

ABOLISH "FIREFIGHTER'S RULE"

House Bill 4044 as passed by the House Second Analysis (4-3-97)

Sponsor: Rep. Kirk Profit
Committee: Judiciary

THE APPARENT PROBLEM:

In 1987, the Michigan Supreme Court established a common law doctrine that is known as the "fire fighter's rule" [*Kreski v Modern Wholesale Electric Supply*, 429 Mich 347 (1987)]. This doctrine bars fire fighters and police officers from bringing lawsuits against civilians for injuries received in the course of the police officer's or fire fighter's duty as result of the negligence of the civilian. In other words, when a police officer or fire fighter is injured in the course of his or her work, even though this injury may arise from the negligent or possibly even intentional behavior of another person, the injured officer may not recover any damages from the party whose negligence caused the injury. The reasoning behind the rule, which is the law in many states, is that it is part of the duty of the fire fighter or police officer to confront danger and face risks; regardless of how a fire was started, it the duty of the fire fighter to attempt to put it out. As the court explained in its decision "the purpose of safety professions is to confront danger and, therefore, the public should not be liable for damages for injuries occurring in the performance of the very functions police officers and fire fighters are intended to fulfill."

In 1992, the court expanded the application of the rule to include two separate categories of injuries. As a result, the rule applies not only to injuries caused by the negligent act of an individual that warranted the need for police officers or fire fighters (e.g., negligently leaving something on the stove and causing a fire or negligently leaving keys in a car, causing the car to be stolen), but it also applies to "risks inherent in fulfilling the police or fire fighting duties." This second category would include such risks as are inherent in the performance of a police officer's or fire fighter's duties, things like high speed pursuits, car accidents, being injured by someone that the officer or fire fighter is trying to rescue, and it may even apply to intentional torts, such as attacking and injuring a police officer.

According to some, the provisions of the fire fighter's rule are inherently unfair; police and fire fighters should have the same right as the general public to sue for and recover damages for injuries caused by the negligence of third parties. Thus, it has been suggested and

legislation has been offered to abolish the fire fighter's rule.

THE CONTENT OF THE BILL:

The bill would add a new section to the Revised Judicature Act that would abolish the common law doctrine known as the "fire fighter's rule." The fire fighter's rule precludes police officers and fire fighters from recovering damages for injuries arising out of the normal, inherent, and foreseeable risks of their work.

(Currently, an individual whose negligent actions caused a fire fighter or police officer to be injured during the course of his or her duties cannot be sued by the fire fighter or police officer for redress for those injuries. Presumably, by statutorily abolishing the doctrine, the bill would allow an injured fire fighter or police officer to bring a lawsuit for damages against the person or persons whose actions lead to the officer's or fire fighter's injury.)

The bill would also specifically state that its provisions would not alter governmental immunity for the performance of governmental functions or liability under any other law. However, the bill would specifically extend immunity for governmental agencies, their agents, or employees from lawsuits by fire fighters or police officers for injuries or death caused by the negligence of the agency, its agents, or employees where the event that caused the officer's or fire fighter's presence at the premises was within the scope of the officer's or fire fighter's professional activities, duties, or functions.

MCL 600.2955

FISCAL IMPLICATIONS:

According to the House Fiscal Agency, the bill has no fiscal impact on state or local government. (4-7-97)

ARGUMENTS:

For:

The fire fighter's rule is unfair to police officers and fire fighters. It bars them from any recourse except workers' compensation when they are injured as the

result of a citizen's negligence. Where another person would have the opportunity to bring a civil suit for damages, a safety officer is prohibited from bringing a lawsuit by the fire fighter's rule. Abolishing the fire fighter's rule will provide police officers and fire fighters with the same right as the general public to recover damages for injuries suffered as the result of the negligence of third parties.

Fire fighters and police officers deserve to have civil recourse against those who, through their negligence, cause them harm. Permitting them to sue for and recover damages for injuries due to the negligence may well encourage persons to cease or avoid activities that would pose a risk of injuring police officers or fire fighters.

