

HOUSE BILL ANALYSIS

HB 1490

Title: An act relating to liability of drivers of authorized emergency vehicles.

Brief Description: Clarifying liability of drivers of authorized emergency vehicles.

Sponsors: Representatives Thompson, Mielke, L. Thomas, McMorris, Chandler, Sterk and Delvin.

HOUSE COMMITTEE ON LAW & JUSTICE

Staff: Dave Bowman (786-7291); Bill Perry (786-7123).

Background: An authorized emergency vehicle is any vehicle of a fire department, police department, sheriff's office, coroner, prosecuting attorney, Washington State Patrol, ambulance service (public or private), or any other vehicle authorized in writing by the Washington State Patrol. RCW 46.04.040 (1996).

When responding to an emergency call, pursuing an actual or suspected violator of the law, or responding to a fire alarm, the driver of an authorized emergency vehicle is permitted to exercise privileges otherwise prohibited by motor vehicle laws. RCW 46.61.035 (1996). For example, the driver may park in a no-parking zone, proceed past a red light, and disregard regulations governing direction of movement. A driver may exercise these privileges only when making use of visual signals required by law. The privileges do not relieve the driver from the duty to drive with due regard for the safety of all persons, or protect the driver from the consequences of acting in reckless disregard for the safety of others.

Washington long ago abolished the principle of sovereign immunity, under which a city, state, or other governmental entity could not be held liable for the negligent acts of a law enforcement officer in its employ. Washington courts have carved an exception to the policy abolishing sovereign immunity. Government entities are immune from liability for acts involving basic policy discretion.— The Washington Supreme Court has ruled, however, that the decisions of law enforcement officers whether to give chase, and whether to continue the pursuit, are operational decisions and are not decisions involving basic policy discretion.— Based on ordinary negligence principles, law enforcement officers have a duty to drive with due regard for the safety of all persons. An officer, along with the city, state, or other governmental entity employing that officer, can be held liable for damages resulting from the breach of that duty.

Ordinary negligence involves a breach of a duty of reasonable care;— that is, doing some act that a reasonably careful person would not do under the same or similar circumstances. *Restatement (Second) of Torts*, Sections 283, 292, and 298. In addition to proving duty and breach, a plaintiff must prove that the breach caused the plaintiff's injury and that the injury is legally compensable.

Gross negligence is defined as the failure to exercise slight care. Although failure to exercise slight care does not mean the total absence of care, it does mean care that is substantially less than reasonable— care.

Reckless disregard for the safety of others is intentional conduct that breaches a duty to do or refrain from doing something, in wanton disregard of the consequences and under such circumstances that a reasonable person would know the conduct is likely to harm another person.

Summary of Bill: The liability arising from certain conduct related to authorized emergency vehicles is changed. The driver or public entity employing the driver of an authorized emergency vehicle is not liable for damages resulting from the pursuit, termination of pursuit, or lack of pursuit of an actual or suspected violator of the law, or from a violation of this section, unless the pursuit, termination of pursuit, lack of pursuit, or violation constitutes gross negligence.

The privileges do not protect the driver of an authorized emergency vehicle from the consequences of acting in reckless disregard for the safety of others.

Fiscal Note: Not requested.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Office of Program Research