

HOUSE BILL REPORT

HB 1341

As Reported by House Committee On:
Civil Rights & Judiciary

Title: An act relating to the professional rescue doctrine.

Brief Description: Concerning the professional rescue doctrine.

Sponsors: Representatives Bronoske, Walen and Berry.

Brief History:

Committee Activity:

Civil Rights & Judiciary: 2/2/21, 2/9/21 [DPS].

Brief Summary of Substitute Bill

- Abolishes the professional rescue doctrine that precludes a professional rescuer from recovering for injuries inherently within the scope of a particular rescue activity.

HOUSE COMMITTEE ON CIVIL RIGHTS & JUDICIARY

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 15 members: Representatives Hansen, Chair; Simmons, Vice Chair; Graham, Assistant Ranking Minority Member; Abbarno, Davis, Entenman, Goodman, Kirby, Klippert, Orwall, Peterson, Thai, Valdez, Walen and Ybarra.

Minority Report: Without recommendation. Signed by 2 members: Representatives Walsh, Ranking Minority Member; Gilday, Assistant Ranking Minority Member.

Staff: Yelena Baker (786-7301).

Background:

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not part of the legislation nor does it constitute a statement of legislative intent.

The Professional Rescue Doctrine.

The general rule in Washington is that a person who is injured while rescuing or attempting to rescue another may recover from the party whose negligence created the need for rescue. Because professional rescuers assume certain risks as part of their profession, the general rule does not apply to them.

Under the professional rescue doctrine, when a professional rescuer is injured by a known hazard associated with a particular rescue activity, the rescuer may not recover from the party whose negligence caused the rescuer's presence at the scene. Where the negligent acts of multiple parties cause the public safety issue that necessitates the professional rescuer's presence, the doctrine bars recovery from each of these parties.

The professional rescue doctrine does not bar a professional rescuer from recovering for injuries:

- stemming from hidden, unknown, or extra hazardous dangers that are not inherently associated with the particular rescue activity; or
- caused by an intervening person who was not responsible for bringing the rescuer to the scene.

Workers' Compensation and Recovery in Third-Party Legal Actions.

Under the state industrial insurance laws, workers injured on the job are entitled to receive workers' compensation benefits. In return for the no-fault nature of industrial insurance, injured workers may not sue their employers or a co-worker. However, in cases where a third party may liable for the injury, the injured worker or their beneficiary may sue the third party for damages. The injured worker may also assign the cause of action to the Department of Labor and Industries (Department) or self-insured employer. State law provides a specific formula to be used when distributing any third-party recovery, and the Department and the self-insurer are entitled to be reimbursed for the benefits paid and estimated to be paid in the future.

Summary of Substitute Bill:

The professional rescue doctrine is abolished.

A professional rescuer who suffers any injury, disease, or death while in the lawful discharge of his or her official duties may seek recovery and damages from the person or entity whose neglect, willful omission, or willful or wanton conduct resulted, directly or indirectly, in the employee's injury, disease, or death. A professional rescuer may not bring an action that is otherwise barred by any other statutory provision.

"Professional rescuer" includes law enforcement officers, firefighters, employees performing wildfire suppression, and emergency medical services personnel.

Substitute Bill Compared to Original Bill:

The substitute bill:

- replaces the term "public safety employee" with "professional rescuer";
- defines "professional rescuer" to include law enforcement officers, firefighters, employees performing wildfire suppression, and emergency medical services personnel;
- modifies one of the categories of culpability from "willful or culpable conduct" to "willful or wanton conduct";
- specifies that a professional rescuer may not bring an action that is otherwise barred by any other statutory provision; and
- removes all provisions related to liability of public service companies.

Appropriation: None.

Fiscal Note: Available.

Effective Date of Substitute Bill: The bill takes effect 90 days after adjournment of the session in which the bill is passed.

Staff Summary of Public Testimony:

(In support) The professional rescue doctrine is a court-created immunity that completely bars first responders and public safety employees from bringing claims against wrongdoers who harm them in the line of duty. The vital importance of this legislation can be seen clearly in the case of Seattle firefighters who were seriously injured in a natural gas explosion; the local utility company claimed that it had capped the gas line, but it had not. The court dismissed the firefighters' claims not on the merits, but based on the professional rescue doctrine, which not only protects the wrongdoers at the expense of taxpayers but also treats first responders unequally and unfairly compared to average citizens.

The trend across the country is to abolish or limit the professional rescue doctrine and to protect the first responders, who deserve the same rights as everyone else. The Oregon Supreme Court called the doctrine inconsistent with modern tort law and abolished it in 1984. The Michigan Legislature recently abolished the doctrine with a very similar bill. The Washington Supreme Court recently had an opportunity to either abolish the professional rescue doctrine or carefully limit it, but they passed on it.

Firefighters understand that their job is extremely risky, and they willingly risk a lot to save lives. The impact of rescuers' injuries is often lifelong, and their families can be left destitute because disability benefits and health insurance do not necessarily cover the additional care that may be needed. In cases where negligence is involved, rescuers should be able to recoup something, and this bill would help with that by holding those who are

negligent accountable.

(Opposed) None.

Persons Testifying: Representative Bronoske, prime sponsor; AJ Johnson; Darrell Cochran, Washington State Association for Justice; Jeff Markoff; Charles Meyer; Richard Martell-Scott; Wynn Loiland; and Suzanne Loiland.

Persons Signed In To Testify But Not Testifying: Jolin Lowry.