

KANSAS TRIAL LAWYERS ASSOCIATION



To: Representative Fred Patton, Chairman
Members of the House Judiciary Committee

From: Callie Jill Denton, Executive Director

Date: January 30, 2019

Re: HB 2065 Concerning motor vehicles; relating to authorized emergency vehicles; duties and liability -- OPPOSE

The Kansas Trial Lawyers Association is a non-profit, professional organization of trial lawyers with members across the state. I am here to testify on behalf of KTLA in opposition to HB 2065.

KTLA appreciates the opportunity in today's hearing to express our concerns with HB 2065 and the importance of the current policy and statute to Kansans. To assist the Committee, KTLA and KTLA members welcome the opportunity to meet with proponents to discuss HB 2065.

HB 2065 amends K.S.A. 8-1506, -1530, and -1541 by removing language that establishes the specific statutory duty of drivers of authorized emergency vehicles "to drive with due regard for the safety of all persons...". Deleting language that explicitly and clearly imposes a duty of safety will make the statute vague. It puts at risk the claims of seriously injured innocent bystanders who were simply in the wrong place at the wrong time. Amending the current law is unnecessary because it already protects municipalities and police officers and gives deference to their special law enforcement roles. K.S.A. 8-1506 requires innocent injured bystanders to prove wrongful conduct that is far more egregious than simple negligence and liability is significantly limited under the Kansas Tort Claims Act.

Under K.S.A. 8-1506, officers must "drive with due regard for the safety of all persons" when responding to an emergency call or in the pursuit of an actual or suspected criminal, and while displaying lights and sirens. The current law could apply to crashes between an officer and a suspect, pedestrian, or unrelated vehicle, or crashes not involving the officer but that are alleged to have been caused by the pursuit. To show that an officer breached their duty an injured party must demonstrate an officer acted with "reckless disregard." Officers may compare fault with the fleeing suspect. The jury decides whether an officer acted with reckless disregard and his or her decisions or actions caused a crash. Liability is limited under the Kansas Tort Claims Act to

\$500,000 total economic and non-economic damages; punitive damages are not permitted under the KTCA.

HB 2065 makes K.S.A. 8-1506 vague because it deletes language in (d) imposing a specific duty on officers "...to drive with due regard for the safety of all persons..." during a pursuit. Retaining the language "...shall not relieve the driver of an authorized emergency vehicle from the consequences of reckless disregard for the safety of others..." does not add clarity. As drafted, HB 2065 may not preserve and could eliminate causes of action under K.S.A. 8-1506 pertaining to police pursuits that must be retained.

KTLA requests that the Committee reject as a matter of public policy legislation that eliminates or potentially eliminates causes of action under K.S.A. 8-1506. We further request that the Committee reject any additional limits on liability and new immunity under the Kansas Tort Claims Act for drivers of authorized emergency vehicles.

Officers, police departments, and communities are already protected more than adequately under current law. K.S.A. 8-1506(d) requires injured parties to establish officers acted with "reckless disregard". The KTCA further limits accountability by capping damages. When an officer's reckless conduct injures or kills a totally innocent driver, passenger, or pedestrian the officer should not be completely immunized from the consequences. Protecting reckless conduct with immunity is unsound policy and unfair.

We understand HB 2065 was introduced in response to the Court of Appeals decision in *Montgomery v. Saleh*, 55 Kan. App. 2d 429 (2018). The Defendant has requested, and the Supreme Court has granted a review. Action on HB 2065 is premature. We urge the Committee to defer decision making on legislation while litigation in *Montgomery* is pending.

On behalf of the members of the Kansas Trial Lawyers Association, I respectfully request that the Committee oppose HB 2065 and take no action on HB 2065.

