

**QUALIFIED IMMUNITY AMENDMENTS**

2021 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Brian S. King**

Senate Sponsor: \_\_\_\_\_

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**LONG TITLE**

**General Description:**

This bill creates a cause of action against peace officers and their employers for the deprivation of rights and requires a certified peace officer to obtain a bond or insurance.

**Highlighted Provisions:**

This bill:

- ▶ requires a certified peace officer to obtain a bond or insurance;
- ▶ creates a cause of action that can be brought against a peace officer, and the employer of a peace officer, who deprives a person of individual rights under the Utah Constitution; and
- ▶ establishes procedures and limitations for the cause of action.

**Money Appropriated in this Bill:**

None

**Other Special Clauses:**

None

**Utah Code Sections Affected:**

ENACTS:

- 53-6-214**, Utah Code Annotated 1953
- 53-19-101**, Utah Code Annotated 1953
- 53-19-102**, Utah Code Annotated 1953
- 53-19-103**, Utah Code Annotated 1953



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

Section 1. Section **53-6-214** is enacted to read:

**53-6-214. Bonding or insurance requirement for certified peace officers.**

(1) (a) (i) A peace officer certified under this part shall, within 10 days after the first day of the peace officer's employment as a peace officer, enter into a surety bond for the faithful and lawful performance of the peace officer's duty.

(ii) If a peace officer certified under this part is currently employed as a peace officer, the peace officer shall obtain the bond required under Subsection (1)(a)(i) before September 1, 2021.

(b) A bond described in Subsection (1)(a) shall be sufficient to satisfy the maximum statutory limitations on damages described in Title 63G, Chapter 7, Part 6, Legal Actions Under this Chapter - Procedures, Requirements, Damages, and Limitations on Judgments.

(c) Coverage for a bond described in Subsection (1)(a) may exclude damages arising out of the negligent operation of a motor vehicle.

(2) (a) A bond described under Subsection (1) shall be filed in the office of the peace officer's employer and the premium shall be paid by the peace officer's employer.

(b) A peace officer's employer may issue additional requirements for a bond under this section.

(3) (a) In lieu of posting a bond as provided in Subsection (1), a peace officer certified under this part may furnish an adequate liability insurance policy as proof of the peace officer's ability to respond in damages resulting from the peace officer's unlawful, negligent, or improper conduct while on official duty.

(b) An insurance policy described in Subsection (3)(a) shall be sufficient to satisfy the maximum statutory limitations on damages described in Title 63G, Chapter 7, Part 6, Legal Actions Under this Chapter - Procedures, Requirements, Damages, and Limitations on Judgments.

(c) Coverage for insurance described in Subsection (3)(a) may exclude damages arising out of the negligent operation of a motor vehicle.

(4) (a) An insurance policy described in Subsection (3) shall be filed in the office of the peace officer's employer and the premium shall be paid by the peace officer's employer.

59 (b) A peace officer's employer may issue additional requirements for an insurance  
60 policy under this section.

61 (5) (a) If a person injured or damaged by the unlawful, negligent, or improper conduct  
62 of a peace officer while on duty is permitted by law to bring an action against the peace officer,  
63 the person may recover damages from the applicable bond or insurance policy required under  
64 this section.

65 (b) This section does not create a new cause of action or affect a claim of immunity or  
66 a legal defense that a peace officer or a peace officer's employer may have.

67 (6) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the  
68 director may, with the advice of the council, make rules necessary for the administration of the  
69 bonds and insurance required under this section.

