

First Extraordinary Session, 2005

HOUSE BILL NO. 28

BY REPRESENTATIVES MARTINY, ALEXANDER, BEARD, BRUNEAU, BURNS, R. CARTER, CROWE, DOVE, DOWNS, ERDEY, GEYMANN, GREENE, HUTTER, JOHNS, KATZ, KENNARD, KLECKLEY, LABRUZZO, LAMBERT, MCVEA, MORRISH, PITRE, M. POWELL, T. POWELL, SCALISE, SCHNEIDER, SMILEY, JANE SMITH, STRAIN, TOOMY, TRAHAN, TUCKER, WADDELL, WALSWORTH, WHITE, AND WINSTON AND SENATORS BARHAM, BOASSO, CAIN, DARDENNE, HOLLIS, KOSTELKA, LENTINI, MALONE, MICHOT, QUINN, ROMERO, SCHEDLER, AND THEUNISSEN

LAW ENFORCEMENT: Limits liability of law enforcement agencies to prison detainees (Item #69)

1 AN ACT

2 To amend and reenact R.S. 29:735(A), relative to immunity of personnel during a

3 declaration of emergency or disaster; to provide for limitation of liability for law

4 enforcement agencies and officers based on detention of persons in any parish prison

5 or local jail under certain circumstances; to provide for retroactive application; and

6 to provide for related matters.

7 Be it enacted by the Legislature of Louisiana:

8 Section 1. R.S. 29:735(A) is hereby amended and reenacted to read as follows:

9 §735. Immunity of personnel

10 A.(1) Neither the state nor any political subdivision thereof, nor other

11 agencies, nor, except in case of willful misconduct, the agents' employees or

12 representatives of any of them engaged in any homeland security and emergency

13 preparedness activities, while complying with or attempting to comply with this

14 Chapter or any rule or regulation promulgated pursuant to the provisions of this

15 Chapter shall be liable for the death of or any injury to persons or damage to property

16 as a result of such activity.

1 (2) Additionally, no person detained or incarcerated in any parish prison or
 2 local jail operated by any sheriff or law enforcement agency shall have a cause of
 3 action for damages against the sheriff, the law enforcement agency, or employee
 4 thereof based solely on his custody or detention in such prison or jail for a period of
 5 time in excess of that required by the Code of Criminal Procedure or Title 15 of the
 6 Louisiana Revised Statutes of 1950 and which was caused by the impact of
 7 Hurricane Katrina or Hurricane Rita, unless the sheriff or law enforcement agency
 8 or employee thereof willfully fails to release the prisoner pursuant to a lawful order
 9 of the court, order of release from the district attorney or city or parish attorney, or
 10 pursuant to bail as authorized by law.

11 * * *

12 Section 2. The provisions of this Act shall be applied retroactively to August 29,
 13 2005.

14 Section 3. This Act shall become effective upon signature by the governor or, if not
 15 signed by the governor, upon expiration of the time for bills to become law without signature
 16 by the governor, as provided by Article III, Section 18 of the Constitution of Louisiana. If
 17 vetoed by the governor and subsequently approved by the legislature, this Act shall become
 18 effective on the day following such approval.

DIGEST

The digest printed below was prepared by House Legislative Services. It constitutes no part of the legislative instrument.

Martiny

HB No. 28

Abstract: Provides that no person shall have a cause of action against any law enforcement agency or officer based on his detention in a parish prison or local jail for a period of time in excess of that required by the Code of Criminal Procedure or Title 15 of the Louisiana Revised Statutes of 1950 when the failure to release was due to the effects of Hurricane Katrina or Rita.

Present law provides that neither the state nor any political subdivision thereof, nor other agencies, nor, except in case of willful misconduct, the agents' employees or representatives of any of them engaged in any homeland security and emergency preparedness activities, while complying with or attempting to comply with the provisions of the Louisiana Homeland Security and Emergency Assistance and Disaster Act or any rule or regulation promulgated pursuant to those provisions shall be liable for the death of or any injury to persons or damage to property as a result of such activity.

Proposed law retains present law and provides that no person detained or incarcerated in any parish prison or local jail operated shall have a cause of action for damages against the sheriff, law enforcement agency, or employee thereof based solely on his detention in such prison or jail for a period of time in excess of that required by the Code of Criminal Procedure or Title 15 of the Louisiana Revised Statutes of 1950 and which was caused by the impact of Hurricane Katrina or Hurricane Rita, unless there is a willful failure to release the prisoner upon a lawful order of the court, order of release from the district attorney, or pursuant to bail as authorized by law.

Proposed law provides for retroactive application to August 29, 2005.

Effective upon signature or lapse of time for gubernatorial action.

(Amends R.S. 29:735(A))

Summary of Amendments Adopted by House

Committee Amendments Proposed by House Committee on Civil Law and Procedure to the original bill.

1. Limits proposed law to when the prolonged detention is caused by Hurricane Katrina or Hurricane Rita.
2. Provides for circumstances when the limitation of liability does not apply.
3. Provides for retroactive application to August 29, 2005.