

2015 Regular Session

HOUSE BILL NO. 839 (Substitute for House Bill No. 706 by Representative Miguez)

BY REPRESENTATIVE MIGUEZ

Prefiled pursuant to Article III, Section 2(A)(4)(b)(i) of the Constitution of Louisiana.

LIABILITY/CIVIL: Provides a limitation of liability for certain facilities operated by nonprofit youth organizations

1 AN ACT

2 To enact R.S. 9:2795.6, relative to a limitation of liability for certain nonprofit youth
3 organizations; to provide for definitions; to extend the limitation of liability to
4 nonprofit youth organizations and youth adventure activities; to provide for duties
5 and requirements; to provide for exceptions; and to provide for related matters.

6 Be it enacted by the Legislature of Louisiana:

7 Section 1. R.S. 9:2795.6 is hereby enacted to read as follows:

8 §2795.6. Limitation of liability; nonprofit youth organizations; legislative findings;
9 definitions; duties and liability of providers and participants

10 A. The legislature hereby recognizes that there are inherent risks in various
11 adventure, educational, or recreational activities which should be understood by the
12 participants and which are essentially impossible for nonprofit youth organizations
13 and their providers to completely eliminate. Accordingly, it is the purpose of this
14 Section to define those areas of responsibility and those affirmative acts for which
15 these nonprofit organizations and their providers of adventure, educational, or
16 recreational activities in the Atchafalaya Basin shall be liable, and to further define
17 those risks which the participants expressly acknowledge and for which there can be
18 no recovery.

19 B. As used in this Section:

1 (1) "Adventure, educational, or recreational activities" means activities
2 which are: (a) sponsored by a nonprofit youth organization or provider which
3 include but are not limited to any of the following: hunting, fishing, trapping,
4 swimming, boating, camping, picnicking, hiking, horseback riding, bicycle riding,
5 motorized or nonmotorized vehicle operation for recreation purposes, nature study,
6 water skiing, ice skating, roller skating, roller blading, skate boarding, sledding,
7 snowmobiling, snow skiing, summer and winter sports, or viewing or enjoying
8 historical, archaeological, scenic, or scientific sites; and (b) conducted or
9 commenced on a youth adventure center and which may extend to other accessible
10 public or private land or waterways, including transportation to and from such land
11 or waterways.

12 (2) "Atchafalaya Basin" means the area of land and waterways located
13 within one mile of and all areas within the outermost levees of the Atchafalaya
14 Basin, and bounded on the north by U.S. Highway 190 and on the south by Morgan
15 City.

16 (3) "Nonprofit youth organization" means any nonprofit organization
17 qualified as a tax-exempt organization under Section 501(c)(3) of the Internal
18 Revenue Code, with a registered membership of at least one thousand persons within
19 the state of Louisiana, including any subsidiary, affiliate, or other related entity
20 within its corporate or other business structure, that has been chartered by the United
21 States Congress, regardless of any requirement to pay dues or tuition in order to
22 become a member of or participate with the organization, and that has established
23 a youth adventure center in an area of at least four hundred contiguous acres within
24 the Atchafalaya Basin in which to provide adventure, educational, or recreational
25 activities for members and participants.

26 (4) "Participant" means any person engaging in an adventure, educational,
27 or recreational activity sponsored by a nonprofit youth organization or provider.

28 (5) "Person" means individuals regardless of age.

1 (6) "Provider" means any individual, sole proprietorship, partnership,
2 association, public or private corporation, the United States or any federal agency,
3 this state or any political subdivision of this state, and any other legal entity which
4 engages, with or without compensation, in organizing, promoting, presenting,
5 providing, or assisting in providing an adventure, educational, or recreational activity
6 sponsored by a nonprofit youth organization, including one that allows the nonprofit
7 youth organization the use of its land for the adventure, educational, or recreational
8 activity.

9 (7) "Youth adventure center" means land and facilities managed by a
10 nonprofit youth organization or provider for adventure, educational, or recreational
11 activities in order to develop the ability of participants to become more self-
12 sufficient and to learn the value of helping others.

13 C. Every nonprofit youth organization or provider shall have all of the
14 following duties:

15 (1) Make reasonable and prudent efforts to determine the ability of a
16 participant to safely engage in an adventure, educational, or recreational activity.

17 (2) Make known to any participant any dangerous traits or characteristics or
18 any physical impairments or conditions related to a particular adventure, educational,
19 or recreational activity, of which the nonprofit youth organization or provider knows
20 or through the exercise of due diligence should know.

21 (3) Make known to any participant any dangerous condition as to land or
22 facilities under the lawful possession and control of the nonprofit youth organization
23 or provider, of which the nonprofit youth organization or provider knows or through
24 the exercise of due diligence should know, by advising the participant in writing or
25 by conspicuously posting warning signs upon the premises.

26 (4) Assure that each participant has or is provided all equipment reasonably
27 necessary for all activities covered by this Section and, in providing equipment to a
28 participant, make reasonable and prudent efforts to inspect such equipment to assure

1 that it is in proper working condition and safe for use in the adventure, educational,
2 or recreational activity.

3 (5) Prepare and present to each participant or prospective participant, for the
4 participant's inspection and signature, a statement which clearly and concisely
5 explains the liability limitations, restrictions, and responsibilities set forth in this
6 Section, provided that the statement shall not contain nor have the effect of a waiver
7 of a nonprofit youth organization or provider's duties set forth in this Section.