70 Section 2. Section **53-19-101** is enacted to read:

71 **CHAPTER 19. CIVIL ACTION FOR DEPRIVATION OF RIGHTS**

72 **53-19-101. Title.**

73 This chapter is known as "Civil Action for Deprivation of Rights."

74 Section 3. Section **53-19-102** is enacted to read:

75 **53-19-102. Definitions.**

76 As used in this chapter:

77 (1) "Deprivation of individual rights" means the deprivation of any of the following  
78 rights under the Utah Constitution:

79 (a) Utah Constitution, Article I, Section 1 [Inherent and inalienable rights];

80 (b) Utah Constitution, Article I, Section 7 [Due process of law];

81 (c) Utah Constitution, Article I, Section 9 [Excessive bail and fines -- Cruel  
82 punishments];

83 (d) Utah Constitution, Article I, Section 14 [Unreasonable searches forbidden --  
84 Issuance of warrant];

85 (e) Utah Constitution, Article I, Section 17 [Elections to be free -- Soldiers voting];

86 (f) Utah Constitution, Article I, Section 22 [Private property for public use];

87 (g) Utah Constitution, Article I, Section 24 [Uniform operation of laws]; and

88 (h) Utah Constitution, Article I, Section 25 [Rights retained by people].

89 (2) "Failure to intervene" means the failure of a peace officer to intervene to prevent or

90 stop another peace officer from using physical force that exceeds the degree of force permitted,  
91 if any, by Sections 76-2-404 and 77-7-7, in pursuance of the other peace officer's law  
92 enforcement duties in carrying out an arrest of any person, placing any person under detention,  
93 taking any person into custody, booking any person, or in the process of crowd control or riot  
94 control, without regard for chain of command.

95 (3) "Peace officer" means any officer certified in accordance with Title 53, Chapter 13,  
96 Peace Officer Classifications, who is employed by the state or a local government.

97 (4) "Subjects," when used as a verb, means subjects or causes to be subjected,  
98 including the failure to intervene.

99 Section 4. Section 53-19-103 is enacted to read:

100 **53-19-103. Civil action for deprivation of rights.**

101 (1) A peace officer who, under color of law, subjects any other person to the  
102 deprivation of individual rights is liable to the person for legal, equitable, or other appropriate  
103 relief.

104 (2) (a) Except as provided in Subsection (5), statutory immunities and statutory  
105 limitations on liability, damages, or attorney fees do not apply to a claim brought under this  
106 section.

107 (b) Except as provided in Subsection (5), Title 63G, Chapter 7, Governmental  
108 Immunity Act of Utah, does not apply to claims brought under this section.

109 (c) Qualified immunity is not a defense to liability under this section.

110 (3) (a) In an action brought under this section, a court shall award reasonable attorney  
111 fees and costs to a prevailing plaintiff.

112 (b) In an action for injunctive relief under this section, a plaintiff prevails if the  
113 plaintiff's suit was a substantial factor or a significant catalyst in obtaining the results sought by  
114 the litigation.

115 (c) When a judgment is entered in favor of a defendant, the court may award  
116 reasonable costs and attorney fees to the defendant for defending any claims the court finds  
117 frivolous.

118 (4) (a) Except as provided in Subsections (4)(b), (4)(c), and (4)(d), a peace officer's  
119 employer shall indemnify the peace officer for any liability incurred by the peace officer and  
120 for any judgment entered against the peace officer for claims arising under this section.

121 (b) Except as provided in Subsection (4)(c):

122 (i) the peace officer is personally liable for damages awarded under this chapter not  
123 exceeding \$50,000 of the damages awarded; and

124 (ii) the peace officer's employer may not indemnify the peace officer for the amount  
125 described in Subsection (4)(b)(i).

126 (c) The peace officer's employer shall pay any portion of the amount described in  
127 Subsection (4)(b) that the plaintiff is not able to recover from the peace officer.

128 (d) A public entity is not required to indemnify a peace officer under this section if the  
129 peace officer is convicted of a crime for conduct upon which the claim is based.

130 (5) A civil action under this section:

131 (a) must be commenced within four years after the cause of action accrues; and

132 (b) is subject to the statutory calculations and limitations on damages described in Title  
133 63G, Chapter 7, Part 6, Legal Actions Under this Chapter - Procedures, Requirements,  
134 Damages, and Limitations on Judgments.