**A** **BILL**

AN ACT TO AMEND THE 1976 CODE, BY ADDING ARTICLE 2, CHAPTER 2, TITLE 56 SO AS TO ESTABLISH IMMUNITY FROM LIABILITY FOR INJURIES OR DEATH TO A PERSON ENGAGED IN AN ATV ACTIVITY CAUSED BY AN INHERENT RISK OF ATV ACTIVITY.

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. Chapter 2, Title 56 of the 1976 Code is amended by adding:

“Article 2

ATV Liability Immunity

Section 56‑2‑200. As used in this chapter:

(1) ‘Engages in ATV activity’ means riding, providing, or assisting in driving, or being a passenger upon an ATV. It does not include being a spectator at an ATV activity, except in cases where the spectator places himself in an unauthorized area and in immediate proximity to the ATV activity.

(2) ‘ATV’ means a motorized off‑road vehicle, which travels on three or more off‑highway tires and which has:

(a) a maximum width of 50 inches and a maximum dry weight of 1,200 pounds; or

(b) a width which exceeds 50 inches or a dry weight which exceeds 1,200 pounds.

This term includes ‘Utility Task Vehicle’ or ‘UTV’, ‘Recreational Off Highway Vehicle’ or ‘ROV’, and ‘trail bike’ or ‘dirt bike’.

This term does not include motorboats, golf carts, aircraft, automobiles, construction machines, trucks or home utility machines; military, fire, emergency and law enforcement vehicles; implements of husbandry; multipurpose agricultural vehicles; or any vehicle that is or is required to be registered under this Title. In addition, this term does not include off‑road motor vehicles used exclusively as utility vehicles for agricultural or business operations and incidentally operated or moved upon the highway.

(3) ‘ATV activity’ means:

(a) An ATV show, competition, performance, parade, hunting, recreational riding, or trail riding.

(b) ATV training or teaching activities, or both;

(c) Riding, inspecting, or evaluating an ATV belonging to another, whether the owner has received monetary consideration or another thing of value for the use of the ATV or is permitting a prospective purchaser of the ATV to ride, inspect, or evaluate the ATV; or

(d) A ride, trip, hunt, or other ATV activity, however informal or impromptu, that is sponsored by an ATV activity sponsor.

(4) ‘ATV activity sponsor’ means an individual, group, club, partnership, or a corporation, whether the sponsor is operating for‑profit or nonprofit, which sponsors, organizes, or provides the facilities for an ATV activity, including, but not limited to a club, riding club, hunt club, park, school and college sponsored class, program, and activity, and an operator, instructor, and promoter of an ATV facility, including, but not limited to, a commercial off‑road park charging fees to the public or private membership to use the park’s trail system and related amenities for ATV uses, trail system, clubhouse, or arena at which the activity is held or a landowner who has given permission for the use of his land in an ATV activity either by easement or other means.

(5) ‘ATV professional’ means a person engaged for compensation in:

(a) Instructing the participant or renting to a participant an ATV for the purposes of writing, driving, or being a passenger upon the ATV; or

(b) Renting equipment to a participant.

(6) ‘Inherent risk of ATV activity’ means those dangers or conditions that are an integral part of ATV activities, including, but not limited to:

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

(b) The inherently dangerous nature of the terrain and environment in which ATVs are ridden, including, but not limited to, the potential for rollovers, tipovers, and other injuries;

(c) Certain hazards such as surface and subsurface conditions;

(d) Collisions with other ATVs or objects; and

(e) The potential of a participant to act in a negligent manner that may contribute to the injury of the participant or others, as failing to maintain control over the ATV or not acting within the participant’s ability.

(7) ‘Participant’ means a person, amateur or professional, who engages in an ATV activity, whether or not a fee is paid to participate in the ATV activity.

(8) ‘UTV’, ‘Recreational Off Highway Vehicle’ or ‘ROV’, means a small 2‑person or 6‑person off‑road vehicle possessing a side‑by‑side seating arrangement.

(9) ‘Trail Bike’ or ‘Dirt Bike’, means any motor‑driven wheeled vehicle on which there is a saddle or seat for the operator or passenger or both and which is designed or adapted for travel over surfaces other than maintained roads.

Section 63‑2‑210. (A) Except as provided in subsection (B), an ATV activity sponsor or an ATV professional is not liable for an injury to or the death of a participant resulting from an inherent risk of ATV activity, and no participant or participant’s representative may make a claim against, maintain an action against, or recover from an ATV activity sponsor or an ATV professional for injury, loss, damage, or death of the participant resulting from an inherent risk of ATV activity.

(B) Nothing in subsection (A) prevents or limits the liability of an ATV activity sponsor or an ATV professional, if the ATV activity sponsor or ATV professional:

(1) provided the equipment and knew or should have known that the equipment was faulty, and the equipment was faulty to the extent that it caused the injury;

(2) committed an act or omission that constitutes wilful or wanton disregard for the safety of the participant and that act or omission caused the injury; or

(3) injured the participant intentionally.

(C) Nothing in subsection (A) prevents or limits the liability of an ATV activity sponsor or an ATV professional under product liability laws.

Section 56‑2‑220. (A) An ATV activity sponsor or ATV professional shall post and maintain signs that contain a warning notice to participants regarding the inherent risks associated with ATV activities. These signs must be placed in a clearly visible location on or near entrance and exit gates, club houses, business centers, rental facilities, or arenas where the ATV activity sponsor or ATV professional conducts ATV activities or once at the primary entrance to any riding trail maintained or operated by the ATV 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 language specified in subsection (B). A written contract entered into by and ATV activity sponsor or by an ATV professional to provide access for ATV activities, professional services, instruction, or rental of equipment to a participant must contain in clearly readable print the warning notice specified in subsection (B).

(B) A sign and contract described in subsection (A) must contain the following warning notice:

‘WARNING

Under South Carolina law, an ATV activity sponsor or ATV professional is not liable for an injury to or the death of a participant in an ATV activity resulting from an inherent risk of ATV activity, pursuant to Section 56‑2‑210 of the 1976 Code.’

(C) Failure to comply with the requirements concerning warning signs and notices provided in this section prevents an ATV activity sponsor or ATV professional from invoking the privileges immunity provided by this article.

SECTION 2. The Code Commissioner is hereby directed to change Article 2, Chapter 2, Title 56 entitled “Motor Vehicle Registration and Property Tax” to Article 3.

SECTION 3. This act takes effect upon approval by the Governor.

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