

CHAPTER [20-9](#) LIABILITY FOR TORTS

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20-9-1. Responsibility for injury by willful act or negligence--Contributory negligence.

Every person is responsible for injury to the person, property, or rights of another caused by his willful acts or caused by his want of ordinary care or skill, subject in the latter cases to the defense of contributory negligence.

Source: CivC 1877, § 979; CL 1887, § 3603; RCivC 1903, § 1297; RC 1919, § 801; SDC 1939, § 47.0304.

20-9-1.1. Loss of chance doctrine abrogated.

The Legislature finds that in those actions founded upon an alleged want of ordinary care or skill the conduct of the responsible party must be shown to have been the proximate cause of the injury complained of. The Legislature also finds that the application of the so called loss of chance doctrine in such cases improperly alters or eliminates the requirement of proximate causation. Therefore, the rule in *Jorgenson v. Vener*, 2000 SD 87, 616 N.W. 2d 366 (2000) is hereby abrogated.

Source: SL 2002, ch 96, § 1.

20-9-1.2. Other rules and principles not affected.

The Legislature intends only to abrogate the loss of chance doctrine expressly adopted by the court, thereby returning the common law of this state to its status immediately prior to the court's decision. The Legislature does not intend to affect any other rule or principle of statutory or common law, including but not limited to, aggravation of preexisting injuries, proximate causation, and the requirement of informed consent for all medical treatment.

Source: SL 2002, ch 96, § 2.

20-9-2. Comparative negligence--Reduction of damages.

In all actions brought to recover damages for injuries to a person or to that person's property caused by the negligence of another, the fact that the plaintiff may have been guilty of contributory negligence does not bar a recovery when the contributory negligence of the plaintiff was slight in comparison with the negligence of the defendant, but in such case, the damages shall be reduced in proportion to the amount of plaintiff's contributory negligence.

Notwithstanding *Woods vs. City of Crooks*, 559 N.W.2d 558 (SD 1997), the determination of whether the contributory negligence of the plaintiff was slight in comparison with the negligence of the defendant shall be made without disclosing any determination of percentage of plaintiff's fault by special interrogatory.

Source: SL 1941, ch 160; SDC Supp 1960, § 47.0304-1; SL 1964, ch 149; SL 1998, ch 125, § 1.

20-9-3. Licensed medical practitioners immune from liability for emergency care.

No physician, surgeon, osteopath, physician assistant, registered nurse, or licensed practical nurse, licensed under the provisions of chapters [36-4](#), [36-4A](#), and [36-9](#), who in good faith renders, in this state, emergency care at the scene of the emergency, shall be liable for any civil damages as a result of any acts or omissions by such person rendering the emergency care.

Source: SL 1961, ch 137, § 1; SL 1963, ch 159, § 1; SL 1976, ch 152.

20-9-4. Immunity of medical practitioner licensed in another state--Acts not deemed professional practice.

No physician, surgeon, osteopath, registered nurse, or licensed practical nurse duly licensed to practice his profession in another state of the United States, who renders in this state emergency care at the scene of the emergency, shall be liable as specified in § [20-9-3](#), nor shall he be deemed to be practicing medicine or nursing within this state as contemplated by chapters [36-2](#), [36-4](#), and [36-9](#).

Source: SL 1961, ch 137, § 2; SL 1963, ch 159, § 2.

20-9-4.1. Immunity from liability for emergency care--Exception.

No peace officer, conservation officer, member of any fire department, police department and their first aid, rescue or emergency squad, or any citizen acting as such as a volunteer, or any other person is liable for any civil damages as a result of their acts of commission or omission arising out of and in the course of their rendering in good faith, any emergency care and services during an emergency which is in their judgment indicated and necessary at the time. Such relief from liability for civil damages extends to the operation of any motor vehicle in connection with any such care or services.

Nothing in this section grants any relief to any person causing any damage by his willful, wanton or reckless act of commission or omission.

Source: SL 1968, ch 193; SL 1970, ch 140; SL 1986, ch 4, § 9; SL 2013, ch 103, § 1.

20-9-4.2. Physician treating minor without consent of parent or guardian--Immunity from liability--Treatments excepted.

A minor as defined in § [26-1-1](#) may be treated by a licensed physician before the minor's parent's or guardian's consent is obtained if a parent or guardian is not immediately available and if, in the opinion of the treating physician, exercising competent medical judgment, the attempt to secure the consent would result in delay of treatment which would threaten the minor's life or health.

No physician, hospital, or other person assisting in the treatment of a minor may be held liable for providing medical or surgical treatment for a minor without consent of the minor's parent or guardian, if in the opinion of the treating physician, exercising competent medical judgment, the minor's life or health would be threatened by delaying treatment.

This section does not apply to an elective abortion or to sterilization or to any device or medication for the control of birth, nor shall it be construed to constitute a modification or repeal of any other current provision of law pertaining thereto.

Source: SL 1983, ch 208, §§ 1, 2.

20-9-4.3. Definition of terms.

Terms used in §§ [20-9-4.3](#) to [20-9-4.8](#), inclusive, mean:

- (1) "AED," an automated external defibrillator;
- (2) "Person," a natural person, organization, corporation, partnership, limited partnership, joint venture, association, government entity, or any other legal or commercial entity.

Source: SL 2000, ch 93, § 1; SL 2007, ch 139, § 1.

20-9-4.4. Civil immunity for emergency use or nonuse of AED.

Any person, who in good faith obtains, uses, attempts to use, or chooses not to use an AED in providing emergency care or treatment, is immune from civil liability for any injury as a result of such emergency care or treatment or as a result of an act or failure to act in providing or arranging such medical treatment.

Source: SL 2000, ch 93, § 2; SL 2007, ch 139, § 2.

20-9-4.5. Repealed by SL 2007, ch 139, § 3.

20-9-4.6. AED trainer immunity.

