

2020 Regular Session

HOUSE BILL NO. 856

BY REPRESENTATIVE EDMONDS

LIABILITY/CIVIL: Provides relative to limitations of liability in response to the COVID-19 state of emergency

1 AN ACT

2 To amend and reenact R.S. 9:2799.3 and R.S. 37:1731.1, relative to the limitation of
3 liability; to provide for the limitation of liability during the COVID-19 public health
4 emergency; to provide for the limitation of liability relative to the provision of food
5 under certain circumstances; to provide for the limitation of liability for the provision
6 of medical supplies and related equipment; to provide for applicability; to provide
7 for definitions; to provide for an effective date; and to provide for related matters.

8 Be it enacted by the Legislature of Louisiana:

9 Section 1. R.S. 9:2799.3 is hereby amended and reenacted to read as follows:

10 §2799.3. Limitation of liability of restaurants, schools, churches, civic
11 organizations, and certain other providers of food ~~donors for damages from~~
12 ~~donated food~~

13 A. No person shall have a cause of action against a restaurant, church, civic
14 organization, or school, or against any individual, farmer, manufacturer, processor,
15 packer, wholesaler, or retailer of food who donates perishable, salvageable food
16 which is prepared and subsequently donated by the restaurant, church, civic
17 organization, or school to a facility which operates an on-premises feeding program
18 for persons who are needy, ill, or have a disability, infants, or individuals or families
19 in need of assistance for damages caused by the condition of the food, unless the

1 damages result from the intentional act or omission or the negligence of the
2 restaurant or donor.

3 B.(1) The limitation of liability provided by this Section for damages caused
4 by the preparation, condition, or delivery of food shall also apply to any restaurant,
5 church, civic organization, or school, and to any individual, farmer, manufacturer,
6 processor, packer, wholesaler, or retailer of food who provides food directly or
7 indirectly to the general public through donation or for compensation during the
8 COVID-19 public health declared state of emergency as declared by Proclamation
9 JBE 2020-25.

10 (2) The provisions of this Subsection shall only be applicable and remain in
11 effect for the duration of Proclamation JBE 2020-25 and for the duration of any
12 subsequent extension of the public health declared state of emergency originally
13 declared by Proclamation JBE 2020-25.

14 Section 2. R.S. 37:1731.1 is hereby amended and reenacted to read as follows:

15 §1731.1. Medical services, supplies, and equipment during declared state of
16 emergency; limitation of liability

17 A.(1) Medical personnel who, in good faith and regardless of compensation,
18 render or fail to render emergency care, ~~health care~~ healthcare services or first aid
19 during a declared state of emergency when the state of emergency affects the
20 rendering of medical care shall not be liable for any civil damages or injury as a
21 result of any act or omission related to the rendering of or failure to render services,
22 unless the damages or injury was caused by gross negligence or willful and wanton
23 misconduct.

24 (2)(a) Individuals and businesses that produce or supply in good faith and
25 regardless of compensation, medical supplies and related equipment in response to
26 the COVID-19 public health declared state of emergency as declared by
27 Proclamation JBE 2020-25 shall not be liable for any civil damages or injury as a
28 result of any act or omission related to the production, delivery, or sale of medical
29 supplies and related equipment in response to the COVID-19 public health declared

1 state of emergency, unless the damages or injury was caused by gross negligence or
2 willful and wanton misconduct.

3 B. As used in this Section:

4 (1) "During a declared state of emergency" means during the period of time
5 set forth in a declaration by proclamation or executive order of the governor in
6 accordance with R.S. 29:724 and shall include the time period as set forth in the
7 declaration and shall also be retroactive to the precipitating event requiring the
8 declaration.

9 (2) "Healthcare provider" means a person who is licensed, certified, or
10 otherwise authorized by the laws of this state to provide health care or medical
11 treatment in the ordinary course of business or practice of a profession.

12 ~~(2)~~(3) "~~Health care~~ Healthcare services" means any act or treatment
13 performed or furnished or which should have been performed or furnished, by a
14 ~~health care~~ healthcare provider for, to, or on behalf of a person.

15 ~~(3)~~(4) "Medical personnel" means an individual or person subject to the
16 provisions of R.S. 37:1731, regardless of compensation.

17 (5) "Medical supplies and related equipment" means healthcare materials
18 ordered or prescribed by a healthcare provider and tools of the trade of the medical
19 profession primarily and customarily used to serve a medical purpose which are
20 necessary for the treatment or prevention of an illness or disease, which include but
21 are not limited to needles, syringes, gauze, gloves, masks, face-shields, gowns, other
22 personal protective equipment used or worn by healthcare providers, and other items
23 used for the treatment of patients.

24 Section 3. This Act shall become effective upon signature by the governor or, if not
25 signed by the governor, upon expiration of the time for bills to become law without signature
26 by the governor, as provided by Article III, Section 18 of the Constitution of Louisiana. If
27 vetoed by the governor and subsequently approved by the legislature, this Act shall become
28 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. 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 856 Original

2020 Regular Session

Edmonds

Abstract: Provides a limitation of liability to certain individuals and businesses that provide food and medical supplies and related equipment in response to the COVID-19 public health emergency.

Present law provides that no person shall have a cause of action for damages against a restaurant, church, civic organization, or school, or against any individual, farmer, manufacturer, processor, packer, wholesaler, or retailer of food who donates perishable, salvageable food which is prepared and subsequently donated by the restaurant, church, civic organization, or school to a facility which operates an on-premises feeding program for certain persons, unless the damages result from the intentional act or omission or the negligence of the restaurant or donor.

Proposed law retains present law and also provides a limitation of liability for damages caused by the condition of food when a restaurant, church, civic organization, school, individual, farmer, manufacturer, processor, packer, wholesaler, or retailer of food provides food directly or indirectly to the general public through donation or for compensation during the COVID-19 public health declared state of emergency.

Proposed law provides that proposed law shall only be applicable and remain in effect for the duration of Proclamation JBE 2020-25 and for the duration of any extension of the public health declared state of emergency.

Present law provides that medical personnel who, in good faith and regardless of compensation, render or fail to render emergency care, health care services or first aid during a declared state of emergency when the state of emergency affects the rendering of medical care shall not be liable for any civil damages or injury as a result of any act or omission related to the rendering of or failure to render services, unless the damages or injury was caused by gross negligence or willful and wanton misconduct.

Proposed law retains present law.

Present law provides definitions for "during a declared state of emergency", "health care services", and "medical personnel".

Proposed law retains present law but specifies that "during a declared state of emergency" means a declaration by proclamation or executive order.

Proposed law extends the present law limitation of liability to individuals and businesses that produce or supply in good faith and regardless of compensation, medical supplies and related equipment in response to the COVID-19 public health declared state of emergency.

Proposed law defines "healthcare provider" and "medical supplies and related equipment".

Effective upon signature of the governor or lapse of time for gubernatorial action.

(Amends R.S. 9:2799.3 and R.S. 37:1731.1)