

2020 South Dakota Legislature  
**House Bill 1092**

**AMENDMENT 1092A FOR THE INTRODUCED BILL**

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 (1)(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.