H.R. REP. 109-393, H.R. Rep. No. 393, 109TH Cong., 2ND Sess. 2006, 2006 WL 686564 (Leg.Hist.)

**\*1** NONPROFIT ATHLETIC ORGANIZATION PROTECTION ACT OF 2006

HOUSE REPORT NO. 109–393

March 15, 2006

Mr. Sensenbrenner, from the Committee on the Judiciary, submitted the following

REPORT

[To accompany H.R. 1176]

The Committee on the Judiciary, to whom was referred the bill (H.R. 1176) to provide immunity for nonprofit athletic organizations in lawsuits arising from claims of ordinary negligence relating to the passage, adoption, or failure to adopt rules of play for athletic competitions and practices, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

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**\*2** PURPOSE AND SUMMARY

H.R. 1176, the “Nonprofit Athletic Organization Protection Act of 2006,” was introduced by Representative Souder on March 8, 2005. The legislation is intended to stem the growing threat of lawsuits against organizations ranging from youth sport's baseball Little Leagues to high school sports rule-making bodies. The bill exempts nonprofit athletic organizations and their officers and employees acting in their official capacity from liability for harm caused by a negligent act or omission of such organization in the adoption of rules of play for sanctioned or approved athletic competitions or practices. The general protection preempts inconsistent State laws but makes exceptions for certain State laws requiring adherence to risk management and training procedures, State general respondeat superior laws, or State laws waiving liability limits in cases brought by any officer of the State or local government. The language mirrors provisions of the “Volunteer Protection Act” (VPA).1

BACKGROUND AND NEED FOR THE LEGISLATION

H.R. 1176 extends the liability protections already provided by Congress in the Volunteer Protection Act of 1997 to nonprofit athletic rule-making organizations. The extension of these liability protections reflects Congress' recognition that America's long tradition of volunteerism and generosity has been undermined by costly and often frivolous litigation. In recent decades, actual lawsuits and fears of liability have increasingly become a deterrent to people who might otherwise have given of their time or resources to better their community and country.

HISTORY OF VOLUNTEER LIABILITY PROTECTIONS

The common law of all 50 States allows individuals to collect monetary damages in tort for personal injury or property damage caused by another person's negligence or willful conduct. Virtually all of these States have recognized the need to encourage good works and volunteerism by protecting volunteers and nonprofit organizations from tort liability for accidents that arise in the normal course of their dealings. For example, New Jersey provides that charities and the volunteers they utilize are immune from liability for ordinary negligence.2 In Kansas, a volunteer or nonprofit organization is immune from liability for negligence if the organization carries general liability insurance coverage.3 Ohio offers broad immunity for volunteers of charitable organizations.4 Wisconsin State law limits the liability of volunteers of non-stock corporations organized under Chapter 181.5 Georgia grants immunity for members, directors, officers, and trustees of charities from negligence claims asserted by beneficiaries of the charity.6 These States' efforts reflect a broader national consensus that volunteers and volunteer organizations should be protected from legal liability.

**\*3** Congress recognized this national consensus and held hearings examining this subject in 1997.7 Those hearings showed that in addition to causing potential volunteers to stay at home or refrain from certain needed activities, liability and the fear of liability for volunteer activities had very real financial impacts, including dramatically rising costs for liability insurance premiums for volunteer organizations. These increased premiums have practical consequences: the Executive Director of the Girl Scout Council of Washington, D.C. stated that “locally we must sell 87,000 boxes of . . . Girl Scout cookies each year to pay for [our] liability insurance.”8 Furthermore, Dr. Thomas Jones, Managing Director of the Washington, D.C. office of Habitat for Humanity, testified that “[t]here are Habitat affiliate boards for whom the largest single administrative cost is the perceived necessity of purchasing liability insurance to protect board members. These are moneys which otherwise would be used to build more houses [for] more persons in need.”9

These concerns prompted Congress to pass the Volunteer Protection Act (VPA), which was signed into law by President Clinton on June 18, 1997.10 The VPA protects “volunteers”11 for incidents that arise in the scope of their work, but it does not provide liability protection for willful, reckless, or criminal conduct or gross negligence. The Act limits punitive damages and non-economic damages for those individuals found liable.12 However, the VPA does not protect nonprofit organizations and government entities themselves from liability for negligence of their volunteers unless State law provides “charitable immunity” for such organizations.13 Hence, under the common law doctrine of respondeat superior, volunteer organizations and entities are still generally vicariously liable for the negligence of their employees and volunteers. Also, volunteers that operate motor vehicles, vessels, or aircraft are not protected by the VPA.14