Any person who provides AED training is immune from civil liability for any personal injury that occurs as a result of emergency care or treatment rendered using the AED or as a result of an act or failure to act in providing or arranging such medical treatment.

Source: SL 2000, ch 93, § 4.

20-9-4.7. Repealed by SL 2007, ch 139, § 4.

20-9-4.8. Immunity inapplicable in event of negligence or misconduct.

The immunity from civil liability under §§ [20-9-4.3](#) to [20-9-4.8](#), inclusive, does not apply if the personal injury results from the gross negligence or willful or wanton misconduct of the person rendering such emergency care.

Source: SL 2000, ch 93, § 6.

20-9-4.9. Over-the-counter AED--Application of chapter--Immunity from civil liability--Exception.

The provisions of this chapter do not apply to an over-the-counter AED purchased without a written prescription. However, any person, who in good faith obtains an over-the-counter AED for use in providing emergency care or treatment or utilizes an over-the-counter AED, is immune from civil liability for any injury as a result of such emergency care or treatment or as a result of an act or failure to act in providing or arranging such emergency care or treatment. The immunity from civil liability pursuant to this section does not apply if the personal injury results from the gross negligence or willful or wanton misconduct of the person rendering such emergency care.

Source: SL 2005, ch 118, § 1.

20-9-5. Repealed by SL 1987, ch 158, § 8

20-9-6. Right to protection from bodily harm, insult, or injury to personal relations.

Every person has, subject to the limitations provided by law, the right of protection from bodily harm or restraint, from personal insult, from defamation, and from injury to his personal relations, and every person is bound, without contract, to abstain from injuring any such rights of others and to abstain from injuring the person or property of another.

Source: CivC 1877, §§ 27, 973; CL 1887, §§ 2526, 3597; RCivC 1903, §§ 27, 1291; RC 1919, §§ 93, 795; SDC 1939, § 47.0301.

20-9-6.1. Claim of barratry.

Barratry is the assertion of a frivolous or malicious claim or defense or the filing of any document with malice or in bad faith by a party in a civil action. Barratry constitutes a cause of action which may be asserted by filing a pleading in the same civil action in which the claim of barratry arises or in a subsequent action. A claim of barratry shall be determined in the same manner as any other substantive cause of action asserted in that civil action.

Source: SL 1997, ch 111, § 1; SL 2001, ch 104, § 1.

20-9-7. Abduction, enticement and seduction forbidden by rights of personal relation.

The rights of personal relation forbid:

- (1) The abduction or enticement of a husband from his wife or of a parent from a child;
- (2) The abduction or enticement of a wife from her husband, of a child from a parent, or from a guardian entitled to its custody;
- (3) The seduction of a wife, daughter, or orphan sister;
- (4) The seduction of a husband, son, or orphan brother.

Source: SDC 1939, § 47.0302; SL 2002, ch 97, § 1.

20-9-8. Repealed.

Source: CivC 1877, § 33; CL 1887, § 2532; RCivC 1903, § 33; RC 1919, § 101; SDC 1939, § 47.0303; SL 2021, ch 93, § 12.

20-9-9. Product's dealers and sellers immune from strict liability except for manufacturers or those who knew of defect--Other causes of action against seller not limited.

No cause of action based on the doctrine of strict liability in tort may be asserted or maintained against any distributor, wholesaler, dealer, or retail seller of a product which is alleged to contain or possess a latent defective condition unreasonably dangerous to the buyer, user, or consumer unless said distributor, wholesaler, dealer, or retail seller is also the manufacturer or assembler of said product or the maker of a component part of the final product, or unless said dealer, wholesaler, or retail seller knew, or, in the exercise of ordinary care, should have known, of the defective condition of the final product. Nothing in this section shall be construed to limit any other cause of action from being brought against any seller of a product.

Source: SL 1979, ch 155, § 2.

20-9-10. Product's manufacturer, assembler, or seller immune from strict liability for injury caused by certain alterations or modifications.

No manufacturer, assembler, or seller of a product may be held liable for damages for personal injury, death, or property damage sustained by reason of the doctrine of strict liability in tort based on a defect in a product, or failure to warn or protect against a danger or hazard in the use or misuse of such a product, or failure to properly instruct in the use or misuse of such product, where a proximate cause of the injury, death, or damage was an alteration or modification of such product made under all of the following circumstances:

- (1) The alteration or modification was made subsequent to the manufacture, assembly, or sale of the product;
- (2) The alteration or modification altered or modified the purpose, use, function, design, or manner of use of the product from that originally designed, tested, or intended by the manufacturer, assembler, or seller; and
- (3) It was not foreseeable by the manufacturer, assembler, or seller of the product that the alteration or modification would be made, and, if made, that it would render the product unsafe.

Source: SL 1979, ch 155, § 1.

20-9-10.1. State of the art defense in product liability actions.

In any product liability action based upon negligence or strict liability, whether the design, manufacture, inspection, testing, packaging, warning, or labeling was in conformity with the generally recognized and

prevailing state of the art existing at the time the specific product involved was first sold to any person not engaged in the business of selling such a product, may be considered in determining the standard of care, whether the standard of care was breached or whether the product was in a defective condition or unreasonably dangerous to the user.

Source: SL 1995, ch 117.

20-9-11. Landowners, tenants, and lessees exempt from liability for injuries on flooded land--Exceptions.

Notwithstanding the provisions of subdivision 20-9-16(1), no cause of action may arise against the owner, tenant, or lessee of any real estate for any injury to any person or death resulting therefrom or damage to property of such person when such person is on the flooded lands of the owner, tenant, or lessee, with or without permission, unless such death or injuries were caused by the willful and wanton misconduct of the owner, tenant or lessee.

