

Regular Session, 2003

HOUSE BILL NO. 128

BY REPRESENTATIVE MONTGOMERY

CIVIL/CLAIMS: Provides for limitation of liability for motorized off-road vehicle activities

1 AN ACT

2 To enact R.S. 9:2795.3, relative to limitation of liability for motorized off-road
3 vehicle activities; to provide for definitions; to provide for limitations
4 of liability in certain circumstances; to provide for exceptions; to
5 provide for the posting of signs and warnings; and to provide for related
6 matters.

7 Be it enacted by the Legislature of Louisiana:

8 Section 1. R.S. 9:2795.3 is hereby enacted to read as follows:

9 §2795.3. Limitation of liability; motorized off-road vehicle activities;
10 definitions; exceptions; required warning

11 A. As used in this Section, the following terms shall have the
12 following meanings, unless the context requires otherwise:

13 (1) "Engages in motorized off-road vehicle activity" means
14 riding or driving, or being a passenger upon a motorized off-road
15 vehicle, or any person assisting a participant or management. The term
16 "engages in a motorized off-road vehicle activity" does not include
17 being a spectator at a motorized off-road vehicle activity, except in

1 cases where the spectator places himself in an unauthorized area and in
2 immediate proximity to the motorized off-road vehicle activity.

3 (2) "Inherent risks of motorized off-road vehicle activities"
4 means those dangers or conditions which are an integral part of a
5 motorized off-road vehicle activity, including but not limited to:

6 (a) The propensity of a motorized off-road vehicle to roll over
7 in ways that may result in injury, harm, or death to persons on or around
8 them.

9 (b) Certain hazards such as surface and subsurface conditions.

10 (c) Collisions with other motorized off-road vehicles or objects.

11 (d) The potential of a participant to act in a negligent manner
12 that may contribute to injury to the participant or others, such as failing
13 to maintain control over the motorized off-road vehicle or not acting
14 within his ability.

15 (3) "Motorized off-road vehicle" means a two or four-wheeled
16 vehicle powered by a combustible engine and weighing under one
17 thousand five hundred pounds.

18 (4) "Motorized off-road vehicle activity" includes any or all of
19 the following:

20 (a) A motorized off-road vehicle show, race, competition, or
21 performance that involves any or all motorized off-road vehicles,
22 including but not limited to any dirt track, race course, or jump.

23 (b) Training, teaching, or demonstrating activities involving
24 motorized off-road vehicles.

25 (c) Riding, inspecting, or evaluating a motorized off-road
26 vehicle belonging to another, whether or not the owner has received

1 ~~some monetary consideration or other thing of value for the use of the~~
2 ~~motorized off-road vehicle.~~

3 (d) A ride, trip, hunt, or other motorized off-road vehicle
4 activity of any type, however informal or impromptu, that is sponsored
5 by a motorized off-road vehicle activity sponsor.

6 (5) "Motorized off-road vehicle activity sponsor" means an
7 individual, group, club, partnership, or corporation, whether or not the
8 sponsor is operating for profit or nonprofit, which sponsors, organizes,
9 or provides the facilities for a motorized off-road vehicle activity,
10 including but not limited to a hunting club; riding club; school or
11 college-sponsored class, program, or activity; therapeutic riding
12 program; or any operator, instructor, or promoter of a motorized off-
13 road vehicle facility.

14 (6) "Motorized off-road vehicle facility" means any area used
15 for any motorized off-road vehicle activity, including but not limited to
16 a farm, ranch, riding arena, barn, pasture, riding trail, or other area or
17 facility used or provided by a motorized off-road vehicle activity
18 sponsor or where a participant engages in a motorized off-road vehicle
19 activity.

20 (7) "Motorized off-road vehicle professional" means a person
21 engaged for compensation in any of the following:

22 (a) Instructing a participant or renting to a participant a
23 motorized off-road vehicle for the purpose of riding, driving, or being
24 a passenger upon the motorized off-road vehicle.

25 (b) Renting equipment to a participant in a motorized off-road
26 vehicle activity.

1 (8) "Participant" means any person, whether amateur or
2 professional, who engages in a motorized off-road vehicle activity,
3 whether or not a fee is paid to participate in the motorized off-road
4 vehicle activity.

5 B. Except as provided in Subsection C of this Section, a
6 motorized off-road vehicle activity sponsor, a motorized off-road
7 vehicle professional, or any other person, which shall include
8 individuals and all forms of business entities, shall not be liable for an
9 injury to or the death of a participant resulting from the inherent risks
10 of a motorized off-road vehicle activity and, except as provided in
11 Subsection C of this Section, no participant or participant's
12 representative shall make any claim against, maintain an action against,
13 or recover from a motorized off-road vehicle activity sponsor, a
14 motorized off-road vehicle professional, or any other person for injury,
15 loss, damage, or death of the participant resulting from any of the
16 inherent risks of motorized off-road vehicle activities.