The passage of the VPA has not ended the problem of liability and its associated costs for volunteers and the non-profit organizations that support them. Hence, the Committee has held hearings15 in recent years about various aspects of this problem and has advanced several pieces of legislation16 designed to limit liability for volunteers and volunteer, non-profit, or charitable organizations. For example, in the 107th Congress, the House-passed **\*4** version of the “Charitable Choice Act of 2001,” H.R. 7, contained provisions limiting liability for persons or entities who donated equipment to charitable organizations.17 In the 108th Congress, the House overwhelmingly passed H.R. 1787, the “Good Samaritan Volunteer Firefighter Assistance Act of 2003,” which extends certain liability protections to those who donate equipment to volunteer fire stations, by a vote of 397–3.18 The provisions of that Act are now included as Section 125 of the USA PATRIOT Improvement and Reauthorization Act of 2005, which was signed into law on March 9, 2006.19 On the same day, the House also overwhelmingly passed H.R. 1084, the “Volunteer Pilot Organization Protection Act,” by a vote of 385–12.20

Most recently, the House passed the “Katrina Volunteer Protection Act of 2005,” H.R. 3736, by voice vote on September 14, 2005.21 This bill extends liability protections to any person or entity that voluntarily rendered aid in the wake of Hurricane Katrina, provided that the harm was not caused by willful, wanton, reckless, or criminal conduct.

THE NONPROFIT ATHLETIC ORGANIZATION PROTECTION ACT OF 2006

H.R. 1176, the “Nonprofit Athletic Organization Protection Act of 2006,” is intended to stem the growing threat of lawsuits against sports rulemaking bodies. Rulemaking bodies play a critical role in facilitating all levels and all types of sports. Nonprofit rulemaking bodies use the expertise of experienced volunteers to set forth rules for athletic competitions and practices that attempt to preserve sports traditions and minimize risks to participants. However, this rulemaking function is a predictive endeavor without the benefit of perfect foresight, and sports involve inherent risks.22 Thus, when the inevitable accidents do occur, nonprofit rulemaking bodies are often sued along with the local school district, coach, and referee because such organizations are presumed to have “deep pockets.” This growing trend of lawsuits has led to a dramatic increase in the insurance premiums for many rulemaking associations. For example, the National High School Federation, which develops rules for 17 different sports, saw a 300 percent increase for insurance premiums over just 3 years.23 This increase means that insurance premiums now make up over 10 percent of the Federation's annual budget.24

If this trend continues, these rulemaking authorities may be driven out of existence and amateur sports would suffer. Typical bodily injury cases cost over $25,000 in legal fees–even when the case is ultimately dismissed.25 As a result, organizations are unable to find a provider of insurance willing to offer them coverage **\*5** because of their exposure to millions of potential litigants (high school athletes).26

H.R. 1176 addresses this insurance reality by mirroring the Volunteer Protection Act and exempting nonprofit athletic organizations from liability only for harm caused by an act or omission of such organization in the adoption of rules of play (and not in any other context) for sanctioned or approved athletic competitions or practices. This legislation does provide a blanket grant of immunity; rather nonprofit athletic rulemaking organizations could still be held liable for any grossly negligent or reckless, willful, or criminal acts or omissions in the formulation of these rules of play. The athletic organizations covered are defined by both their IRS nonprofit status and those with a primary function of setting rules for competitions. Also covered are employees of such organizations acting in the scope of their official duties. The liability protections have limiting exceptions to ensure the organization meets any certification or licensing requirements, and that the harm was not caused by willful or criminal misconduct or gross negligence on the part of the organization. The general protection preempts inconsistent State laws but makes exceptions for certain State laws requiring adherence to risk management and training procedures, State general respondeat superior laws, or State laws waiving liability limits in cases brought by an officer of the State or local government.

The predecessor bill to H.R. 1176, H.R. 3369, received majority support (217–176) in the House of Representatives in the 108th Congress.27 Because the bill was brought up on suspension of the rules and failed to achieve the requisite two-thirds support, it did not pass. However, a new provision, subsection 4(d), has been added to the bill to address the concerns of some Members that the liability protections be clearly directed at personal injury claims.