This section does not affect the doctrine of attractive nuisance or other legal doctrines relating to the liability arising from artificial conditions highly dangerous to children. This section does not preempt the standard of liability which a landowner owes to a person who has paid a charge to enter the land pursuant to subdivision 20-9-16(2).

Source: SL 1987, ch 159; SL 2001, ch 105, § 1.

20-9-11.1. Trespasser defined.

For the purposes of §§ [20-9-11.2](#) to [20-9-11.6](#), inclusive, a trespasser is any person who enters on the property of another without permission and without an invitation, express or implied.

Source: SL 2011, ch 111, § 6.

20-9-11.2. Person with possessory interest in land exempt from liability to trespasser--Exceptions.

No person with a possessory interest in land, including an owner, lessee, or other occupant, owes any duty of care to a trespasser nor is subject to liability for any injury to a trespasser except as provided in §§ [20-9-11.3](#) to [20-9-11.6](#), inclusive.

Source: SL 2011, ch 111, § 1.

20-9-11.3. Person with possessory interest in land liable to trespasser for intentional injury.

A person with a possessory interest in land may be subject to liability if the trespasser's physical injury or death was intentionally caused, including by entrapment, and if the injury or death was not justifiable pursuant to § [22-18-4](#).

Source: SL 2011, ch 111, § 2.

20-9-11.4. Person with possessory interest in land liable for injury to or death of young child for certain artificial conditions on land.

A person with a possessory interest in land may be subject to liability for physical injury or death to a child thirteen years of age or younger resulting from an artificial condition on the land if:

- (1) The person knew or had reason to know that children of that age were likely to trespass at the location of the artificial condition; and

- (2) The condition is one the person knew or reasonably should have known involved an unreasonable risk or death or serious bodily harm to such children; and
- (3) The injured child did not discover the artificial condition or realize the risk involved in the artificial condition or the risk coming within the area made dangerous by it; and
- (4) The utility to the person of maintaining the artificial condition and the burden of eliminating the danger were slight as compared with the risk to the child involved; and
- (5) The person failed to exercise reasonable care to eliminate the danger or otherwise protect the injured child.

Source: SL 2011, ch 111, § 3.

20-9-11.5. Person with possessory interest in land liable for injury to or death under certain conditions where trespassers consistently intrude upon limited area.

A person with a possessory interest in land may be subject to liability for physical injury or death to a trespasser if the possessor knows, or from facts within the possessor's knowledge should have known, that trespassers consistently intrude upon a limited area of the possessor's land and:

- (1) The trespasser's harm was caused by the possessor's failure to carry on an activity involving a risk of death or serious bodily harm with reasonable care for the trespasser's safety; or
- (2) The trespasser's harm was caused by an artificial condition and:
 - (a) The artificial condition was created or maintained by the person;
 - (b) The person knew the artificial condition was likely to cause death or serious bodily injury to such a trespasser;
 - (c) The artificial condition was of such a nature that the possessor had reason to believe that the trespasser would not discover it; and
 - (d) The person failed to exercise reasonable care to warn the trespasser of the artificial condition and the risk involved.

Source: SL 2011, ch 111, § 4.

20-9-11.6. Person with possessory interest in land liable for injury to or death of certain known trespassers.

A person with a possessory interest in land may be subject to liability for physical injury or death to a known trespasser if:

- (1) The trespasser was harmed as a result of the person's failure to carry on dangerous activities on the land with reasonable care for the trespasser's safety;
- (2) The trespasser was harmed as a result of the possessor's failure to exercise reasonable care to warn the trespasser about an artificial condition maintained by the person, the artificial condition involved a risk of death or serious bodily injury, and the artificial condition was of such a nature that the person had reason to believe the trespasser would not discover the artificial condition or realize the risk involved; or
- (3) The person knew or had reason to know that the trespasser was in dangerous proximity to a moving force in the person's immediate control just before the harm occurred, and the trespasser was harmed as a result of the person's failure to exercise reasonable care so as to prevent the force from harming the trespasser or failed to exercise reasonable care to provide a warning that was reasonably adequate to allow the trespasser to avoid the harm.

Source: SL 2011, ch 111, § 5.

20-9-12. Definition of terms.

Terms used in §§ [20-9-12](#) to [20-9-18](#), inclusive, mean:

- (1) "Agritourism activity," any activity carried out on a farm, on a ranch, or in a forest that allows members of the public, for recreation, entertainment, or education purposes, to view or participate in agricultural activities, including farming, ranching, historical, cultural, harvest-your-own, or nature-based activities and attractions. An activity is not an agritourism activity if the participant is paid to participate in the activity;
- (2) "Charge," the admission price or fee asked in return for an invitation or permission to enter on or use the land. Any nonmonetary gift to an owner that is less than one hundred dollars in value may not be construed to be a charge;
- (3) "Inherent risk," the conditions, dangers, or hazards that are an integral part of the land used for agricultural purposes, including:
 - (a) Surface and subsurface conditions and natural conditions of land, vegetation, and waters;
 - (b) The behavior of wild and domestic animals;
 - (c) The ordinary dangers of structures or equipment ordinarily used in farming or ranching operations, if the structures or equipment are used for farming or ranching purposes;
 - (d) The potential of a participant in an agritourism activity to act in a negligent way that may contribute to an injury to the participant or others, whether by failing to follow safety procedures or by failing to act with reasonable caution while engaging in the agritourism activity;
- (4) "Land," land, trails, water, watercourses, private ways, and structures, and machinery or equipment if attached to the realty;
- (5) "Outdoor recreational activity," includes any of the following activities, or any combination thereof: hunting, fishing, swimming other than in a swimming pool, boating, canoeing, camping, picnicking, hiking, biking, off-road driving, aviation activity, nature study, water skiing, winter sports, snowmobiling, or viewing or enjoying historical, archaeological, scenic, or scientific sites, or an agritourism activity;
- (6) "Owner," the possessor of a fee interest, a tenant, lessee, occupant, or person in control of the land;
- (7) "Participant," an individual who, for purposes of outdoor recreational activity, enters on or uses the land of another but does not include an owner of the land or an agent, employee, or contractor of an owner of the land.

