

# State of South Dakota

NINETY-FOURTH SESSION  
LEGISLATIVE ASSEMBLY, 2019

857B0220

## HOUSE BILL NO. 1117

Introduced by: Representative Goodwin and Senator Russell

1 FOR AN ACT ENTITLED, An Act to establish immunity from liability for injuries to or the  
2 death of a person engaged in off-road vehicle activity under certain circumstances.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That the code be amended by adding a NEW SECTION to read:

5 Terms used in this Act mean:

6 (1) "Off-road vehicle," any vehicle as defined in § 32-20-1;

7 (2) "Off-road vehicle activity," includes:

8 (a) An off-road vehicle show, competition, performance, parade, hunt,  
9 recreational ride, or trail ride;

10 (b) Off-road vehicle training or teaching activities, or both;

11 (c) Riding, inspecting, or evaluating an off-road vehicle belonging to another  
12 person, whether the owner has received monetary consideration or anything  
13 of value for the use of the off-road vehicle or is permitting a prospective  
14 purchaser of the off-road vehicle to ride, inspect, or evaluate the off-road  
15 vehicle; or



1 (d) A ride, trip, hunt, or other off-road vehicle activity, however informal or  
2 impromptu, that is sponsored by an off-road vehicle activity sponsor;

3 (3) "Off-road vehicle activity sponsor," includes the following:

4 (a) An individual, group, club, partnership, or corporation, whether operating for-  
5 profit or not-for-profit, that sponsors, organizes, or provides the facilities for  
6 an off-road vehicle activity including a club, riding club, hunt club, park, or  
7 a school or college-sponsored class, program, or activity;

8 (b) An operator, instructor, or promoter of an off-road vehicle facility, including  
9 any commercial off-road park charging fees to the public or offering private  
10 memberships to use the park's trail system and related amenities for off-road  
11 vehicle uses, trail system, clubhouse, or arena where the activity is held; or

12 (c) A landowner who has given permission for the use of the landowner's land in  
13 an off-road activity either by easement or other means;

14 (4) "Off-road vehicle professional," any person who, for compensation, instructs the  
15 participant or rents an off-road vehicle to the participant for the purpose of driving  
16 or being a passenger on the off-road vehicle, or who rents equipment to a participant;

17 (5) "Participant," any person, amateur or professional, who engages in off-road vehicle  
18 activity, whether or not a fee is paid to participate in the off-road vehicle activity.

19 Section 2. That the code be amended by adding a NEW SECTION to read:

20 For the purposes of this Act, engaging in off-road vehicle activity means riding, providing,  
21 assisting in driving, or being a passenger on an off-road vehicle. It does not include being a  
22 spectator at an off-road vehicle activity unless the spectator is in an unauthorized area and in  
23 immediate proximity to the off-road vehicle activity.

24 Section 3. That the code be amended by adding a NEW SECTION to read:

1 Except as provided in section 4 of this Act, no off-road vehicle activity sponsor or off-road  
2 vehicle professional is liable for an injury to or the death of a participant resulting from an  
3 inherent risk of off-road vehicle activity. No participant or the representative of any participant  
4 may make a claim against, maintain an action against, or recover from an off-road vehicle  
5 activity sponsor or an off-road vehicle professional for injury, loss, damage, or the death of the  
6 participant resulting from an inherent risk of off-road vehicle activity.

7 For the purposes of this section, the inherent risks of off-road vehicle activity are those  
8 dangers or conditions that are an integral part of off-road vehicle activities including:

- 9 (1) The propensity of off-road vehicle users to behave in ways that may result in injury,  
10 harm, or death to a person on or around an off-road vehicle;
- 11 (2) The inherently dangerous nature of the terrain and environment in which off-road  
12 vehicles are ridden including the potential for rolling over, tipping over, or receiving  
13 other injuries;
- 14 (3) Certain hazards relating to the surface and subsurface conditions;
- 15 (4) Collisions with other off-road vehicles or objects; and
- 16 (5) The potential of a participant to act in a negligent manner that may contribute to the  
17 injury of the participant or others.

18 Section 4. That the code be amended by adding a NEW SECTION to read:

19 Nothing in this Act prevents or limits the liability of an off-road vehicle or an off-road  
20 vehicle professional, if the off-road activity sponsor or the off-road vehicle professional:

- 21 (1) Knowingly provides faulty equipment or should have known the equipment was  
22 faulty, and the equipment was faulty to the extent that it caused the accident;
- 23 (2) Commits an act or omission that constitutes willful or wanton disregard for the safety  
24 of the participant, and that act or omission caused the injury; or

1 (3) Injures the participant intentionally.

2 Nothing in this Act prevents or limits the liability of an off-road vehicle activity sponsor or  
3 an off-road vehicle professional under product liability laws.

4 Section 5. That the code be amended by adding a NEW SECTION to read:

5 An off-road vehicle activity sponsor or off-road vehicle professional shall post and maintain  
6 signs that contain a warning notice to participants regarding the inherent risks associated with  
7 off-road vehicle activities. The signs shall be placed in a clearly visible location on or near  
8 entrance and exit gates, clubhouses, business centers, rental facilities, or arenas where the off-  
9 road vehicle activity sponsor or off-road vehicle professional conduct off-road vehicle activities  
10 or once at the primary entrance to any riding trail maintained or operated by the off-road vehicle  
11 activity sponsor. The warning notice must appear on the sign in black letters with each letter a  
12 minimum of three inches in height and contain the following language:

13 "WARNING

14 Under South Dakota law, an off-road vehicle activity sponsor or an off-road vehicle  
15 professional is not liable for an injury to or the death of a participant in off-road vehicle activity  
16 resulting from an inherent risk of off-road vehicle activity as provided in this Act."

17 Any written contract entered into by an off-road vehicle activity sponsor or by an off-road  
18 vehicle professional to provide access for off-road vehicle activities, professional services,  
19 instruction, or rental of equipment to a participant shall contain in clear, readable print the  
20 warning notice specified in this section.

21 Section 6. That the code be amended by adding a NEW SECTION to read:

22 The immunity from liability provided in section 3 of this Act does not apply to any off-road  
23 vehicle activity sponsor or off-road vehicle professional who fails to comply with the warning  
24 sign and warning notice requirements in section 5 of this Act.