

GENERAL DAMAGES AMENDMENTS

2019 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Steve Waldrip

Senate Sponsor: _____

LONG TITLE

General Description:

This bill repeals the limit on the amount of damages recoverable in certain personal injury actions.

Highlighted Provisions:

This bill:

- ▶ repeals the limit on the amount of damages recoverable in a personal injury action when the injured individual dies from a cause unrelated to the action before judgment or settlement; and
- ▶ makes technical and conforming changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

78B-3-107, as last amended by Laws of Utah 2015, Chapter 382

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 or death to individual, upon death of



28 **wrongdoer or injured individual -- Exception and restriction to out-of-pocket expenses.**

29 (1) (a) A cause of action arising out of personal injury to ~~[a person]~~ an individual, or
30 death caused by the wrongful act or negligence of a wrongdoer, does not abate upon the death
31 of the wrongdoer or the injured ~~[person]~~ individual. The injured ~~[person]~~ individual, or the
32 personal representatives or heirs of the ~~[person]~~ individual who died, has a cause of action
33 against the wrongdoer or the personal representatives of the wrongdoer for special and general
34 damages, subject to Subsection (1)(b).

35 (b) If, prior to judgment or settlement, the injured ~~[person]~~ individual dies as a result of
36 a cause other than the injury received as a result of the wrongful act or negligence of the
37 wrongdoer, the personal representatives or heirs of the ~~[person]~~ individual have a cause of
38 action against the wrongdoer or personal representatives of the wrongdoer for special and
39 general damages which resulted from the injury caused by the wrongdoer and which occurred
40 prior to death of the injured ~~[party]~~ individual from the unrelated cause.

41 (c) If the death of the injured ~~[party]~~ individual from an unrelated cause occurs more
42 than six months after the incident giving rise to the claim for damages, the claim shall be
43 limited to special damages unless, prior to the injured ~~[party's]~~ individual's death:

44 (i) written notice of intent to hold the wrongdoer responsible has been mailed to or
45 served upon the wrongdoer or the wrongdoer's insurance carrier or the uninsured motorist
46 carrier of the injured ~~[party]~~ individual, and proof of mailing or service can be produced upon
47 request; or

48 (ii) a claim for damages against the wrongdoer or against the uninsured motorist carrier
49 of the injured ~~[party]~~ individual is the subject of ongoing negotiations between the parties or
50 persons representing the parties or their insurers.

51 (d) A subsequent claim against an underinsured motorist carrier for which the injured
52 ~~[party]~~ individual was a covered person is not subject to the notice requirement described in
53 Subsection (1)(c).

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

57 (2) Under Subsection (1) neither the injured ~~[person]~~ individual nor the personal
58 representatives or heirs of the ~~[person]~~ individual who dies may recover judgment except upon

59 competent satisfactory evidence other than the testimony of the injured [~~person~~] individual.

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