Source: SL 1987, ch 158, § 1; SL 1990, ch 154; SL 2010, ch 109, § 1; SL 2012, ch 117, § 1; SL 2022, ch 57, § 1.

20-9-13. Landowner not obligated to keep land safe for outdoor recreational activity—Exception.

Except as provided in § [20-9-16](#), an owner of land owes no duty of care to keep the land safe for entry on or use by any participant for outdoor recreational activity, or to give any warning of a dangerous condition, use, structure, or activity on the owner's land to any participant entering on or using the land for outdoor recreational activity.

Source: SL 1987, ch 158, § 2; SL 2010, ch 109, § 2; SL 2022, ch 57, § 2.

20-9-14. Individual on private land for outdoor recreational activity--Landowner not liable--Exceptions.

Except as provided in § [20-9-16](#), an owner of land who either directly or indirectly invites or permits without charge any participant to enter on or use the owner's land for outdoor recreational activity, or an owner upon whose land an individual has entered pursuant to § [41-9-8](#), does not thereby:

- (1) Extend any assurance that the land is safe for any purpose;
- (2) Confer upon any person the legal status of an invitee or licensee to whom a duty of care is owed; or
- (3) Assume responsibility for, or incur liability for, any injury to persons or property caused by an act of omission of the owner as to the maintenance of the land.

Source: SL 1987, ch 158, § 3; SL 1990, ch 155; SL 1991, ch 24, § 6; SL 2010, ch 109, § 3; SL 2022, ch 57, § 3.

20-9-15. Landowner liability for land leased to state or its political subdivisions for outdoor recreation activity.

Unless otherwise agreed in writing, the provisions of §§ [20-9-13](#) and [20-9-14](#) apply to the duties and liability of an owner of land leased to the state or any political subdivision of the state for outdoor recreational activity.

Source: SL 1987, ch 158, § 4; SL 2010, ch 109, § 4; SL 2022, ch 57, § 4.

20-9-16. Landowner liability for gross negligence or injury suffered where consideration charged or law violated.

Nothing in §§ [20-9-12](#) to [20-9-18](#), inclusive, limits in any way any liability which otherwise exists:

- (1) For gross negligence or willful or wanton misconduct of the owner;
- (2) For injury suffered in any case where the owner of land charges any participant, except as provided in § [20-9-16.1](#) or except in the case of land leased to the state or a political subdivision of the state, any consideration received by the owner for the lease may not be deemed a charge within the meaning of this section nor may any incentive payment paid to the owner by the state or federal government to promote public access for outdoor recreational activities be considered a charge; or
- (3) For injury suffered in any case where the owner has violated a county or municipal ordinance or state law which violation is a proximate cause of the injury.

Source: SL 1987, ch 158, § 5; SL 2010, ch 109, § 5; SL 2022, ch 57, § 5.

20-9-16.1. Injury or death resulting from inherent risk of an agritourism activity--Warning notice.

The provisions of subdivision [20-9-16\(2\)](#) do not apply to injury to an individual or property resulting from inherent risk of an agritourism activity if the owner charges a participant for entry on or use of the land for the agritourism activity and the owner:

- (1) Posts and maintains signage containing the warning, described in this section, in a clearly visible and conspicuous location at or near the entrance to the land used for the agritourism activity; and
- (2) Includes the warning, described in this section, in a written contract between the owner and any participant who is charged to enter on or use the land for the agritourism activity.

The warning shall include the following: WARNING-Under South Dakota law, an owner of property, including lands and waters, who charges individuals an admission price or fee to participate in an agritourism activity on the owner's property, is not liable for injury to or death of a participant in the agritourism activity or damage to the participant's property of the injury or damage resulted from an inherent risk of the agritourism activity. Inherent risks are conditions, dangers, or hazards that are an integral part of the land used for agritourism activity, including surface and subsurface conditions and natural conditions of the land, vegetation, and waters; the behavior of wild or domestic animals; the ordinary dangers of structures or equipment ordinarily used in farming or ranching operations when such structures or equipment are used for farming or ranching purposes; and the potential for you or another participant to act in a negligent way that may contribute to your injury, death or damages. You are assuming the risk of participating in the agritourism activity for which you are entering on or using the owner's land.

Source: SL 2022, ch 57, § 7.

20-9-17. Liability for injury to persons or property or failure to exercise care in use of land for outdoor recreation or agritourism.

Sections [20-9-12](#) to [20-9-18](#), inclusive, may not be construed to create a duty of care or ground of liability for injury to persons or property, or relieve any person entering on or using the land of another for outdoor recreational activity from any obligation which the person may have in the absence of §§ [20-9-12](#) to [20-9-18](#), inclusive, to exercise care in the person's entry on or use of the land, or from the legal consequences of failure to employ such care.

Source: SL 1987, ch 158, § 6; SL 2010, ch 109, § 6; SL 2022, ch 57, § 6.

[20-9-18](#). Doctrine of attractive nuisance not affected.

Sections [20-9-12](#) to [20-9-18](#), inclusive, does not affect the doctrine of attractive nuisance or other legal doctrines relating to liability arising from artificial conditions highly dangerous to children.

Source: SL 1987, ch 158, § 7.

[20-9-19](#). Definition of terms as to political subdivisions.