17 C. Nothing in Subsection B of this Section shall prevent or limit
18 the liability of a motorized off-road vehicle activity sponsor, a
19 motorized off-road vehicle professional, or any other person if the
20 motorized off-road vehicle activity sponsor, motorized off-road vehicle
21 professional, or other person either:

22 (1) Provided the equipment, and knew or should have known
23 that the equipment was faulty, and such equipment was faulty to the
24 extent that it did cause the injury.

1 (2) Failed to make reasonable and prudent efforts to determine
2 the ability of the participant to engage safely in the motorized off-road
3 vehicle activity.

4 (3) Owns, leases, rents, or otherwise is in lawful possession and
5 control of the land or facility upon which the participant sustained
6 injuries because of a dangerous latent condition which was known or
7 should have been known to the motorized off-road vehicle activity
8 sponsor, motorized off-road vehicle professional, or other person and
9 for which warning signs have not been conspicuously posted.

10 (4) Commits an act or omission that constitutes willful or
11 wanton disregard for the safety of the participant, and that act or
12 omission caused the injury.

13 (5) Intentionally injures the participant.

14 D. Nothing in Subsection B of this Section shall prevent or limit
15 the liability of a motorized off-road vehicle activity sponsor or a
16 motorized off-road vehicle professional or other person under liability
17 provisions as set forth in the "Louisiana Products Liability Act", R.S.
18 9:2800.51 through 2800.59.

19 E. Every motorized off-road vehicle professional and every
20 motorized off-road vehicle activity sponsor shall post and maintain a
21 sign conspicuously located or provide a written warning which contains
22 the warning notice specified in Subsection F of this Section. The sign
23 shall be placed in a clearly visible location on or near any registration
24 area, staging area, or arena where the motorized off-road vehicle
25 professional or the motorized off-road vehicle activity sponsor conducts
26 a motorized off-road vehicle activity or the written warning shall be

1 given to each participant prior to the commencement of the activities.

2 The warning notice specified in Subsection F of this Section shall
3 appear on the sign in black letters, with each letter to be a minimum of
4 one inch in height or shall appear in the written warning in boldfaced
5 capital letters no smaller than twelve-point type. Every written contract
6 entered into by a motorized off-road vehicle professional or by a
7 motorized off-road vehicle activity sponsor for the provision of
8 professional services, instruction, or the rental of equipment or a
9 motorized off-road vehicle to a participant, whether or not the contract
10 involves motorized off-road vehicle activities on or off the location or
11 site of the motorized off-road vehicle professional's or the motorized
12 off-road vehicle activity sponsor's business, shall contain in clearly
13 readable print the warning notice specified in Subsection F of this
14 Section.

15 F. The signs, written warnings, and contracts described in
16 Subsection E of this Section shall contain the following warning notice:
17 "WARNING Under Louisiana law, a motorized off-road vehicle
18 activity sponsor or motorized off-road vehicle professional is not liable
19 for an injury to or the death of a participant in a motorized off-road
20 vehicle activity resulting from the inherent risks of the motorized off-
21 road vehicle activity, pursuant to R.S. 9:2795.3."

22 G. Failure to comply with the requirements concerning warning
23 notices provided in this Section shall prevent a motorized off-road
24 vehicle activity sponsor or motorized off-road vehicle professional
25 from invoking the privilege of immunity provided by this Section.

DIGEST

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

Montgomery

HB No. 128

Abstract: Provides for limitations of liability for certain motorized off-road vehicle (ORV) activities and for definitions and the posting of signs and warnings.

Proposed law provides for definitions of "engages in motorized off-road vehicle activity", "inherent risks of motorized off-road vehicle activities", "motorized off-road vehicle", "motorized off-road vehicle activity", "motorized off-road vehicle activity sponsor", "motorized off-road vehicle professional", and "participant".

Proposed law provides that an ORV activity sponsor, an ORV activity professional, or any other person shall not be liable for injury or death of a participant in ORV activities resulting from the inherent risks of those activities. Further provides for exceptions to the limitation of liability including recovery under the "La. Products Liability Act".

Proposed law requires that ORV professionals and ORV activity sponsors post and maintain signs warning of the inherent risks of ORV activities, or that the written warning shall be given to each participant, and that the same warning notice should be contained in written contracts entered into by ORV professionals and by ORV activity sponsors for the providing of professional services, instruction, or the rental of equipment or an ORV to a participant.

Proposed law provides for the language of the warning sign or contract notices and provides that failure to comply with the requirements concerning the signs and contract notices prevents the ORV activity sponsor, professional, or other person from invoking the privilege of immunity provided by proposed law.

(Adds R.S. 9:2795.3)