

**ACT No. 1011**

Regular Session, 2003

HOUSE BILL NO. 128

BY REPRESENTATIVE MONTGOMERY

AN ACT

To enact R.S. 9:2795.3, relative to limitation of liability for motorized off-road vehicle activities; to provide for definitions; to provide for limitations of liability in certain circumstances; to provide for exceptions; to provide for the posting of signs and warnings; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. R.S. 9:2795.3 is hereby enacted to read as follows:

§2795.3. Limitation of liability; motorized off-road vehicle activities; definitions; exceptions; required warning

A. As used in this Section, the following terms shall have the following meanings, unless the context requires otherwise:

(1) "Engages in motorized off-road vehicle activity" means rides or drives, or is a passenger upon a motorized off-road vehicle, or is a person assisting a participant or management. The term "engages in a motorized off-road vehicle activity" does not include being a spectator at a motorized off-road vehicle activity, except in cases where the spectator places himself in an unauthorized area and in immediate proximity to the motorized off-road vehicle activity.

(2) "Inherent risks of motorized off-road vehicle activities" means those dangers or conditions which are an integral part of a motorized off-road vehicle activity, including but not limited to:

(a) The propensity of a motorized off-road vehicle to roll over in ways that may result in injury, harm, or death to persons on or around it.

(b) Certain hazards such as surface and subsurface conditions.

(c) Collisions with other motorized off-road vehicles or objects.

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

(3) "Motorized off-road vehicle" means a two or four-wheeled vehicle powered by a combustible engine and weighing under one thousand five hundred pounds.

(4) "Motorized off-road vehicle activity" includes any or all of the following:

(a) A motorized off-road vehicle show, race, competition, or performance that involves any or all motorized off-road vehicles, including but not limited to any dirt track, race course, or jump.

(b) Training, teaching, or demonstrating activities involving motorized off-road vehicles.

(c) Driving, inspecting, or evaluating a motorized off-road vehicle belonging to another, whether or not the owner has received some monetary consideration or other thing of value for the use of the motorized off-road vehicle at a motorized off-road vehicle facility.

(d) A ride, trip, hunt, or other motorized off-road vehicle activity of any type, however informal or impromptu, that is sponsored by a motorized off-road vehicle activity sponsor.

(5) "Motorized off-road vehicle activity sponsor" means an individual, group, club, partnership, or corporation, whether or not the sponsor is operating for profit or nonprofit, which sponsors, organizes, or provides the facilities for a motorized off-road vehicle activity, including but not limited to a hunting club; riding club; school or college-sponsored class, program, or activity; therapeutic riding program; or any operator, instructor, or promoter of a motorized off-road vehicle facility.

(6) "Motorized off-road vehicle facility" means any area used for any motorized off-road vehicle activity, including but not limited to a farm, ranch, riding arena, barn, pasture, riding trail, or other area or facility used or provided by a motorized off-road vehicle activity sponsor or where a participant engages in a motorized off-road vehicle activity.

(7) "Motorized off-road vehicle professional" means a person engaged for compensation in any of the following:

(a) Instructing a participant or renting to a participant a motorized off-road vehicle for the purpose of riding, driving, or being a passenger upon the motorized off-road vehicle.

(b) Renting equipment to a participant in a motorized off-road vehicle activity.

(8) "Participant" means any person, whether amateur or professional, who engages in a motorized off-road vehicle activity, whether or not a fee is paid to participate in the motorized off-road vehicle activity.

B. Except as provided in Subsection C of this Section, a motorized off-road vehicle activity sponsor, a motorized off-road

vehicle professional, or any other person, which shall include individuals and all forms of business entities, shall not be liable for an injury to or the death of a participant resulting from the inherent risks of a motorized off-road vehicle activity and, except as provided in Subsection C of this Section, no participant or participant's representative shall make any claim against, maintain an action against, or recover from, a motorized off-road vehicle activity sponsor, a motorized off-road vehicle professional, or any other person for injury, loss, damage, or death of the participant resulting from any of the inherent risks of motorized off-road vehicle activities.

C. Nothing in Subsection B of this Section shall prevent or limit the liability of a motorized off-road vehicle activity sponsor, a motorized off-road vehicle professional, or any other person if the motorized off-road vehicle activity sponsor, motorized off-road vehicle professional, or other person either:

(1) Provided the equipment, and knew or should have known that the equipment was faulty, and such equipment was faulty to the extent that it did cause the injury.

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

(3) Owned, leased, rented, or otherwise was in lawful possession and control of the land or facility upon which the participant sustained injuries because of a dangerous latent condition which was known or should have been known to the motorized off-road vehicle activity sponsor, motorized off-road vehicle professional, or other

person and for which warning signs have not been conspicuously posted.

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

(5) Intentionally injured the participant.

D. Nothing in Subsection B of this Section shall prevent or limit the liability of a motorized off-road vehicle activity sponsor or a motorized off-road vehicle professional or other person under liability provisions as set forth in the "Louisiana Products Liability Act", R.S. 9:2800.51 through 2800.59.

E. Every motorized off-road vehicle professional and every motorized off-road vehicle activity sponsor shall post and maintain a sign conspicuously located or provide a written warning which contains the warning notice specified in Subsection F of this Section. The sign shall be placed in a clearly visible location on or near any registration area, staging area, or arena where the motorized off-road vehicle professional or the motorized off-road vehicle activity sponsor conducts a motorized off-road vehicle activity, or the written warning shall be given to each participant prior to the commencement of the activities. The warning notice specified in Subsection F of this Section shall appear on the sign in black letters, with each letter to be a minimum of one inch in height or shall appear in the written warning in boldfaced capital letters no smaller than twelve-point type. Every written contract entered into by a motorized off-road vehicle professional or by a motorized off-road vehicle activity sponsor for the provision of professional services, instruction, or the rental of equipment or a

motorized off-road vehicle to a participant, whether or not the contract involves motorized off-road vehicle activities on or off the location or site of the motorized off-road vehicle professional's or the motorized off-road vehicle activity sponsor's business, shall contain in clearly readable print the warning notice specified in Subsection F of this Section.

F. The signs, written warnings, and contracts described in Subsection E of this Section shall contain the following warning notice: "WARNING Under Louisiana law, a motorized off-road vehicle activity sponsor or motorized off-road vehicle professional is not liable for an injury to or the death of a participant in a motorized off-road vehicle activity resulting from the inherent risks of the motorized off-road vehicle activity, pursuant to R.S. 9:2795.3."

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

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SPEAKER OF THE HOUSE OF REPRESENTATIVES

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PRESIDENT OF THE SENATE

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GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: \_\_\_\_\_