



2020 South Dakota Legislature

House Bill 1092

Introduced by: **Representative Goodwin**

1 **An Act to establish immunity from liability for injuries to or the death of a person**
 2 **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 a NEW SECTION be added:

5 **32-20-17. Definitions.**

6 Terms used in §§ 32-20-17 through 32-20-22 mean:

7 (1) "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
 13 anything of value for the use of the off-road vehicle or is permitting a
 14 prospective purchaser of the off-road vehicle to ride, inspect, or evaluate
 15 the off-road vehicle; or

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

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

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

23 (b) An operator, instructor, or promoter of an off-road vehicle facility, including
 24 any commercial off-road park charging fees to the public or offering private
 25 memberships to use the park's trail system and related amenities for off-

1 road vehicle uses, trail system, clubhouse, or arena where the activity is
2 held; or

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

5 (3) "Off-road vehicle professional," any person who, for compensation, instructs the
6 participant or rents an off-road vehicle to the participant for the purpose of driving
7 or being a passenger on the off-road vehicle, or who rents equipment to a
8 participant;

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

11 **Section 2.** That a NEW SECTION be added:

12 **32-20-18. Off-road vehicle activity.**

13 For the purposes of §§ 32-20-17 through 32-20-22, engaging in off-road vehicle
14 activity means riding, providing, assisting in driving, or being a passenger on an off-road
15 vehicle. It does not include being a spectator at an off-road vehicle activity unless the
16 spectator is in an unauthorized area and in immediate proximity to the off-road vehicle
17 activity.

18 **Section 3.** That a NEW SECTION be added:

19 **32-20-19. Immunity from liability--Inherent risks of off-road vehicle**
20 **activity.**

21 Except as provided in § 32-20-20, no off-road vehicle activity sponsor or off-road
22 vehicle professional is liable for an injury to or the death of a participant resulting from an
23 inherent risk of off-road vehicle activity. No participant or the representative of any
24 participant may make a claim against, maintain an action against, or recover from an off-
25 road vehicle activity sponsor or an off-road vehicle professional for injury, loss, damage,
26 or the death of the participant resulting from an inherent risk of off-road vehicle activity.

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

29 (1) The propensity of off-road vehicle users to behave in ways that may result in injury,
30 harm, or death to a person on or around an off-road vehicle;

31 (2) The inherently dangerous nature of the terrain and environment in which off-road
32 vehicles are ridden including the potential for rolling over, tipping over, or receiving
33 other injuries;

- 1 (3) Certain hazards relating to the surface and subsurface conditions;
2 (4) Collisions with other off-road vehicles or objects; and
3 (5) The potential of a participant to act in a negligent manner that may contribute to
4 the injury of the participant or others.

5 **Section 4.** That a NEW SECTION be added:

6 **32-20-20. Faulty equipment or unsafe conditions--Liability.**

7 Any off-road vehicle activity sponsor or off-road vehicle professional who engages
8 in the business of renting off-road vehicles to another shall maintain the rental off-road
9 vehicles in a safe condition.

10 An off-road vehicle activity sponsor or off-road vehicle professional who offers off-
11 road vehicles for rent is liable for the death or injury to a participant or other person or
12 property only for an act or omission that constitutes gross negligence.

13 Nothing in §§ 32-20-17 through 32-20-22 prevents or limits the liability of an off-
14 road vehicle or an off-road vehicle professional, if the off-road activity sponsor or the off-
15 road vehicle professional:

16 (1) Knowingly provides faulty equipment or should have known the equipment was
17 faulty, and the equipment was faulty to the extent that it caused the accident;

18 (2) Owns, leases, rents, or otherwise is in lawful possession and control of the land or
19 facilities upon which the participant sustains any injury because of a dangerous
20 latent condition which was known to the off-road vehicle activity sponsor, or the
21 off-road vehicle professional and for which warning signs had not been
22 conspicuously posted;

23 (3) Commits an act or omission that constitutes willful or wanton disregard for the
24 safety of the participant, and that act or omission caused the injury; or

25 (4) Injures the participant intentionally.

26 Nothing in §§ 32-20-17 through 32-20-22 prevents or limits the liability of an off-
27 road vehicle activity sponsor or an off-road vehicle professional under product liability
28 laws.

29 **Section 5.** That a NEW SECTION be added:

30 **32-20-21. Off-road vehicle activity--Warning notices.**

31 An off-road vehicle activity sponsor or off-road vehicle professional shall post and
32 maintain signs that contain a warning notice to participants regarding the inherent risks
33 associated with off-road vehicle activities. The signs shall be placed in a clearly visible

1 location on or near entrance and exit gates, clubhouses, business centers, rental facilities,
2 or arenas where the off-road vehicle activity sponsor or off-road vehicle professional
3 conduct off-road vehicle activities or once at the primary entrance to any riding trail
4 maintained or operated by the off-road vehicle activity sponsor. The warning notice must
5 appear on the sign in black letters with each letter a minimum of three inches in height
6 and contain the following language:

7 "WARNING

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

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

15 **Section 6.** That a NEW SECTION be added:

16 **32-20-22. Failure to meet warning requirements--Immunity from liability**
17 **not applicable.**

18 The immunity from liability provided in § 32-20-19 does not apply to any off-road
19 vehicle activity sponsor or off-road vehicle professional who fails to comply with the
20 warning sign and warning notice requirements in § 32-20-21.