Terms used in §§ [20-9-19](#) to [20-9-23](#), inclusive, mean:

- (1) "Land," all land, trails, water, watercourses, lakes, ponds, reservoirs, or improvements to real property, except for machinery and equipment on or attached to the realty, when located on lands owned, leased, or managed by any political subdivision of South Dakota, all areas designated as snowmobile, equestrian, hiking, or other recreational trails by any political subdivision of South Dakota, all private lands leased by any political subdivision of South Dakota, for public hunting, and all lands owned, leased, or operated by any political subdivision of South Dakota and operated as a park; and
- (2) "Outdoor recreational purpose," includes any of the following activities or any combination thereof: hunting, fishing, swimming other than in a swimming pool, boating, canoeing, kayaking, camping, picnicking, hiking, biking, skateboarding, in-line skating, sledding, horseback riding, off-road driving, nature study, water skiing, team sports, snowmobiling, skiing, climbing, spelunking, para-sailing, hang gliding, shooting, observing wildlife, viewing or enjoying historical, archaeological, scenic, or scientific sites, or engaging in any other form of outdoor sport or recreational activity of any sort.

Source: SL 1996, ch 147, § 1; SL 1999, ch 111, § 1.

[20-9-20](#). Political subdivisions and employees not obligated to keep land safe for entry or use--Exceptions.

Except as provided in § [20-9-22](#), any political subdivision of South Dakota, and its employees acting within the scope of their duties owe no duty of care to keep the land safe for entry or use by others for outdoor recreational purposes, or to give any warning of a dangerous condition, use, structure, or activity on the land to persons entering the land for outdoor recreational purposes.

Source: SL 1996, ch 147, § 2.

[20-9-21](#). Liability of political subdivision or employees for invitational or permissive use of land.

Except as provided in § [20-9-22](#), any political subdivision of South Dakota, and its employees, by either directly or indirectly inviting or permitting the person to use the land described for outdoor recreational purposes or by charging a fee for admittance to parks, campgrounds, or other recreational areas, do not thereby:

- (1) Extend any assurance that the land is safe for any purpose; or
- (2) Confer upon any person the legal status of an invitee or licensee to whom a duty of care is owed; or
- (3) Assume responsibility for, or incur liability for, any injury to persons or property caused by an act of omission of the political subdivision of South Dakota, and its employees as to maintenance of the land.

Source: SL 1996, ch 147, § 3.

20-9-22. Limits of political subdivision's liability.

Nothing in §§ [20-9-19](#) to [20-9-23](#), inclusive, limits in any way any liability which otherwise exists:

- (1) For gross negligence or willful or wanton misconduct of the political subdivision of South Dakota, or its employees; and
- (2) For injury suffered in any case where the political subdivision of South Dakota, or its employees, have violated a county or municipal ordinance or state law which violation is a proximate cause of the injury.

Source: SL 1996, ch 147, § 4.

20-9-23. Effect of §§ [20-9-19](#) to [20-9-23](#) on attractive nuisance or other legal doctrines.

Nothing in §§ [20-9-19](#) to [20-9-23](#), inclusive, affects the doctrine of attractive nuisance or other legal doctrines relating to liability arising from artificial conditions unreasonably dangerous to children.

Source: SL 1996, ch 147, § 5.

20-9-24. Definition of terms as to state.

Terms used in §§ [20-9-24](#) to [20-9-28](#) mean:

- (1) "Land," all land, trails, water, watercourses, lakes, ponds, reservoirs, or improvements to real property, except for machinery and equipment on or attached to the realty, when located on lands owned, leased, or managed by the South Dakota Department of Game, Fish and Parks, all areas designated as snowmobile, equestrian, hiking, or other recreational trails by the State of South Dakota, and all private lands leased by the State of South Dakota for public hunting; and
- (2) "Outdoor recreational purpose," includes any of the following activities or any combination thereof: hunting, fishing, swimming other than in a swimming pool, boating, canoeing, kayaking, camping, picnicking, hiking, biking, horseback riding, off-road driving, nature study, water skiing, team sports, snowmobiling, skiing, climbing, spelunking, para-sailing, hang gliding, shooting, observing wildlife, viewing or enjoying historical, archaeological, scenic or scientific sites, or engaging in any other form of outdoor sport or recreational activity of any sort.

Source: SL 1996, ch 148, § 1.

20-9-25. State's duty of care to keep land safe and to warn of dangers on land used for outdoor recreational purposes.

Except as provided in § [20-9-27](#), the State of South Dakota, its agencies, and its employees acting within the scope of their duties owe no duty of care to keep the land safe for entry or use by others for outdoor recreational purposes, or to give any warning of a dangerous condition, use, structure, or activity on the land to persons entering the land for outdoor recreational purposes.

Source: SL 1996, ch 148, § 2.

20-9-26. Liability of state, its agencies, and employees for invitational or permissive use of land.

Except as provided in § [20-9-27](#), the State of South Dakota, its agencies, and employees, by either directly or indirectly inviting or permitting the person to use the land described for outdoor recreational purposes or by charging a fee for admittance to parks, campgrounds, or other recreational areas, do not thereby:

- (1) Extend any assurance that the land is safe for any purpose; or
- (2) Confer upon any person the legal status of an invitee or licensee to whom a duty of care is owed; or
- (3) Assume responsibility for, or incur liability for, any injury to persons or property caused by an act of omission of the State of South Dakota, its agencies and employees as to maintenance of the land.

Source: SL 1996, ch 148, § 3.

20-9-27. Limits of state's liability.

Nothing in §§ [20-9-24](#) to [20-9-28](#), inclusive, limits in any way any liability which otherwise exists:

- (1) For gross negligence or willful or wanton misconduct of the State of South Dakota, its agencies or employees; and
- (2) For injury suffered in any case where the State of South Dakota, its agencies or employees, have violated a county or municipal ordinance or state law which violation is a proximate cause of the injury.

Source: SL 1996, ch 148, § 4.

20-9-28. Effect of §§ [20-9-24](#) to [20-9-28](#) on attractive nuisance or other legal doctrines.

Nothing in §§ [20-9-24](#) to [20-9-28](#), inclusive, affects the doctrine of attractive nuisance or other legal doctrines relating to liability arising from artificial conditions unreasonably dangerous to children.

