

# STATE OF NEW YORK

5354

2019-2020 Regular Sessions

## IN ASSEMBLY

February 11, 2019

Introduced by M. of A. DiPIETRO -- read once and referred to the Committee on Judiciary

AN ACT to amend the general obligations law, in relation to the duty to keep premises safe for certain uses and the inherent risk for use of off highway recreational vehicles

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. Paragraph a of subdivision 1 of section 9-103 of the general obligations law, as separately amended by chapters 141 and 286 of the laws of 1984, is amended to read as follows:

2 a. an owner, lessee or occupant of premises, whether or not posted as  
3 provided in section 11-2111 of the environmental conservation law, owes  
4 no duty to keep the premises safe for entry or use by others for hunting,  
5 fishing, organized gleanings as defined in section seventy-one of  
6 the agriculture and markets law, canoeing, boating, trapping, hiking,  
7 cross-country skiing, tobogganing, sledding, speleological activities,  
8 horseback riding, bicycle riding, hang gliding, ~~motorized vehicle operation~~  
9 ~~for recreational purposes, snowmobile operation,~~ cutting or gathering  
10 of wood for non-commercial purposes ~~[or]~~, training of dogs or  
11 other recreational activities, or to give warning of any hazardous  
12 condition or use of or structure or activity on such premises to persons  
13 entering for such purposes;

14 § 2. Paragraphs b and c of subdivision 2 of section 9-103 of the  
15 general obligations law, as amended by chapter 408 of the laws of 1979,  
16 are amended to read as follows:

17 b. for injury suffered in any case where permission to pursue any of  
18 the activities ~~[enumerated]~~ described in this section was granted for a  
19 consideration other than the consideration, if any, paid to said land-  
20 owner by the state or federal government, or permission to train dogs  
21 was granted for a consideration other than that provided for in section  
22 11-0925 of the environmental conservation law; or  
23  
24

EXPLANATION--Matter in italics (underscored) is new; matter in brackets  
[-] is old law to be omitted.

LBD07604-01-9

1 c. for injury caused, by acts of persons to whom permission to pursue  
2 any of the activities [~~enumerated~~] described in this section was grant-  
3 ed, to other persons as to whom the person granting permission, or the  
4 owner, lessee or occupant of the premises, owed a duty to keep the prem-  
5 ises safe or to warn of danger.

6 § 3. The general obligations law is amended by adding a new section  
7 9-107 to read as follows:

8 § 9-107. Inherent risk for use of off highway recreational vehicles.

9 1. As used in this section, the following terms shall have the following  
10 meanings:

11 a. "Off highway recreational vehicle" shall mean any mechanically  
12 propelled vehicle used for pleasure or recreational purposes running on  
13 rubber tires, belts, cleats, tracks, skis or cushion of air and depend-  
14 ent on the ground or surface for travel, or other unimproved terrain  
15 whether covered by ice or snow or not, where the operator sits in or on  
16 the vehicle.

17 b. "OHRV" shall mean off highway recreational vehicle.

18 c. "Posted land" shall mean an appropriate sign with the designated  
19 symbol or warning to be legible at a distance of fifty feet indicating  
20 that use of such land is prohibited for the purpose so specified.

21 2. It is recognized that OHRV operation may be dangerous and any  
22 person who engages in such activity faces an inherent risk of injury.  
23 Accordingly, any person who is an operator or passenger on an OHRV  
24 accepts, as a matter of law, the dangers inherent in such activity, and  
25 shall be prohibited from maintaining an action, and no cause of action  
26 shall accrue against any owner, lessee, or occupant of land for any  
27 injuries which result from such inherent risks, dangers, or hazards. The  
28 categories of such risks, dangers, or hazards which the OHRV user  
29 assumes as a matter of law include, but are not limited to, the follow-  
30 ing: variations in terrain, trails, paths, or roads; or surface or  
31 subsurface snow or ice conditions, bare spots, rocks, trees, stumps, and  
32 other forms of forest growth or debris, structures on the land, existing  
33 or changing weather conditions, equipment not in use, pole lines, fenc-  
34 es, and collisions with other operators or persons.

35 3. An owner may maintain posted land on all or any portion of the  
36 owner's land against use by an OHRV; however, failure of an owner to  
37 maintain posted land as provided in this section shall not be construed  
38 as granting any license to users of OHRVs to enter such land, nor shall  
39 such failure be construed as implying any duty of care to the user of an  
40 OHRV by the owner.

41 4. This section shall not limit the liability which would otherwise  
42 exist:

43 a. for injury suffered in any case where permission to pursue OHRV  
44 activities was granted for a consideration; or

45 b. for injuries caused by willful or malicious acts performed by an  
46 owner, lessee, or occupant of land intended or substantially likely to  
47 cause injury or harm to operators or passengers of an OHRV.

48 § 4. This act shall take effect immediately.