

2015 Regular Session

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

BY REPRESENTATIVES MIGUEZ, ARMES, BERTHELOT, BILLIOT, STUART BISHOP, CARMODY, CROMER, GISCLAIR, HENRY, HOWARD, HUVAL, NANCY LANDRY, LEOPOLD, MILLER, MONToucET, NORTON, ORTEGO, OURSO, PONTI, REYNOLDS, RICHARD, SCHEXNAYDER, ST. GERMAIN, THIERRY, AND WOODRUFF

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:

20 (1) "Adventure, educational, or recreational activities" means activities  
21 which are: (a) sponsored by a nonprofit youth organization or provider which  
22 include but are not limited to any of the following: hunting, fishing, trapping,  
23 swimming, boating, camping, picnicking, hiking, horseback riding, bicycle riding,

1 motorized or nonmotorized vehicle operation for recreation purposes, nature study,  
2 water skiing, ice skating, roller skating, roller blading, skate boarding, sledding,  
3 snowmobiling, snow skiing, summer and winter sports, or viewing or enjoying  
4 historical, archaeological, scenic, or scientific sites; and (b) conducted or  
5 commenced on a youth adventure center and which may extend to other accessible  
6 public or private land or waterways, including transportation to and from such land  
7 or waterways.

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

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

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

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

25 (6) "Provider" means any individual, sole proprietorship, partnership,  
26 association, public or private corporation, the United States or any federal agency,  
27 this state or any political subdivision of this state, and any other legal entity which  
28 engages, with or without compensation, in organizing, promoting, presenting,  
29 providing, or assisting in providing an adventure, educational, or recreational activity  
30 sponsored by a nonprofit youth organization, including one that allows the nonprofit

1           youth organization the use of its land for the adventure, educational, or recreational  
2           activity.

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

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

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

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

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

20          (4) Assure that each participant has or is provided all equipment reasonably  
21          necessary for all activities covered by this Section and, in providing equipment to a  
22          participant, make reasonable and prudent efforts to inspect such equipment to assure  
23          that it is in proper working condition and safe for use in the adventure, educational,  
24          or recreational activity.

25          (5) Prepare and present to each participant or prospective participant, for the  
26          participant's inspection and signature, a statement which clearly and concisely  
27          explains the liability limitations, restrictions, and responsibilities set forth in this  
28          Section, provided that the statement shall not contain nor have the effect of a waiver  
29          of a nonprofit youth organization or provider's duties set forth in this Section. For  
30          participants under the age of eighteen or of any age who have a legally appointed

1 guardian, the statement shall also require the acknowledgment of their parent or legal  
2 guardian.

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

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

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

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

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

20 (4) Remain in the area or facility where the adventure, educational, or  
21 recreational activity took place in the event of an accident causing injury, unless the  
22 participant leaves personal identification and contact information, notifies the proper  
23 authorities, or obtains assistance when that participant knows or reasonably should  
24 know that any other person involved in the accident is in need of medical or other  
25 assistance.

26 (5) Participants under the age of eighteen or of any age who have a legally  
27 appointed guardian shall also require the acknowledgment of their parent or legal  
28 guardian with regard to their duties under this Section.

29 E. A nonprofit youth organization or provider shall be liable for any of the  
30 following:

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

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

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

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

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SPEAKER OF THE HOUSE OF REPRESENTATIVES

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PRESIDENT OF THE SENATE

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GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: \_\_\_\_\_