

HOUSE BILL 367

By Matheny

AN ACT to amend Tennessee Code Annotated, Title 11
and Title 70.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 70, is amended by adding SECTION 2 through SECTION 6 as a new chapter.

SECTION 2. The general assembly recognizes that persons who participate in off-highway vehicle (OHV) activities may incur injuries as a result of the risks involved in such activities. The general assembly also finds that the state and its citizens derive numerous economic and personal benefits from these activities. It is, therefore, the intent of the general assembly to encourage off-highway vehicle activities by limiting the civil liability of those facilitating or providing access to such activities.

SECTION 3. As used in this part, unless the context otherwise requires:

(1)

(A) "Engages in an off-highway vehicle activity" means riding, driving, or being a passenger upon an off-highway vehicle, including participation in off-highway vehicle training or teaching activities, or both, by a rider, driver, or passenger;

(B) "Engages in an off-highway vehicle activity" does not include being a spectator at an off-highway vehicle activity, except in cases where the spectator's own actions in entering an unauthorized area in immediate proximity to the off-highway vehicle activity cause the danger;

(2) "Inherent risks of off-highway vehicle activities" means those dangers or conditions that are an integral part of off-highway vehicle activities, including, but not limited to:

(A) Hazards such as surface and subsurface conditions;

(B) Collisions with other off-highway vehicles or objects; and

(C) 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 off-highway vehicle or not acting within the participant's ability;

(3) "Off-highway vehicle" or "OHV" means any off-road motorcycle, three-wheel or four-wheel all-terrain vehicle, four-wheel-drive motor vehicle intended by the user or owner to be used in recreational pursuits, or dune buggy;

(4) "Off-highway vehicle activity professional" means an individual, group, club, partnership or corporation, whether or not the professional is operating for profit or nonprofit, that:

(A) Provides the land and facilities for an off-highway vehicle activity;

(B) Engages for compensation in instructing a participant or renting to a participant an off-highway vehicle for the purposes of riding, driving or being a passenger upon the off-highway vehicle; or

(C) Operates a business or facility that permits participants to engage in off-highway vehicle activities for consideration; and

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

SECTION 4. Except as provided in SECTION 5, an off-highway vehicle professional or any other person, which shall include a corporation or partnership, shall not be liable for an

injury to or the death of a participant resulting from the inherent risks of off-highway vehicle activities. Except as provided in SECTION 5, no participant or participant's representative shall make any claim against, maintain an action against, or recover from an off-highway vehicle professional or any other person for injury, loss, damage or death of the participant resulting from any of the inherent risks of off-highway vehicle activities.

SECTION 5.

(a) Nothing in SECTION 4 shall prevent or limit the liability of an off-highway vehicle professional or any other person, which shall include a corporation or partnership, if the off-highway vehicle professional or person:

(1) Provides the off-highway vehicle and fails to make reasonable and prudent efforts to determine the ability of the participant to engage safely in the off-highway vehicle activity and determine the ability of the participant to safely operate the particular off-highway vehicle based on the participant's representations of the participant's ability;

(2) Owns, leases, rents, or otherwise is in lawful possession and control of the land and facilities upon which the participant sustained injury because of a dangerous latent condition that was known to the off-highway vehicle professional or person and for which warning signs had not been conspicuously posted at the time the participant sustained such injury;

(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) Intentionally injures the participant.

(b) Nothing in SECTION 4 shall prevent or limit the liability of an off-highway vehicle professional:

- (1) Under product liability provisions in title 29, chapter 28; or
- (2) Under trespass provisions in title 44, chapter 8.

SECTION 6.

(a) Every off-highway vehicle professional shall post and maintain signs that contain the warning notice specified in subsection (b). The signs shall be placed in clearly visible locations on or near the sites where the off-highway vehicle professional conducts off-highway vehicle activities if such sites are located on land owned, managed or controlled by the off-highway vehicle professional. The warning notice specified in subsection (b) shall appear on the sign in black letters, with each letter to be a minimum of one inch (1") in height. Every written contract entered into by an off-highway vehicle professional for the provision of professional services, instruction, or rental of an off-highway vehicle to a participant, whether or not the contract involves off-highway vehicle activities on or off the location or site of the off-highway vehicle professional's business, shall contain in clearly readable print the warning notice specified in subsection (b).

(b) The signs and contracts described in subsection (a) shall contain the following warning notice:

WARNING

Under Tennessee Law, an off-highway vehicle professional is not liable for an injury to or the death of a participant in off-highway vehicle activities, pursuant to this Act.

SECTION 7. This act shall take effect July 1, 2009, the public welfare requiring it.