

1 HB25
2 155144-3
3 By Representative Wallace
4 RFD: Judiciary
5 First Read: 14-JAN-14
6 PFD: 10/02/2013

1 ENGROSSED

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4 A BILL
5 TO BE ENTITLED
6 AN ACT
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8 Relating to civil liability; to provide for
9 limitation of liability for certain motorized off-road vehicle
10 activities; to provide for exceptions to limitation of
11 liability; to require the posting of signs and warnings at
12 certain motorized off-road vehicle activities; and to provide
13 that the failure to post signs and warnings would prevent the
14 invocation of the privilege of immunity.

15 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

16 Section 1. As used in this act, the following terms
17 shall have the following meanings, unless the context requires
18 otherwise:

19 (1) ENGAGES IN MOTORIZED OFF-ROAD VEHICLE ACTIVITY.
20 Rides or drives or is a passenger upon a motorized off-road
21 vehicle, or is a person assisting a participant or management.
22 The term does not include being a spectator at a motorized
23 off-road vehicle activity, except in cases where the spectator
24 places himself or herself in an unauthorized area and in
25 immediate proximity to the motorized off-road vehicle
26 activity.

1 (2) INHERENT RISKS OF MOTORIZED OFF-ROAD VEHICLE
2 ACTIVITY. Those dangers or conditions which are an integral
3 part of a motorized off-road vehicle activity, including, but
4 not limited to, any of the following:

5 a. The propensity of a motorized off-road vehicle to
6 roll over in ways that may result in injury, harm, or death to
7 persons on or around the vehicle

8 b. Certain hazards caused by the surface and
9 subsurface conditions.

10 c. Collisions with other motorized off-road vehicles
11 or objects.

12 ~~d. The potential of a participant to act in a
13 negligent manner that may contribute to injury to the
14 participant or others, such as failing to maintain control
15 over the motorized off-road vehicle or not acting within his
16 or her ability.~~

17 (3) MOTORIZED OFF-ROAD VEHICLE. A two- or
18 four-wheeled vehicle powered by a combustible engine or
19 electric motor and weighing eleven thousand five hundred
20 pounds or less, whether or not the vehicle is required to be
21 registered to operate upon the highways of this state.

22 (4) MOTORIZED OFF-ROAD VEHICLE ACTIVITY. Any or all
23 of the following:

24 a. A motorized off-road vehicle show, race,
25 competition, or performance that involves any or all motorized
26 off-road vehicles, including, but not limited to, any dirt
27 track, paved or unpaved race course, or jump.

1 b. Training, teaching, or demonstrating activities
2 involving motorized off-road vehicles that are conducted with
3 reasonable care and in a manner consistent with accepted
4 industry standards.

5 c. Driving, inspecting, or evaluating activities
6 that are conducted with reasonable care and in a manner
7 consistent with accepted industry standards regarding a
8 motorized off-road vehicle belonging to another, whether or
9 not the owner has received some monetary consideration or
10 other thing of value for the use of the motorized off-road
11 vehicle at a motorized off-road vehicle facility.

12 ~~d. A ride, trip, hunt, or other motorized off-road~~
13 ~~vehicle activity of any type, however informal or impromptu,~~
14 ~~that is sponsored by a motorized off-road vehicle activity~~
15 ~~sponsor.~~

16 (5) MOTORIZED OFF-ROAD VEHICLE ACTIVITY SPONSOR. An
17 individual, group, club, partnership, or corporation, whether
18 or not the sponsor is operating for profit or not for profit,
19 which sponsors, organizes, or provides the facilities for a
20 motorized off-road vehicle activity, including, but not
21 limited to, a hunting club, riding club, school or
22 college-sponsored class, program, or activity, therapeutic
23 riding program, or any operator, instructor, or promoter of a
24 motorized off-road vehicle facility.

25 (6) MOTORIZED OFF-ROAD VEHICLE FACILITY. Each area
26 used for any motorized off-road vehicle activity, including,
27 but not limited to, a farm, ranch, riding arena, barn,

1 pasture, riding trail, paved or unpaved race course, or other
2 area or facility used or provided by a motorized off-road
3 vehicle activity sponsor or where a participant engages in a
4 motorized off-road vehicle activity.

5 (7) MOTORIZED OFF-ROAD VEHICLE PROFESSIONAL. A
6 person engaged for compensation in any of the following:

7 a. Instructing a participant or renting to a
8 participant a motorized off-road vehicle for the purpose of
9 riding, driving, or being a passenger upon the motorized
10 off-road vehicle.

11 b. Renting equipment to a participant in a
12 motorized off-road vehicle activity.

13 (8) PARTICIPANT. A person, whether amateur or
14 professional, who engages in a motorized off-road vehicle
15 activity, whether or not a fee is paid to participate in the
16 motorized off-road vehicle activity.