Against:

A majority of states have similar "fire fighter rules" in effect. The reason for this doctrine is that police officers and fire fighters are engaged in professions where they are expected to confront dangers and face risks. The public hires, trains, and compensates fire fighters and police officers to deal with inevitably dangerous situations. Unfortunately, more often than not, the need for a safety officer arises due to the negligence of one or more members of the public. Since the purpose of these safety professions is to confront danger and, as a result, the normal performance of their duties places them at risk of harm, the fire fighter's rule recognizes that the public should not be made liable for injuries that result from the officer's performance of the very function that he or she was intended to fulfill.

If Michigan abolishes the fire fighter's rule, it could have a chilling effect on citizen's willingness to call a fire fighter or police officer for fear of liability. Furthermore, since abolishing the rule could cause a flood of new lawsuits for injuries, abolishing the fire fighter's rule could result in increased insurance rates. Safety officers already have workers' compensation available to protect them if they are injured in the course of their work; such compensation is already paid for by the officers' employer -- the taxpayers of Michigan.

Response:

It should be noted that New York recently abolished its fire fighter's rule, as have Florida, Minnesota, and Oregon. The suggestion that without the fire fighter's rule insurance rates would rise, suggests the corollary: that rates would have fallen when it was imposed. That does not seem to have been the case. The only effect of the rule has been to deny a large number of injured safety officers any recourse for their injuries.

In addition, the suggestion that workers' compensation always offers sufficient coverage for injured officers is wholly without support. Workers' compensation does

not offer equivalent pay when an officer is so severely injured that he or she is no longer able to perform his or her duties, it offers only a percentage of the individual's salary.

Rebuttal:

If workers' compensation does not offer employees sufficient compensation then the appropriate recourse is not to attempt to abolish the fire fighter's rule, but to see to it that the amount of compensation paid to injured workers is adjusted so that injured employees are not forced to try to live on benefits that are unfairly apportioned.

Against:

The fire fighter's rule is based upon the recognition that the need for a fire fighter or police officer to come onto someone's property is not one for which most people plan. Where a person might owe a certain duty to someone he or she invites onto his or her property, that same duty is not owed to a trespasser. Unfortunately, a police officer or fire fighter is not an invited guest but neither is he or she a trespasser in the truest sense (some would argue that there is an implicit invitation to allow police or fire fighters onto one's property in cases of emergencies). As a result, it is difficult to hold a property owner to the same level of care that one would assign if the officer had been invited onto the property, but it is equally unfair to hold that the owner owes no duty whatsoever to the officer.

Thus, the bill could be significantly improved if amended. Specifically, if the rule were limited so that it did not apply under certain circumstances it would be more fair and less likely to open a Pandora's box of unnecessary litigation. Some suggested areas of limitation could include those cases where any of the following circumstances existed: the fire fighter's or police officer's injuries were caused by wilful, wanton, or intentional misconduct; the injuries were caused by a fire set by the defendant or that resulted from the illegal activities of the defendant; or the owner or occupier of the building either intentionally misled the officer as to the building's condition or the nature of the activities carried on in the building or was on the premises at the time of the injury and had knowledge of the officer's presence and failed to warn the officer of known dangers on the premises that caused the injury. These exceptions, which were outlined as possible exceptions in the Kreski decision, would improve the bill by adding reasonable restrictions rather than allowing all safety officers to file lawsuits whenever they are injured during the course of their work.

Against:

It seems unfair to place ordinary citizens at risk of lawsuits from injured safety officers for ordinary negligence, while including a provision to protect the

government against such lawsuits. Government agencies and their employees should not be free from responsibility for their actions; if it is good public policy for fire fighters and police officers to be allowed to bring lawsuits against those whose negligence has caused them injury, then all responsible parties, whether average citizens or governmental entities, should be subject to the same risk of liability.

■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.

POSITIONS:

The Michigan Police Legislative Coalition supports the bill. (4-3-97)

The Michigan State Police Troopers Association supports the bill. (4-3-97)

The Michigan State Fire Fighters Union supports the bill. (4-3-97)

The Michigan Trial Lawyers Association supports the bill. (4-3-97)

The Michigan Insurance Federation is opposed to the bill. (4-3-97)

The National Federation of Independent Business is opposed to the bill. (4-3-97)

Analyst: W. Flory
