

SB0290S01 compared with SB0290

~~{deleted text}~~ shows text that was in SB0290 but was deleted in SB0290S01.

inserted text shows text that was not in SB0290 but was inserted into SB0290S01.

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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:

- ▶ ~~{repeals the provision that }~~ 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

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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:

41-6a-212, as last amended by Laws of Utah 2014, Chapter 288

78B-3-104, as enacted by Laws of Utah 2008, Chapter 3

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

Section 1. Section **41-6a-212** is amended to read:

41-6a-212. Emergency vehicles -- Policy regarding vehicle pursuits --

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

(1) As used in this section ~~{, "marked"}~~ [-]:

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

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

(a) (i) has emergency lights that comply with Section 41-6a-1601 affixed to the top of the vehicle; or

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

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

- (a) responding to an emergency call;
 - (b) in the pursuit of an actual or suspected violator of the law; or
 - (c) responding to but not upon returning from a fire alarm.
- (3) The operator of an authorized emergency vehicle may:

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

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

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

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

(4) (a) Except as provided in Subsection (4)(b), privileges granted under this section to the operator of an authorized emergency vehicle, who is not involved in a vehicle pursuit, apply only when:

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

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

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

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

(a) the operator of the vehicle:

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

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

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

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

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

(6) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the Department of Public Safety shall make rules providing minimum standards for all emergency

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pursuit policies that are adopted by public agencies authorized to operate emergency pursuit vehicles.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(2) The bond shall cover all estimated costs and attorney fees the officer may be expected to personally incur in defending the action[-] in the event the officer prevails, excluding costs and attorney fees that would be paid by the law enforcement officer's employer or an employer's insurance policy.

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

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

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Legislative Review Note

~~as of 3-2-15 10:15 AM~~

~~Office of Legislative Research and General Counsel}~~