Source: SL 1996, ch 148, § 5.

20-9-29. Definitions.

Terms used in §§ [20-9-29](#) to [20-9-31](#), inclusive, mean:

- (1) "Person," any corporation, family farm corporation, limited liability corporation, cooperative association, partnership, limited partnership, limited liability partnership, joint venture, natural person, or other legally established entity of any sort;
- (2) "Livestock," includes cattle, poultry, bison, sheep, swine, goats, and horses;
- (3) "Ownership interest," includes any partial, fractional, or complete ownership of an interest in livestock, but does not include any lien or security interest attaching to livestock;
- (4) "Environmental damages," includes all damages arising from contamination or pollution of air, water, real or personal property, livestock, wild animals, birds, fish, or other aquatic life, or injury to human beings from a location within the State of South Dakota, including contamination or pollution, as defined in Title 34A.

Source: SL 1998, ch 123, § 1; SDCL [34A-11-9.1](#)

20-9-30. Livestock owners--Control by another person.

Any person who holds an ownership interest in livestock and negligently entrusts the possession or control of that livestock to another person shall be jointly and severally liable for all environmental damages which are caused by the acts or omissions of the person entrusted with those livestock and which arise from the possession or control of that livestock.

Source: SL 1998, ch 123, § 2; SDCL § 34A-11-9.2

20-9-31. Livestock--Contract--Facilities.

Any person who holds an ownership interest in livestock and controls or specifies through a contract or other business relationship the design, construction, or operational instructions of the facilities which care for that livestock shall be jointly and severally liable for all environmental damages which are caused by such person's negligent design, negligent construction, or negligent operational instructions for the livestock facility.

Source: SL 1998, ch 123, § 3; SDCL 34A-11-9.3

20-9-32. Civil cause of action for malicious intimidation or harassment--Damages.

In addition to the criminal penalty provided in § [22-19B-1](#), there is a civil cause of action for malicious harassment. The victim of malicious intimidation or harassment may recover both special and general damages, including damages for emotional distress, reasonable attorney fees and costs, and punitive damages. The civil cause of action for malicious intimidation or harassment is in addition to any other remedies, criminal or civil, otherwise available under law.

Source: SL 1993, ch 177, § 3; SDCL, [22-19B-3](#); SL 2005, ch 120, §§ 183, 185.

20-9-33. Civil liability for counterfeit lien.

Any person who violates § [22-11-28](#) is liable in a civil action to any person for any injury, death, or loss to person or property incurred as a result of the commission of the offense and for reasonable attorney's fees, court costs, and other reasonable expenses incurred as a result of prosecuting a civil action commenced under this section. A civil action under this section is not the exclusive remedy of a person who incurs injury, death, or loss to person or property as a result of a violation of § [22-11-28](#).

Source: SL 1997, ch 45, § 9; SDCL, § [22-11-30](#); SL 2005, ch 120, § 232.

20-9-34. Civil liability for harassment by threat of fraudulent legal proceedings or liens.

Any person who violates § [22-11-31](#) is liable in a civil action to any person for any injury, death, or loss to person or property incurred as a result of the commission of the offense and for reasonable attorney's fees, court costs, and other reasonable expenses incurred as a result of prosecuting a civil action commenced under this section. A civil action under this section is not the exclusive remedy of a person who incurs injury, death, or loss to person or property as a result of a violation of § [22-11-31](#).

Source: SL 1997, ch 45, § 12; SDCL, § [22-11-33](#); SL 2005, ch 120, § 232.

20-9-35. Civil liability for impersonating a judicial official.

Any person who violates § [22-40-17](#) is liable in a civil action to any person for any injury, death, or loss to person or property incurred as a result of the commission of the offense and for reasonable attorney's fees, court costs, and other reasonable expenses incurred as a result of prosecuting a civil action commenced under this section. A civil action under this section is not the exclusive remedy of a person who incurs injury, death, or loss to persons or property as a result of a violation of § [22-40-17](#).

Source: SL 1997, ch 45, § 14; SDCL § [22-11-35](#); SL 2005, ch 120, § 232, eff. July 1, 2006.

20-9-36. Definitions related to asbestos claims.

Terms used in §§ [20-9-36](#) to [20-9-43](#), inclusive, mean:

- (1) "Corporation," any corporation for profit, including a domestic corporation organized under the laws of this state or a foreign corporation organized under laws other than the laws of this state;
- (2) "Successor," any corporation that assumes or incurs or has assumed or incurred successor asbestos-related liabilities and that became a successor before January 1, 1972, or any successors of that corporation;
- (3) "Transferor," any corporation from which successor asbestos-related liabilities are or were assumed or incurred.

Source: SL 2010, ch 110, § 1.

20-9-37. Asbestos claim defined.

For the purposes of §§ [20-9-36](#) to [20-9-43](#), inclusive, an asbestos claim is any claim, wherever or whenever made, for damages, losses, indemnification, contribution, or other relief arising out of, based on, or in any way related to asbestos, including:

- (1) The health effects of exposure to asbestos, including a claim for personal injury or death, mental or emotional injury, risk of disease or other injury, or the costs of medical monitoring or surveillance;
- (2) Any claim made by or on behalf of any person exposed to asbestos, or a representative, spouse, parent, child, or other relative of the person; and
- (3) Any claim for damage or loss caused by the installation, presence, or removal of asbestos.

Source: SL 2010, ch 110, § 2.

20-9-38. Successor asbestos-related liabilities defined.

