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

FOR AN ACT ENTITLED, An Act to establish immunity from liability for injuries to or the death of a person engaged in off-road vehicle activity under certain circumstances.

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

Section 1. That the code be amended by adding a NEW SECTION to read:

Terms used in this Act mean:

(1) "Off-road vehicle," any vehicle as defined in § 32-20-1;

(2) "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

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Insertions into existing statutes are indicated by underscores.
Deletions from existing statutes are indicated by ~~overstrikes~~.

(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;

(3) "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;

(4) "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;

(5) "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 the code be amended by adding a NEW SECTION to read:

For the purposes of this Act, 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 the code be amended by adding a NEW SECTION to read:

Except as provided in section 4 of this Act, no off-road vehicle activity sponsor or off-road vehicle professional is liable for an injury to or the death of a participant resulting from an inherent risk of off-road vehicle activity. No participant or the representative of any participant may make a claim against, maintain an action against, or recover from an off-road vehicle activity sponsor or an off-road vehicle professional for injury, loss, damage, or the death of the participant resulting from an inherent risk of off-road vehicle activity.

For the purposes of this section, the inherent risks of off-road vehicle activity are those dangers or conditions that are an integral part of off-road vehicle activities including:

(1) The propensity of off-road vehicle users to behave in ways that may result in injury, harm, or death to a person on or around an off-road vehicle;

(2) The inherently dangerous nature of the terrain and environment in which off-road vehicles are ridden including the potential for rolling over, tipping over, or receiving other injuries;

(3) Certain hazards relating to the surface and subsurface conditions;

(4) Collisions with other off-road vehicles or objects; and

(5) The potential of a participant to act in a negligent manner that may contribute to the injury of the participant or others.

Section 4. That the code be amended by adding a NEW SECTION to read:

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 gross negligence.

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

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

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

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

(4) Injures the participant intentionally.

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

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

An off-road vehicle activity sponsor or off-road vehicle professional shall post and maintain signs that contain a warning notice to participants regarding the inherent risks 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 the code be amended by adding a NEW SECTION to read:

The immunity from liability provided in section 3 of this Act 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 section 5 of this Act.