H.R. 1176 is supported by, among others, the National Federation of State High School Associations; the National Collegiate Athletic Association; the National Council of Youth Sports; the Amateur Athletic Union of the United States (AAU); Little League Baseball; Pop Warner Little Scholars, Inc.; USA Baseball; USA Softball; and the Women's Sports Foundation.

HEARINGS

The full Committee on the Judiciary held no hearings on H.R. 1176 in the 109th Congress. However, the full Committee on the Judiciary held a hearing on a nearly identical bill, H.R. 3369, in the 108th Congress, at which testimony was received from Mr. Robert Kanaby, Executive Director of the National Federation of State High School Associations, and Professor Andrew F. Popper, of the American University and Washington College of Law.

COMMITTEE CONSIDERATION

On March 2, 2006, the Committee met in open session and ordered favorably reported the bill H.R. 1176 by voice vote, a quorum being present.

**\*6** VOTE OF THE COMMITTEE

In compliance with clause 3(b) of Rule XIII of the Rules of the House of Representatives, the Committee notes that there were no recorded votes during the Committee consideration of H.R. 1176.

COMMITTEE OVERSIGHT FINDINGS

In compliance with clause 3(c)(1) of Rule XIII of the Rules of the House of Representatives, the Committee reports that the findings and recommendations of the Committee, based on oversight activities under clause 2(b)(1) of Rule X of the Rules of the House of Representatives, are incorporated in the descriptive portions of this report.

NEW BUDGET AUTHORITY AND TAX EXPENDITURES

Clause 3(c)(2) of Rule XIII of the Rules of the House of Representatives is inapplicable because this legislation does not provide new budgetary authority or increased tax expenditures.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

In compliance with clause 3(c)(3) of Rule XIII of the Rules of the House of Representatives, the Committee sets forth, with respect to the bill, H.R. 1176, the following estimate and comparison prepared by the Director of the Congressional Budget Office under section 402 of the Congressional Budget Act of 1974:

U.S. Congress,

Congressional Budget Office,

Washington, DC, March 10, 2006.

Hon. F. James Sensenbrenner, Jr., Chairman,

Committee on the Judiciary,

House of Representatives, Washington, DC.

Dear Mr. Chairman: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 1176, the “Nonprofit Athletic Organization Protection Act of 2006.”

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contacts are Gregory Waring (for Federal costs), who can be reached at 226–2860, and Melissa Merrell (for the state and local impact), who can be reached at 225–3220.

Sincerely,

Douglas Holtz-Eakin.

Enclosure

cc:

Honorable John Conyers, Jr.

Ranking Member

H.R. 1176–Nonprofit Athletic Organization Protection Act of 2006.

H.R. 1176 would provide immunity to nonprofit athletic organizations such as Little League and school sports programs from liability in certain civil suits alleging harm from an act or omission of such an organization in the adoption of rules for athletic competitions or practices.

**\*7** CBO estimates that implementing the legislation would result in no significant costs to the Federal Government. Enacting H.R. 1176 would not affect direct spending or revenues.

H.R. 1176 contains an intergovernmental mandate as defined in the Unfunded Mandates Reform Act (UMRA), but CBO estimates that the resulting costs, if any, would not be significant and would be well below the threshold for intergovernmental mandates established in that act ($64 million in 2006, adjusted annually for inflation). This bill contains no new private-sector mandates as defined in UMRA.

H.R. 1176 contains an intergovernmental mandate because it would preempt certain state liability laws. Specifically, the bill would exempt nonprofit athletic organizations from liability under state tort laws for certain injuries that may occur during practice or competitions. CBO estimates that the costs, if any, would not be significant and would be well below the threshold established in UMRA.

The CBO staff contacts for this estimate are Gregory Waring (for Federal costs), who can be reached at 226–2860, and Melissa Merrell (for the state and local impact), who can be reached at 225–3220. This estimate was approved by Peter H. Fontaine, Deputy Assistant Director for Budget Analysis.

PERFORMANCE GOALS AND OBJECTIVES

The Committee states that pursuant to clause 3(c)(4) of Rule XIII of the Rules of the House of Representatives, H.R.1176, will provide limited liability protection for nonprofit athletic organizations and their officers operating within the scope of their official capacity.

CONSTITUTIONAL AUTHORITY STATEMENT

Pursuant to clause 3(d)(1) of Rule XIII of the Rules of the House of Representatives, the Committee finds the authority for this legislation in art. I, S 8 of the Constitution.