17 Section 2. Except as provided in Section 3, a
18 motorized off-road vehicle activity sponsor, a motorized
19 off-road vehicle professional, ~~or any other person, which~~
20 ~~shall include individuals and all forms of business entities,~~
21 or a landowner where motorized off-road vehicle activity
22 occurs may not be liable for an injury to or the death of a
23 participant resulting from the inherent risks of a motorized
24 off-road vehicle activity. Except as provided in Section 3, a
25 participant or the representative of a participant may not
26 make any claim against, maintain an action against, or recover
27 from a motorized off-road vehicle activity sponsor, a

1 motorized off-road vehicle professional, ~~or any other person~~
2 or a landowner where motorized off-road vehicle activity
3 occurs for injury, loss, damage, or death of the participant
4 resulting from any of the inherent risks of motorized off-road
5 vehicle activities.

6 Section 3. Nothing in Section 2 shall prevent or
7 limit the liability of a motorized off-road vehicle activity
8 sponsor, a motorized off-road vehicle professional, ~~or any~~
9 ~~other person~~ or a landowner where motorized off-road vehicle
10 activity occurs if the motorized off-road vehicle activity
11 sponsor, motorized off-road vehicle professional, ~~or other~~
12 ~~person~~ or a landowner where motorized off-road vehicle
13 activity occurs who does any of the following:

14 (1) Provided the equipment and knew or should have
15 known that the equipment was faulty, and the equipment was
16 faulty to the extent that it caused the injury.

17 (2) Failed to make reasonable and prudent efforts to
18 determine the ability of the participant to engage safely in
19 the motorized off-road vehicle activity.

20 (3) Owned, leased, rented, or otherwise was in
21 lawful possession and control of the land or facility upon
22 which the participant sustained injuries because of a
23 dangerous latent condition which was known or should have been
24 known to the motorized off-road vehicle activity sponsor,
25 motorized off-road vehicle professional, or other person and
26 for which warning signs were not conspicuously posted.

1 (4) Committed an act or omission that constitutes
2 willful or wanton disregard for the safety of the participant,
3 and that act or omission caused the injury.

4 (5) Intentionally injured the participant.

5 Section 4. Nothing in Section 3 shall be construed
6 to prevent or limit the liability of a motorized off-road
7 vehicle activity sponsor or a motorized off-road vehicle
8 professional or other person under the liability provisions as
9 set forth in Article 28, Chapter 5, Title 6 of the Code of
10 Alabama 1975 (commencing at Section 6-5-500).

11 Section 5. Each motorized off-road vehicle
12 professional and motorized off-road vehicle activity sponsor
13 shall post and maintain a conspicuously located sign or
14 provide a written warning which contains the warning notice
15 specified in Section 6. The sign shall be placed in a clearly
16 visible location on or near any registration area, staging
17 area, or arena where the motorized off-road vehicle
18 professional or the motorized off-road vehicle activity
19 sponsor conducts a motorized off-road vehicle activity, or a
20 written warning shall be given to each participant prior to
21 the commencement of the activities. The warning notice
22 specified in Section 6 shall appear on the sign in black
23 letters, with each letter to be a minimum of one inch in
24 height or shall appear in the written warning in boldface
25 capital letters no smaller than twelve-point type. Each
26 written contract entered into by a motorized off-road vehicle
27 professional or by a motorized off-road vehicle activity

1 sponsor for the provision of professional services,
2 instruction, or the rental of equipment or a motorized
3 off-road vehicle to a participant, whether or not the contract
4 involves motorized off-road vehicle activities on or off the
5 location or site of the motorized off-road vehicle
6 professional's or the motorized off-road vehicle activity
7 sponsor's business, shall contain in clearly readable print
8 the warning notice specified in Section 6.

9 Section 6. The signs, written warnings, and
10 contracts described in Section 5 shall contain the following
11 warning notice: "WARNING Under Alabama law, a motorized
12 off-road vehicle activity sponsor or motorized off-road
13 vehicle professional is not liable for an injury to or the
14 death of a participant in a motorized off-road vehicle
15 activity resulting from the inherent risks of the motorized
16 off-road vehicle activity."

17 Section 7. Failure to comply with the requirements
18 concerning warning notices provided in this act shall prevent
19 a motorized off-road vehicle activity sponsor or motorized
20 off-road vehicle professional from invoking the privilege of
21 immunity provided by this act.

22 Section 8. Nothing in this act shall diminish,
23 change, amend, or otherwise affect the provisions of Sections
24 35-15-1 through 35-15-40, Code of Alabama 1975, or any
25 statutory or common law defenses including, without
26 limitation, doctrines of contributory negligence, assumption
27 of risk, and open and obvious dangers. Provided further that

1 no utility or any individual acting on its behalf shall be
2 deemed to be a "motorized off-road vehicle activity sponsor,"
3 a "motorized off-road vehicle professional," or "a landowner
4 where a motorized off-road vehicle activity occurs" unless and
5 only to the extent that a participant suffers injury or death
6 as a proximate result of an off-road recreational event
7 operated by the utility.

8 Section 9. This act shall become effective on the
9 first day of the third month following its passage and
10 approval by the Governor, or its otherwise becoming law.

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House of Representatives

Read for the first time and re-
ferred to the House of Representa-
tives committee on Judiciary 14-JAN-14

Read for the second time and placed
on the calendar 2 amendments 15-JAN-14

Read for the third time and passed
as amended..... 04-FEB-14

Yeas 86, Nays 0, Abstains 1

Jeff Woodard
Clerk