For the purposes of §§ [20-9-36](#) to [20-9-43](#), inclusive, successor asbestos-related liabilities are any liabilities, whether known or unknown, asserted or unasserted, absolute or contingent, accrued or unaccrued, liquidated or unliquidated, or due to become due, which are related to asbestos claims and were assumed or incurred by a corporation as a result of, or in connection with, a merger or consolidation, or the plan of merger or consolidation related to the merger or consolidation with or into another corporation, or that are related in any way to asbestos claims based on the exercise of control or the ownership of stock of the corporation before the merger or consolidation. The term includes liabilities that, after the time of the merger or consolidation for which the fair market value of total gross assets is determined, pursuant to § [20-9-41](#), were or are paid or otherwise discharged, or committed to be paid or otherwise discharged, by or on behalf of the corporation, or by a successor of the corporation, or by or on behalf of a transferor, in connection with settlements, judgments, or other discharges in this state or another jurisdiction.

Source: SL 2010, ch 110, § 3.

20-9-39. Limitation on cumulative successor asbestos-related liabilities.

The cumulative successor asbestos-related liabilities of any successor corporation are limited to the fair market value of the total gross assets of the transferor determined as of the time of the merger or consolidation. The successor corporation does not have responsibility for successor asbestos-related liabilities in excess of this limitation.

Source: SL 2010, ch 110, § 4.

20-9-40. Limitation where transferor assumed or incurred liabilities of prior transferor.

If the transferor had assumed or incurred successor asbestos-related liabilities or liabilities in connection with a prior merger or consolidation with a prior transferor, then the fair market value of the total assets of the prior transferor determined as of the time of the earlier merger or consolidation shall be substituted for the limitation set forth in § [20-9-39](#) for purposes of determining the limitation of liability of a successor corporation.

Source: SL 2010, ch 110, § 5.

20-9-41. Total gross assets defined--Determination of fair market value.

Any successor corporation may establish the fair market value of total gross assets for the purpose of the limitations under §§ [20-9-39](#) and [20-9-40](#) through any method reasonable under the circumstances, including:

- (1) By reference to the going concern value of the assets or to the purchase price attributable to, or paid for, the assets in arms-length transactions; or
- (2) In the absence of other readily available information from which the fair market value can be determined, by reference to the value of the assets recorded on a balance sheet.

Total gross assets include intangible assets. To the extent total gross assets include any liability insurance that was issued to the transferor whose assets are being valued for purposes of this section, the applicability, terms, conditions, and limits of such insurance are not affected by this section, nor does this section otherwise affect the rights and obligations of an insurer, transferor, or successor under any insurance contract or any related agreements, including pre-enactment settlements resolving coverage-related disputes, and the rights of an insurer to seek payment for applicable deductibles, retrospective premiums, or self-insured retentions or to seek contribution from a successor for uninsured or self-insured periods or periods where insurance is uncollectible or otherwise unavailable. Without limiting the foregoing, to the extent total gross assets include any such liability insurance, a settlement of a dispute concerning any such liability insurance coverage entered into by a transferor successor with the insurers of the transferor before the date of enactment of §§ [20-9-36](#) to [20-9-43](#), inclusive, shall be determinative of the total coverage of such liability insurance to be included in the calculation of the transferor's total gross assets.

Source: SL 2010, ch 110, § 6.

20-9-42. Adjustment of fair market value of total gross assets.

The fair market value of total gross assets at the time of the merger or consolidation shall increase annually at a rate equal to the sum of the prime rate as listed in the first edition of the *Wall Street Journal* published for each calendar year since the merger or consolidation, unless the prime rate is not published in that edition of the *Wall Street Journal*, in which case any reasonable determination of the prime rate on the first day of the year may be used, plus one percent. This rate may not be compounded. The adjustment of the fair market value of total gross assets shall continue as provided in this section until the date the adjusted value is first exceeded by the cumulative amounts of successor asbestos-related liabilities paid or committed to be paid by or on behalf of the successor corporation or a predecessor or by or on behalf of a transferor after the time of the merger or consolidation for which the fair market value of total gross assets is determined.

No adjustment of the fair market value of total gross assets may be applied to any liability insurance that may be included in the definition of total gross assets by § [20-9-41](#).

Source: SL 2010, ch 110, § 7.

20-9-43. Exclusions from limitation on cumulative successor asbestos-related liabilities.

The provisions of §§ [20-9-39](#) and [20-9-40](#) do not apply to any of the following:

- (1) Workers' compensation benefits paid by or on behalf of an employer to an employee under the provisions of Title 62, or a comparable workers' compensation law of another jurisdiction;
- (2) Any claim against a corporation that does not constitute a successor asbestos-related liability;

- (3) Any obligation under the National Labor Relations Act, 29 U.S.C. section 151, et seq., or under any collective bargaining agreement; or
- (4) A successor that, after a merger or consolidation, continued in the business of mining asbestos or in the business of selling or distributing asbestos fibers or in the business of manufacturing, distributing, removing, or installing asbestos-containing products which were the same or substantially the same as those products previously manufactured, distributed, removed, or installed by the transferor.

Source: SL 2010, ch 110, § 8.

20-9-44. Limitation of action for personal injury or death caused by negligence of directors and officers of nonprofit fire, ambulance, or search and rescue entity or its employees and volunteers.

Any action for recovery of damages for personal injury or death caused by the negligence of directors and officers of a nonprofit fire, ambulance, or search and rescue entity organized or incorporated in the State of South Dakota, or its employees and volunteers authorized by the nonprofit organization at the time of the alleged negligent act shall be commenced within two years from the occurrence of the accident causing the injury or death. This section applies whether such person is classified, unclassified, licensed, certified, permanent, temporary, compensated, or not compensated.

Source: SL 2013, ch 103, § 2.

20-9-45. Immunity from liability for nonprofit fire, ambulance, or search and rescue entity and its volunteer officers and directors.

A nonprofit fire, ambulance, or search and rescue entity organized or incorporated in the State of South Dakota and its volunteer officers and directors are immune from civil liability for any action brought in any court in this state on the basis of any act or omission resulting in damage or injury if:

- (1) The individual was acting in good faith and within the scope of such individual's official functions and duties for the nonprofit organization or corporation; and
- (2) The damage or injury was not caused by gross negligence or willful and wanton misconduct by such individual.

