6.5.
44 (3) The presumptive personal representative's claim shall be on behalf of all heirs of
45 the decedent as defined by Section 78-11-6 or 78-11-6.5. The personal representative shall
46 have the same duties toward other heirs as those duties provided in Sections 75-3-701 through
47 75-3-720.
48 (4) Any insurer paying a claim arising out of the wrongful death of a person, including
49 a minor, including but not limited to claims for uninsured or underinsured motorist coverage as
50 provided in Section 31A-22-305, to a presumptive personal representative upon presentation of
51 an affidavit as described in Subsection (2) is discharged and released to the same extent as if
52 the insurer dealt with a personal representative of the decedent. The insurer is not required to
53 inquire into the truth of any statement in the affidavit.
54 (5) Nothing in this section affects or prevents, to the limits of insurance protection
55 only, any claim for first party benefits or a proceeding to establish the liability of a tort feasor
56 insured under any policy of insurance in addition to the policy under which the claim was
57 presented and paid under Subsection (2).
58 (6) If any heirs are minors, the presumptive personal representative may not distribute

59 more than 50% of the proceeds of the settlement until the distribution has been approved by a
60 court approved settlement in which a conservator is appointed for any minor heirs.
61 (7) (a) During the 2007 interim, the Judiciary Interim Committee shall study the results
62 of implementing the use of presumptive personal representatives in wrongful death claims as
63 provided in this section.
64 (b) The Judiciary Interim Committee shall:
65 (i) study the impact of claims brought by presumptive personal representatives
66 authorized under this section; and
67 (ii) consider any other issues regarding presumptive personal representatives.

Legislative Review Note
as of 1-18-07 8:39 AM

Office of Legislative Research and General Counsel

Fiscal Note

S.B. 152 - Presumptive Personal Representative

2007 General Session

State of Utah

State Impact

Enactment of this bill will not require additional appropriations.

Individual, Business and/or Local Impact

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

1/23/2007, 5:37:57 PM, Lead Analyst: Byrne, D.

Office of the Legislative Fiscal Analyst