

ABOLISH "FIRE FIGHTER'S RULE"

House Bill 4044 as enrolled
Public Act 389 of 1998
Third Analysis (11-23-98)

Sponsor: Rep. Kirk Profit
House Committee: Judiciary
Senate 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 includes 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.) Instead of the absolute bar provided by the firefighter's rule, the bill would allow a police officer or fire fighter to sue for damages under certain circumstances. The bill would also specify that its provisions should not be construed to affect any other rights, remedies or procedures provided by common law or statute.

The bill would require a police officer or fire fighter to prove that certain circumstances exist before he or she would be able to recover any damages for an injury or death that arose from the normal, inherent, and foreseeable risks of his or her work. [The bill would not apply to injuries to fire fighters or police officers that occurred outside of that individual's line of work.]

If the injury or death that was the basis of the lawsuit had been caused by the conduct of a person (defined in the bill as an individual, partnership, association,

corporation, or other legal entity), the police officer or fire fighter would have to be able to prove that the person's conduct was grossly negligent, wanton, willful, intentional or had resulted in a conviction, guilty plea, or plea of no contest to a state or federal crime, or a local ordinance that was substantially similar to a state criminal law.

If the police officer or fire fighter sought to bring a product liability claim or a claim based upon ordinary negligence, he or she would have to prove that all of the following were true:

- 1) The negligent person's act or omission had not resulted in the firefighter's or police officer's presence at the place where the injury occurred, unless the cause of action was based on that person's action after the fire fighter or police officer arrived on the scene.
- 2) The negligent person was not someone from whom the fire fighter or police officer sought or obtained assistance nor was he or she the owner or tenant of the property from where the police officer or fire fighter sought or obtained assistance.
- 3) The negligent person was not an owner or tenant of the property where the injury occurred, unless the cause of action was based on that person's action after the fire fighter or police officer arrived on the property.

In addition, if the police officer or fire fighter brought a product liability claim, he or she would have to prove that the cause of action was based upon the failure of police or fire fighting equipment that failed during use in an emergency situation. The use would have to have occurred during legally required or authorized duties of the police officer or fire fighter that substantially increased the likelihood of the resulting injury or death.

If the lawsuit was based upon a person's ordinary negligence, the police officer or fire fighter would also have to prove that he or she was either:

- a) operating or riding in or on a motor vehicle that was operated in conformity with the laws applicable to the general public, or
- b) was engaged in legally required or authorized duties of his or her profession that had not substantially increased the likelihood of the resulting injury or death. If the injury occurred within a highway right-of-way, there was emergency lighting activated at the scene and, if the fire fighter or police officer had been engaged in emergency medical services, accessing a fire hydrant, traffic control, motorist assistance, or traffic stop for a possible violation of law, the court

could consider the police officer or fire fighter to have been engaged in a duty that had substantially increased the likelihood of injury or death.

The bill would also specifically provide immunity for the state, political subdivisions of the state, a governmental agency, governmental officer or employee, volunteer acting on the government's behalf, and members of a governmentally created board, council, commission, or task force. Such individuals or groups would be immune from tort liability for injuries to fire fighters or police officers that arose from the normal, inherent, and foreseeable risks of their respective professions. The bill would specify that this grant of immunity could not be used to affect an individual's rights to worker's disability compensation benefits.

The bill's provisions would apply only to causes of action that arose on or after the effective date of the bill and its provisions would specifically be prohibited from being construed to affect a right, remedy, procedure, or limitation of action that is otherwise provided by law.

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 an unfair barrier to police officers and fire fighters. It prevents them from any recourse except workers' compensation when they are injured as the result of someone else'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. Fire fighters and police officers risk their lives on behalf of the general public on a daily basis and therefore deserve to have civil recourse against those who, through their negligence, cause them harm. Furthermore, permitting them to sue and recover damages for injuries due to the negligence of others may well encourage people to cease or avoid activities

that would pose a risk of injuring police officers or fire fighters.

Abolishing the fire fighter's rule will eliminate this unfair barrier. The bill's provisions will allow safety officers a reasonable opportunity to bring a lawsuit to recover damages for injuries suffered as the result of the negligence of third parties without allowing such a broad basis for lawsuits that anyone who calls for the assistance of the police or fire department must worry about being sued.

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.

For:

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. While a person is held to 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 expressly invited onto the property, but it is equally unfair to hold that the owner owes no duty whatsoever to the officer.

The bill provides a good balance by eliminating the fire fighter's rule but only allowing lawsuits under certain circumstances. Many of the restrictions on lawsuits provided in the bill are exceptions that were outlined as possible exceptions in the Kreski decision. As a result, the bill's provisions limiting the situations where a lawsuit could successfully be brought will make certain that the repeal of the fire fighter's rule will not open a Pandora's box of litigation.

Against:

The bill is too restrictive; it replaces an absolute bar with a very limited and restrictive set of circumstances under which a police officer or fire fighter could successfully bring a lawsuit. For example, gross negligence is a notoriously difficult standard to prove and ordinary negligence generally could not be the basis for a cause of action against someone who caused the incident that had necessitated the police officer's or fire fighter's presence where the injury occurred. Finally, by adding new restrictions to how and when a fire fighter or police officer may sue for product liability, the bill is more restrictive than the

fire fighter's rule. (The bill's provisions regarding product liability law are wholly new, since the fire fighter's rule had not been applied to product liability cases.)

Furthermore, the bill primarily protects police officers and offers little or no protection for firefighters. It is far more likely that a fire fighter will be injured as the result of the negligence of the person who owns the property, started the fire, or called to report the fire. In these cases even if the person was negligent, a fire fighter would be unable to bring a lawsuit. Where a police officer would likely be able to sue a drunk driver who injured the police officer by colliding with the police officer's vehicle, a fire fighter would not be able to sue for injuries incurred while attempting to extinguish a fire that was caused by someone who was drunk.

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■ 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.