

State of South Dakota

NINETY-FOURTH SESSION
LEGISLATIVE ASSEMBLY, 2019

857B0220

HOUSE ENGROSSED NO. **HB 1117** - 2/13/2019

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

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

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

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

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

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

11 (4) Injures the participant intentionally.

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

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

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

23 "WARNING

24 Under South Dakota law, an off-road vehicle activity sponsor or an off-road vehicle

1 professional is not liable for an injury to or the death of a participant in off-road vehicle activity
2 resulting from an inherent risk of off-road vehicle activity as provided in this Act."

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

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

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