



2020 South Dakota Legislature

House Bill 1092

ENROLLED

AN ACT

ENTITLED An Act to provide for an assumption of risk by any person engaged in off-road vehicle activity and to limit the liability of the renters of off-road vehicles under certain circumstances.

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

Section 1. That a NEW SECTION be added:

32-20-17. Definitions.

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

- (1) "Off-road vehicle activity," includes:
 - (a) An off-road vehicle show, competition, performance, parade, hunt, recreational ride, or trail ride;
 - (b) Off-road vehicle training or teaching activities, or both;
 - (c) Riding, inspecting, or evaluating an off-road vehicle belonging to another person, whether the owner has received monetary consideration or anything of value for the use of the off-road vehicle or is permitting a prospective purchaser of the off-road vehicle to ride, inspect, or evaluate the off-road vehicle; or
 - (d) A ride, trip, hunt, or other off-road vehicle activity, however informal or impromptu, that is sponsored by an off-road vehicle activity sponsor;
- (2) "Off-road vehicle activity sponsor," includes the following:
 - (a) An individual, group, club, partnership, or corporation, whether operating for-profit or not-for-profit, that sponsors, organizes, or provides the facilities for an off-road vehicle activity including a club, riding club, hunt club, park, or a school or college-sponsored class, program, or activity;
 - (b) An operator, instructor, or promoter of an off-road vehicle facility, including any commercial off-road park charging fees to the public or offering private memberships to use the park's trail system and related amenities for off-

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

- (c) A landowner who has given permission for the use of the landowner's land in an off-road activity either by easement or other means;
- (3) "Off-road vehicle professional," any person who, for compensation, instructs the participant or rents an off-road vehicle to the participant for the purpose of driving or being a passenger on the off-road vehicle, or who rents equipment to a participant;
- (4) "Participant," any person, amateur or professional, who engages in off-road vehicle activity, whether or not a fee is paid to participate in the off-road vehicle activity.

Section 2. That a NEW SECTION be added:

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

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

Section 3. That a NEW SECTION be added:

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

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

- (1) Knowing the range of the participant's own ability to engage in off-road vehicle activity within the limits of the participant's ability considering the conditions;
- (2) Maintaining control of the off-road vehicle's speed and course at all times while engaging in off-road vehicle activity;
- (3) Heeding all posted warnings; and
- (4) Refraining from acting in a manner that may cause or contribute to the injury of anyone.

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

Section 4. That a NEW SECTION be added:

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

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

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

An Act to provide for an assumption of risk by any person engaged in off-road vehicle activity and to limit the liability of the renters of off-road vehicles under certain circumstances.

I certify that the attached Act originated in the:

House as Bill No. 1092

Received at this Executive Office
this ____ day of _____,

2020 at _____ M.

Chief Clerk

By _____
for the Governor

Speaker of the House

The attached Act is hereby
approved this ____ day of
_____, A.D., 2020

Attest:

Chief Clerk

Governor

STATE OF SOUTH DAKOTA,

ss.

Office of the Secretary of State

President of the Senate

Attest:

Filed _____, 2020
at _____ o'clock __ M.

Secretary of the Senate

Secretary of State

House Bill No. 1092

File No. _____

Chapter No. _____

By _____
Asst. Secretary of State