

Representative Mike K. McKell proposes the following substitute bill:

**CIVIL ACTIONS INVOLVING LAW ENFORCEMENT
OFFICERS OR EMERGENCY VEHICLE OPERATORS**

2015 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Mark B. Madsen

House Sponsor: Mike K. McKell

LONG TITLE

General Description:

This bill amends provisions relating to civil actions involving law enforcement officers or emergency vehicle operators.

Highlighted Provisions:

This bill:

- ▶ provides that the operator of a marked authorized emergency vehicle owes no duty of care to a person who is a suspect in the commission of a crime in certain circumstances, except that the operator may not act with gross negligence;
- ▶ amends the bond requirements for a person filing an action against a law enforcement officer acting within the scope of the officer's duties; and
- ▶ makes technical and conforming changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:



26 [41-6a-212](#), as last amended by Laws of Utah 2014, Chapter 288

27 [78B-3-104](#), as enacted by Laws of Utah 2008, Chapter 3



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

30 Section 1. Section [41-6a-212](#) is amended to read:

31 **[41-6a-212. Emergency vehicles -- Policy regarding vehicle pursuits --](#)**

32 **Applicability of traffic law to highway work vehicles -- Exemptions.**

33 (1) As used in this section[;]:

34 (a) "Gross negligence" means an individual's carelessness or recklessness to a degree
35 that shows indifference to the consequences of the individual's actions.

36 (b) "~~[marked]~~ Marked authorized emergency vehicle" means an authorized emergency
37 vehicle that:

38 ~~[(a)]~~ (i) has emergency lights that comply with Section [41-6a-1601](#) affixed to the top of
39 the vehicle; or

40 ~~[(b)]~~ (ii) is displaying an identification mark designating the vehicle as the property of
41 an entity that is authorized to operate emergency vehicles in a conspicuous place on both sides
42 of the vehicle.

43 (2) Subject to Subsections (3) through (6), the operator of an authorized emergency
44 vehicle may exercise the privileges granted under this section when:

45 (a) responding to an emergency call;

46 (b) in the pursuit of an actual or suspected violator of the law; or

47 (c) responding to but not upon returning from a fire alarm.

48 (3) The operator of an authorized emergency vehicle may:

49 (a) park or stand, irrespective of the provisions of this chapter;

50 (b) proceed past a red or stop signal or stop sign, but only after slowing down as may
51 be necessary for safe operation;

52 (c) exceed the maximum speed limits, unless prohibited by a local highway authority
53 under Section [41-6a-208](#); or

54 (d) disregard regulations governing direction of movement or turning in specified
55 directions.

56 (4) (a) Except as provided in Subsection (4)(b), privileges granted under this section to

57 the operator of an authorized emergency vehicle, who is not involved in a vehicle pursuit,
58 apply only when:

59 (i) the operator of the vehicle sounds an audible signal under Section 41-6a-1625; or

60 (ii) uses a visual signal with emergency lights in accordance with rules made under
61 Section 41-6a-1601, which is visible from in front of the vehicle.

62 (b) An operator of an authorized emergency vehicle may exceed the maximum speed
63 limit when engaged in normal patrolling activities with the purpose of identifying and
64 apprehending violators.

65 (5) Privileges granted under this section to the operator of an authorized emergency
66 vehicle involved in any vehicle pursuit apply only when:

67 (a) the operator of the vehicle:

68 (i) sounds an audible signal under Section 41-6a-1625; and

69 (ii) uses a visual signal with emergency lights in accordance with rules made under
70 Section 41-6a-1601, which is visible from in front of the vehicle;

71 (b) the public agency employing the operator of the vehicle has, in effect, a written
72 policy which describes the manner and circumstances in which any vehicle pursuit should be
73 conducted and terminated;

74 (c) the operator of the vehicle has been trained in accordance with the written policy
75 described in Subsection (5)(b); and

76 (d) the pursuit policy of the public agency is in conformance with standards established
77 under Subsection (6) .

78 (6) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
79 Department of Public Safety shall make rules providing minimum standards for all emergency
80 pursuit policies that are adopted by public agencies authorized to operate emergency pursuit
81 vehicles.

82 (7) (a) Except as provided in Subsection (7)(b), the privileges granted under this
83 section do not relieve the operator of an authorized emergency vehicle of the duty to act as a
84 reasonably prudent emergency vehicle operator under the circumstances.

85 (b) The operator of a marked authorized emergency vehicle owes no duty of care under
86 this Subsection (7) to a person who is:

87 (i) (A) a suspect in the commission of a crime; and

88 (B) evading, fleeing, or otherwise attempting to elude the operator of a marked
89 authorized emergency vehicle; or

90 (ii) in a motor vehicle with the suspect described in Subsection (7)(b)(i), unless it is
91 proven by a preponderance of the evidence that:

92 (A) the person's presence in the vehicle was involuntary; and

93 (B) the person's participation in evading, fleeing, or attempting to elude was
94 involuntary.

95 (c) (i) Notwithstanding Subsection (7)(b), an operator of a marked authorized
96 emergency vehicle may be held liable for a fleeing suspect's injuries ~~[if the operator of a~~
97 ~~marked authorized emergency vehicle had actual intent to cause harm to the fleeing suspect in~~
98 ~~an act that was unrelated to the legitimate object of the arrest]~~ that result from the operator's
99 gross negligence.

100 ~~[(ii) "Actual intent" under this Subsection (7)(c) means a malicious motive to cause~~
101 ~~injury, not merely an intent to do the act resulting in the injury.]~~

102 (d) If an operator of a marked authorized emergency vehicle complies with the
103 requirements described in Subsections (5) and (6) while operating the marked authorized
104 emergency vehicle, the operator shall be deemed to have met the operator's duty to act as a
105 reasonably prudent emergency vehicle operator under the circumstances.

106 (8) Except for Sections [41-6a-210](#), [41-6a-502](#), and [41-6a-528](#), this chapter does not
107 apply to persons, motor vehicles, and other equipment while actually engaged in work on the
108 surface of a highway.

109 Section 2. Section **78B-3-104** is amended to read:

110 **78B-3-104. Actions against officers -- Bond required -- Costs and attorney fees.**

111 (1) A person ~~[may not file]~~ filing an action against a law enforcement officer acting
112 within the scope of the officer's official duties ~~[unless the person has posted]~~ shall post a bond
113 in an amount determined by the court[;] within five working days after the latter of:

114 (a) receipt of the law enforcement officer's answer; or

115 (b) receipt of the court order determining the amount of the bond required under this
116 section.

117 (2) The bond shall cover all estimated costs and attorney fees the officer may be
118 expected to personally incur in defending the action[;] in the event the officer prevails,

119 excluding costs and attorney fees that would be paid by the law enforcement officer's employer
120 or an employer's insurance policy.

121 (3) The prevailing party shall recover from the losing party all costs and attorney fees
122 allowed by the court.

123 (4) In the event the plaintiff prevails, the official bond of the officer shall be liable for
124 the plaintiff's costs and attorney fees.