SECTION-BY-SECTION ANALYSIS AND DISCUSSION

The following discussion describes the bill as reported by the Committee.

Section 1. Short Title

Section 1 provides that H.R. 1176 may be cited as the “Nonprofit Athletic Organization Protection Act of 2006.”

Section 2. Findings

Section 2 sets forth eight Congressional findings regarding the role amateur athletics plays in the overall health and well-being of America's youth. The findings also note that rules and rule-making bodies are essential for the development of amateur athletics, and that these rules and rule-making bodies have become the focus of a large number of lawsuits.

Section 3. Definitions

Section 3 sets forth the operative definitions for the Act. Those definitions are identical to those found in the Volunteer Protection **\*8** Act, 14 U.S.C. S 14505, with one addition: the term “Nonprofit Athletic Organization.” That term is defined as nonprofit organization (as that term is defined in Section 401(c)(3) of the Tax Code) that has as one of its primary functions the adoption of rules for sanctioned or approved athletic competitions and practices. The term includes the employees, agents, and volunteers of such organization, provided such individuals are acting within the scope of their duties with the nonprofit athletic organization.

Section 4. Limitation on Liability for Nonprofit Athletic Organizations

Section 4 creates ordinary negligence liability protection for nonprofit athletic organizations for lawsuits arising out of their rulemaking function in setting the rules for athletic competitions. This protection does not apply when harm was caused by gross negligence or willful, criminal, or reckless misconduct by the organization. These protections are identical to those contained within the Volunteer Protection Act, 42 U.S.C. S 14503, and only protect against negligent actions and decisions of a nonprofit athletic organization related to enacting a “rule of play,” as opposed to a rule related to hiring or eligibility. This protection does not apply when certain State law requirements are in effect and such requirements have not been met.

Subsection 4(a) provides that a nonprofit athletic organization shall not be liable for harm caused by an act or omission of such an organization in the adoption of rules of play for sanctioned or approved athletic competitions or practices if it was acting within the scope of its duties at the time of the adoption of the rules; it met the applicable State licensing, certification or authorization requirements; and the harm was not caused by willful or criminal misconduct, gross negligence, or reckless misconduct on the part of the nonprofit athletic organization. Nothing in this subsection would preclude a suit against a coach or referee, or the organization that hired such coach or referee, for claims of molestation or sexual battery.

Subsection 4(b) provides that nothing in the act shall be construed to affect a lawsuit brought by a covered nonprofit athletic organization against any employee, agent, or volunteer of the organization. This section does not preclude a lawsuit by an employee, agent, or volunteer against the nonprofit athletic organization, provided that the suit is not related to the adoption of rules of play as provided in subsection 4(a).

Subsection 4(c) provides that if the laws of a State limit the liability of a nonprofit athletic organization subject to the following conditions, those conditions must still be met by the organization to enjoy protection: (1) a State law that requires such organization to adhere to risk management procedures; (2) a State (respondeat superior) law that makes such an organization liable for the acts or omissions of its employees, agents, and volunteers to the same extent any employer is liable for acts or omissions of its employees; or (3) a State law that makes a limitation on liability inapplicable if the civil action was brought by an officer of a State or local government pursuant to State or local law.

Subsection 4(d) provides that this Act shall not apply to any claims arising out of Federal, State, or local antitrust, labor, **\*9** environmental, defamation, tortious interference of contract law, or civil rights law, or any other Federal, State, or local law providing protection from discrimination.

Section 5. Preemption

Section 5 provides that this Act preempts the laws of any State to the extent such laws are inconsistent with the Act, but shall not preempt any State law that affords additional protection from liability relating to the rulemaking activities of nonprofit athletic organizations.

Section 6. Effective Date

Section 6 provides that the Act shall take effect on the date of enactment and will apply to any claim for harm caused by a nonprofit athletic organization that is filed on or after the effective date, but only if the harm that is the subject of the claim occurred on or after the effective date.

MARKUP TRANSCRIPT

BUSINESS MEETING

The Committee met, pursuant to notice, at 10:00 a.m., in Room 2141, Rayburn House Office Building, the Honorable F. James Sensenbrenner, Jr. (Chairman of the Committee) presiding.

[Intervening business.]

Chairman Sensenbrenner. Pursuant to notice, I now call up the bill H.R. 1176, the “Nonprofit Athletic Organization Protection Act,” for purposes of markup and move its favorable recommendation to the House.

Without objection, the bill will be considered as read and open for amendment at any point.

