

SUBJECT: Limiting liability for donated fire fighting and rescue equipment

COMMITTEE: Agriculture and Livestock — favorable, without amendment

VOTE: 7 ayes — Patterson, Swinford, Cook, Hupp, Rabuck, Roman, B. Turner
0 nays
2 absent— Flores, Oakley

WITNESSES: For — Gary Joiner, Texas Farm Bureau; Tommy Engelke; Joe Caldwell Nail; Mark Shilling; David White
Against — Bill Whitehurst, Texas Trial Lawyers Association
On — James B. Hull and Bobby R. Young, Texas Forest Service

BACKGROUND : The Education Code authorizes the Texas Forest Service to sell, lend or make available to organized fire fighting groups obsolete fire control equipment the service has received.

DIGEST: HB 680 would allow the Texas Forest Service to also make available to organized fire fighting groups used fire control as well as used or obsolete fire rescue equipment. Persons could donate used or obsolete fire control or fire rescue equipment to the Texas Forest Service for the service's own use or for distribution to other fire fighting groups. The bill would exempt the donor and the Texas Forest Service from civil liability for personal injury, property damage or death resulting from a defect in equipment donated in good faith except in cases involving gross negligence, recklessness or intentional misconduct.

Fire control and fire rescue equipment would include vehicles, fire fighting tools, protective gear, breathing apparatus and other supplies and tools used in fire fighting and rescue operations.

The bill would take effect September 1, 1997 and apply only to a cause of action accruing on or after that date.

**SUPPORTERS
SAY:**

HB 680 would help improve fire fighting and emergency services all across Texas by facilitating donations of needed equipment. Of the approximately 1,800 volunteer fire departments in Texas, 1,500 have no formal funding mechanisms and rely totally on donations. Other volunteer fire departments and many small or rural paid fire departments receive only very limited funding from local governments. Most do not have the funds to purchase equipment like breathing apparatus and protective clothing that help keep firefighters safe and enable them to better perform their duties.

Because of potential tort liability, many private companies routinely destroy used fire equipment rather than donating it. Texas is home to more than 900 industrial plants with their own fire brigades and over 10,000 industrial firefighters. These private fire brigades regularly update and replace their fire equipment, and in many cases equipment is junked that has never been used. This equipment — which includes breathing apparatus, protective clothing, hose, nozzles, hand tools, fire extinguishers and fire trucks — should be made available to the small and volunteer fire departments that so urgently need it.

HB 680 would end the waste of industrial fire equipment and help provide millions of dollars worth of equipment to local firefighters at no cost to taxpayers by removing the threat of liability from well-intentioned donors.

Under HB 680, neither donors nor the Texas Park Service would be liable for injuries or damage caused by a defect in equipment that was donated in good faith unless gross negligence, recklessness or intentional misconduct were involved. In these cases, the bill would preserve the right of the injured party to seek civil damages.

Several companies have indicated that they would donate equipment immediately if this bill took effect. One company has already promised 800 self-contained breathing apparatus, commonly known as air packs, costing \$2,000 to \$3,500 each when new.

The Texas Forest Service already has the procedures in place to carry out the provisions of this bill. The service currently obtains used fire equipment from military bases and other outlets of federal surplus and distributes the equipment to volunteer fire departments. Because of its primary concern

with the safety of volunteer firefighters, the service generally inspects equipment and will not accept or distribute defective “junk” equipment. The service distributes air packs with a warning notice that they must be certified.

OPPONENTS
SAY:

HB 680 would remove important legal protections from firefighters using donated equipment that may be defective. Current law does not prevent nor discourage donations because it only holds liable those donors who give equipment they know or should know is defective. If lawyers are telling companies not to donate, then companies are getting bad legal advice. There is no evidence suggesting there have been a significant number of lawsuits related to donated equipment.

HB 680 would broadly shield from liability “a person” who donates fire equipment. This would also immunize manufacturers who donate defective products. Firefighters already willingly take on dangerous duties for the safety of their fellow Texans. They should not be forced to further compromise their personal safety and liberty by relinquishing their rights to strict liability in products liability cases.

Furthermore, because of recent changes in tort law, “malice,” not “gross negligence” is the standard of conduct required for an award of punitive damages. Courts interpreting HB 680 might require injured firefighters or their families to prove malice, a very difficult burden, in order to recover punitive damages.

HB 680 could turn Texas into a dumping ground for junk equipment and endanger firefighters. Private businesses already get a federal tax deduction for charitable donations, and this broad exemption from liability would make donation of potentially substandard or defective equipment even more attractive.

OTHER
OPPONENTS
SAY:

HB 680 should explicitly require that donated breathing apparatus be recertified to manufacturer's specifications before being distributed to a volunteer fire department.

NOTES:

The companion bill, SB 675 by Ogden and Haywood, was reported favorably with amendments, from the Senate Jurisprudence Committee on March 11. The amendments would make “malice” an additional standard of conduct triggering liability, limit the bill to donations to volunteer fire departments, and add a subsection requiring that breathing apparatus donated to the Texas Forest Service be recertified to the manufacturer's specifications before being made available to a volunteer fire department.