



# 2020 South Dakota Legislature

## House Bill 1092

HOUSE JUDICIARY ENGROSSED

Introduced by: **Representative** Goodwin

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       (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

location on or near entrance and exit gates, clubhouses, business centers, rental facilities, or arenas where the off-road vehicle activity sponsor or off-road vehicle professional conduct off-road vehicle activities or once at the primary entrance to any riding trail maintained or operated by the off-road vehicle activity sponsor. The warning notice must appear on the sign in black letters with each letter a minimum of three inches in height and contain the following language:

"WARNING

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

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

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

**32-20-22. Failure to meet warning requirements--Immunity from liability not applicable.**

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