8 (6) Make reasonable efforts to provide supervision of participants while
9 engaged in activities under this Section.

10 D. Each participant shall have all of the following duties:

11 (1) Acknowledge that the adventure, educational, or recreational activities
12 described in this Section are hazardous to participants, regardless of all feasible
13 safety measures which can be taken.

14 (2) Expressly acknowledge the risk of and legal responsibility for any injury,
15 loss, or damage to person or property which may result from participation in an
16 adventure, educational, or recreational activity.

17 (3) Have the individual responsibility for knowing the range of the
18 participant's own ability to participate in a particular adventure, educational, or
19 recreational activity, acting within the limits of the participant's own ability, heeding
20 all posted warnings, acting in accordance with the instructions of any employee of
21 the nonprofit youth organization or provider, performing an adventure, educational,
22 or recreational activity only in an area or facility designated by the nonprofit youth
23 organization or provider, and refraining from acting in a manner which may cause
24 or contribute to the injury of anyone.

25 (4) Remain in the area or facility where the adventure, educational, or
26 recreational activity took place in the event of an accident causing injury, unless the
27 participant leaves personal identification and contact information, notifies the proper
28 authorities, or obtains assistance when that participant knows or reasonably should

1 know that any other person involved in the accident is in need of medical or other
2 assistance.

3 E. A nonprofit youth organization or provider shall be liable for all of the
4 following:

5 (1) Injury, loss, or damage directly resulting from the failure to follow the
6 duties set forth in Subsection C of this Section. A nonprofit youth organization or
7 provider shall not be liable for any injury, loss, or damage caused by the negligence
8 of any person who is not an agent or employee of the nonprofit youth organization
9 or provider.

10 (2) Acts or omissions which constitute gross negligence or willful and
11 wanton conduct which is the direct cause of injury to a participant.

12 (3) An intentional act by an agent or employee of the nonprofit youth
13 organization or provider which is the direct cause of injury or damages to a
14 participant.

15 F. Every nonprofit youth organization and any provider for such nonprofit
16 youth organization shall carry liability insurance in limits of no less than one million
17 dollars per person, three million dollars per occurrence, and fifty thousand dollars
18 for property damage with coverage extending to any employee or volunteer of the
19 nonprofit youth organization or provider in the course of their duties as an employee
20 or volunteer. The nonprofit youth organization, its employees, or agents shall not be
21 responsible for any loss or damages in excess of or in addition to the limits of
22 liability insurance coverage required by this Section. The failure to have in effect
23 the insurance required by this Section shall prevent the nonprofit youth organization
24 or provider from relying on the provisions of this Section in any civil action brought
25 by a participant.

DIGEST

The digest printed below was prepared by House Legislative Services. It constitutes no part of the legislative instrument. The keyword, one-liner, abstract, and digest do not constitute part of the law or proof or indicia of legislative intent. [R.S. 1:13(B) and 24:177(E)]

HB 839 Original

2015 Regular Session

Miguez

Abstract: Provides a limitation of liability to nonprofit youth organizations which operate youth adventure centers for adventure, educational, or recreational activities.

Proposed law provides for legislative findings relative to the inherent risks in various adventure, educational, or recreational activities sponsored by certain nonprofit youth organizations.

Proposed law defines "adventure, educational, or recreation activities", "Atchafalaya Basin", "nonprofit youth organization", "participant", "person", "provider", and "youth adventure center".

Proposed law establishes the duties of every nonprofit youth organization or provider as follows:

- (1) Make reasonable and prudent efforts to determine the ability of a participant to safely engage in the activity.
- (2) Make known to any participant any dangerous traits or characteristics or any physical impairments or conditions related to a particular activity.
- (3) Make known to any participant any dangerous condition as to land or facilities under the lawful possession and control of the nonprofit youth organization or provider.
- (4) Assure that each participant has or is provided all properly inspected equipment.
- (5) Prepare and present to each participant or prospective participant, for the participant's inspection and signature, a statement which clearly and concisely explains the liability limitations, restrictions, and responsibilities.
- (6) Make reasonable efforts to provide supervision of participants while engaged in activities.

Proposed law establishes the duties of each participant as follows:

- (1) Acknowledge that the adventure, educational, or recreational activities are hazardous to participants.
- (2) Expressly acknowledge the risk of and legal responsibility for any injury, loss, or damage to person or property.
- (3) Have the sole individual responsibility for knowing the range of the participant's own ability to participate in a particular adventure, educational, or recreational activity.
- (4) Remain in the area or facility where the adventure, educational, or recreational activity took place in the event of an accident causing injury.

Proposed law establishes liability for all of the following:

- (1) Injury, loss, or damage directly resulting from the failure to follow the duties set forth in proposed law.
- (2) Acts or omissions which constitute gross negligence or willful and wanton conduct which is the direct cause of injury to a participant.
- (3) An intentional act by an agent or employee of the nonprofit youth organization or provider which is the direct cause of injury or damages to a participant.

Proposed law requires every nonprofit youth organization and any provider for such nonprofit youth organization to carry liability insurance in limits of no less than \$1,000,000, per person, \$3,000,000 per occurrence, and \$50,000 for property damage.

Proposed law provides that a nonprofit youth organization, its employees, or agents shall not be responsible for any loss or damages in excess or in addition to the limits of liability insurance coverage required by proposed law, and further provides that failure to carry such insurance shall prevent the nonprofit youth organization or provider from relying on the limitations of liability provided by proposed law.

(Adds R.S. 9:2795.6)