

2020 South Dakota Legislature

House Bill 1092**AMENDMENT 1092B FOR THE HOUSE JUDICIARY BILL**

1 **An Act to ~~establish immunity from liability for injuries to or the death of a~~ provide**
2 **for an assumption of risk by any person engaged in off-road vehicle activity**
3 **and to limit the liability of the renters of off-road vehicles under certain**
4 **circumstances.**

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

6 **Section 1.** That a NEW SECTION be added:

7 **32-20-17. Definitions.**

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

9 (1) "Off-road vehicle activity," includes:

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

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

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

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

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

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

25 (b) An operator, instructor, or promoter of an off-road vehicle facility, including
26 any commercial off-road park charging fees to the public or offering private

1 memberships to use the park's trail system and related amenities for off-
2 road vehicle uses, trail system, clubhouse, or arena where the activity is
3 held; or

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

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

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

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

13 **32-20-18. Off-road vehicle activity.**

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

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

21 ~~Immunity from liability--Inherent risks of off-road vehicle activity.~~

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

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

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

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

5 ~~(3) Certain hazards relating to the surface and subsurface conditions;~~

6 ~~(4) Collisions with other off-road vehicles or objects; and~~

7 ~~(5) The potential of a participant to act in a negligent manner that may contribute to the~~
8 ~~injury of the participant or others.~~

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

10 **32-20-19. Assumption of risk of injury.**

11 A participant assumes the risks inherent in engaging in off-road vehicle activity. A
12 participant is responsible for:

13 (1) Knowing the range of the participant's own ability to engage in off-road vehicle
14 activity within the limits of the participant's ability considering the conditions;

15 (2) Maintaining control of the off-road vehicle's speed and course at all times while
16 engaging in off-road vehicle activity;

17 (3) Heeding all posted warnings; and

18 (4) Refraining from acting in a manner that may cause or contribute to the injury of
19 anyone.

20 The provisions of this section do not affect a product's liability cause of action based
21 upon the design or manufacture of off-road vehicles or the safety equipment used
22 incidental to the operation of an off-road vehicle.

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

24 **32-20-20. Faulty equipment or unsafe conditions--Liability.**

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

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

1 ~~Nothing in §§ 32-20-17 through 32-20-22 prevents or limits the liability of an off-~~
2 ~~road vehicle or an off-road vehicle professional, if the off-road activity sponsor or the off-~~
3 ~~road vehicle professional:~~

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

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

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

13 ~~(4) Injures the participant intentionally.~~

14 ~~Nothing in §§ 32-20-17 through 32-20-22 prevents or limits the liability of an off-~~
15 ~~road vehicle activity sponsor or an off-road vehicle professional under product liability~~
16 ~~laws.~~

17
18 **Section 5. That a NEW SECTION be added:**

19 ~~Off-road vehicle activity—Warning notices.~~

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

28 "WARNING

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

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

5

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

7 ~~Failure to meet warning requirements--Immunity from liability not applicable.~~

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