[The bill, H.R. 1176, follows:]

s,d450

**\*21** DISSENTING VIEWS

A. THE LEGISLATION DOES NOT DIFFERENTIATE BETWEEN MERITORIOUS LAWSUITS AND FRIVOLOUS CLAIMS.

B. H.R. 1176 PROVIDES ONE WAY IMMUNITY.

CONCLUSION

As we have in the past, we are willing to work with the Majority to develop reasonable legislation that protects non-profit groups from unnecessary litigation while insuring that meritorious claims are protected. H.R. 1176 however, does not meet this test. Instead of protecting good faith and reasonable actions by non-profit athletic associations designed to protect athletes from physical harm, the bill massively overreaches and limits legitimate actions.

John Conyers, Jr.

Bobby Scott.

Maxine Waters.

Bill Delahunt.

Linda T. Sánchez

Debbie Wasserman Schultz.

Howard L. Berman.

Melvin L. Watt.

1 42 U.S.C. S 14501 et. seq.

2 N.J. Stat. Ann. S S 2A: 53A–7 to 7.1.

3 Kan. Stat. Ann. S 60–3601.

4 Ohio. Rev. Code Ann. S 2305.38.

5 Wis. Stat. S S 181.0670.

6 Ga. Code Ann. S 51–1–20.

7 Volunteer Liability Legislation, Hearing on H.R. 911 and H.R. 1167 Before the House Committee on the Judiciary, 105th Cong. (1997).

8 H.R. Rep. No. 105–101, at 6 (1997).

9 Volunteer Liability Legislation: Hearing on H.R. 911 and H.R. 1167, supra, 105th Cong. at 56.

10 Pub. L. No. 105–19 (1997).

11 “Volunteer” is defined in the VPA as a person who performs services for a non-profit and who receives no more than $500 per year for such services. 24 U.S.C. S 14505(6).

12 42 U.S.C. S S 14503(e), 14504.

13 42 U.S.C. S S 14502(a), 14503(c).

14 42 U.S.C. S 14503(a)(4).

15 See, e.g., Good Samaritan Volunteer Firefighter Assistance Act of 2003, the Non Profit Athletic Organization Protection Act of 2003, and the Volunteer Pilot Organization Protection Act: Hearing Before the House Comm. on the Judiciary on H.R. 1787, H.R. 3369, and H.R. 1084,108th Cong. (2004); State and Local Implementation of Existing Charitable Choice Programs, 107th Cong. 13 (2001); Volunteer Liability Legislation, Hearing on H.R. 911 and H.R. 1167 Before the House Committee on the Judiciary, 105th Cong. (1997); and Health Care Reform Issues: Antitrust Medical Malpractice Liability and Volunteer Liability, Hearing on H.R. 911, H.R. 2925, H.R. 2938 Before the House Committee on the Judiciary, 104th Cong. (1995).

16 See,e.g., H.R. 911, 105th Cong. (1997); H.R. 1167, 105th Cong. (1997); H.R. 7, 107th Cong. (2001); H.R. 1787, 108th Cong. (2003); H.R. 3369, 108th Cong. (2003); H.R. 1084, 108th Cong. (2003); and H.R. 3736, 109th Cong. (2005).

17 H.R. 7, 107th Cong. S 401 (2001).

18 150 Cong. Rec. H7097 (daily ed. Sept. 14, 2004).

19 151 Cong. Rec. 1289 (daily ed. Dec. 8, 2005), Pub. L. No. 109–177.

20 150 Cong. Rec. H7098 (daily ed. Sept. 14, 2004).

21 151 Cong. Rec. H7887 (daily ed. Sept. 14, 2005).

22 Good Samaritan Volunteer Firefighter Assistance Act of 2003, the Nonprofit Athletic Organization Protection Act of 2003, and the Volunteer Pilot Organization Protection Act: Hearing Before the H. Comm. on the Judiciary, 108th Cong. 12 (2004) (testimony of Robert F. Kanaby, Executive Director of the National Federation of High School Associations).

23 Id.

24 Id.

25 Id. at 22.

26 Id. at 24–25.

27 150 Cong. Rec. H7096 (daily ed. Sept. 14, 2004).

1 H.R. 1176, sec. 3(b).

H.R. REP. 109-393, H.R. Rep. No. 393, 109TH Cong., 2ND Sess. 2006, 2006 WL 686564 (Leg.Hist.)

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