



2020 South Dakota Legislature

House Bill 1092

SENATE JUDICIARY ENGROSSED

Introduced by: **Representative** Goodwin

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

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

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

6 **32-20-17. Definitions.**

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

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

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

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

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

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

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

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

24 (b) An operator, instructor, or promoter of an off-road vehicle facility, including
 25 any commercial off-road park charging fees to the public or offering private
 26 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 32-20-20, 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. Assumption of risk of injury.**

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

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

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

26 (3) Heeding all posted warnings; and

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

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

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

1 **32-20-20. Faulty equipment or unsafe conditions--Liability.**

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

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