Source: SL 2013, ch 103, § 3.

20-9-46. Wrongful human trafficking.

A victim of human trafficking pursuant to chapter [22-49](#), or any federal human trafficking offense, may bring a civil cause of action for wrongful human trafficking.

Source: SL 2014, ch 107, § 1.

20-9-47. Definitions pertaining to fishing tournaments.

Terms used in §§ [20-9-47](#) to [20-9-51](#), inclusive, mean:

- (1) "Fishing," the riding, driving, or being a passenger in a boat or watercraft used in a fishing tournament, or any person assisting a participant or show management. The term does not include being a spectator at a fishing tournament;
- (2) "Fishing tournament," an organized competition among fishermen, usually as a series of competition events centered around or on a specific body of water, with specific rules applying to each event;
- (3) "Fishing tournament sponsor," any individual, group, club, partnership, or corporation, whether or not the sponsor is operating for profit or nonprofit, that supports, organizes, or provides the facilities for a fishing tournament;

- (4) "Fishing professional," any person engaged for compensation in instructing a participant or renting to a participant a boat, watercraft or other equipment for the purpose of fishing in a fishing tournament;
- (5) "Inherent risks of fishing," those dangers or conditions that are an integral part of fishing, including:
 - (a) The unpredictability of the weather and environment in the area the fishing occurs;
 - (b) Certain hazards such as surface and subsurface conditions of the body of water at or on which the fishing occurs;
 - (c) Collisions with other boats, watercrafts, vehicles, ice shacks, or objects;
 - (d) If engaged in a fishing tournament, 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 boat or watercraft or not acting within the participant's ability;
- (6) "Participant," any person, whether amateur or professional, who engages in a fishing tournament, whether or not a fee is paid to participate in a fishing tournament.

Source: SL 2016, ch 115, § 1.

20-9-48. Limited liability of fishing tournament sponsors.

No fishing tournament sponsor is liable for an injury to, or the death of, a participant resulting from the inherent risks of fishing.

Source: SL 2016, ch 115, § 2.

20-9-49. Circumstances under which liability of fishing tournament sponsor and others not limited.

Nothing in §§ [20-9-47](#) to [20-9-51](#), inclusive, prevents or limits the liability of a fishing tournament sponsor, a fishing professional, or any other person if the fishing tournament sponsor, fishing professional, or other person:

- (1) Provides the equipment, boat, or watercraft, and knew or should have known that the equipment, boat, or watercraft was faulty, and the equipment, boat, or watercraft was faulty to the extent that it causes the injury; or provides the equipment, boat, or watercraft and fails to make reasonable and prudent efforts to determine the proper operating licensure and ability of the participant to engage safely in the fishing tournament and determine the ability of the participant to safely manage the equipment, boat, or watercraft 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 or facilities upon which the participant sustains any injury because of a dangerous latent condition that was known to the fishing tournament sponsor, fishing professional, or person and for which warning signs had not been conspicuously posted;
- (3) Commits an act or omission that constitutes willful or wanton disregard for the safety of the participant and that causes the injury; or
- (4) Intentionally injures the participant.

Source: SL 2016, ch 115, § 3.

20-9-50. Fishing professionals and tournament sponsors liable for warranty and trespass.

Nothing in §§ [20-9-47](#) to [20-9-51](#), inclusive, prevents or limits the liability of any fishing tournament sponsor or fishing professional for any injury involving a participant if the recovery is made pursuant to warranty or trespass.

Source: SL 2016, ch 115, § 4.

20-9-51. Warning sign to be posted by fishing professionals and tournament sponsors--Warning notice in contracts.

Each fishing professional and fishing tournament sponsor shall post and maintain the following sign:

WARNING: Under South Dakota law, no fishing tournament sponsor or fishing professional is liable for an injury to, or the death of, a participant resulting from the inherent risks of fishing, pursuant to §§ [20-9-47](#) to [20-9-51](#) of the South Dakota Codified Laws.

The sign shall be placed in a clearly visible location on or near boat docks, registration tables, equipment rental stations, or where a fishing professional conducts fishing activities. The warning notice shall appear on the sign in black letters, with each letter being a minimum of one inch in height. Each written contract entered into by a fishing professional for the providing of professional services, instruction, or the rental of equipment, a boat, or watercraft to a participant, whether or not the contract involves fishing activities on or off the location or site of the fishing professional's business, shall contain in clearly readable print the warning notice provided in this section.

Source: SL 2016, ch 115, § 5.

20-9-52. Intentional exposure to HIV, syphilis, gonorrhea, chancroid, or other communicable disease.

Any person who knowingly violates the provisions of § [22-18-31](#), [34-22-5](#), or [34-23-1](#) is liable for civil damages.

Source: SL 2018, ch 204, § 2.

20-9-53. Definitions.

Terms used in §§ 20-9-53 to [20-9-57](#), inclusive, mean:

- (1) "Civil recoveries," funds received by the state from any third party as damages resulting from riot or incitement to riot that cause the state or a political subdivision to incur costs;
- (2) "Incitement to riot," any person who, with the intent to cause a riot, commits an act or engages in conduct that urges three or more people, acting together and without authority of law, to use force or violence to cause any injury to any person or any damage to property, under circumstances in which the force or violence is imminent and the urging is likely to incite or produce the use of force or violence, incites riot. Urging includes instigating, inciting, or directing, but does not include the oral or written advocacy of ideas or expression of belief that does not urge the commission of an act or conduct of imminent force or violence;
- (3) "Person," any individual, joint venture, association, partnership, cooperative, limited liability company, corporation, nonprofit, other entity, or any group acting as a unit;
- (4) "Political subdivision," a county or municipality;
- (5) "Riot," any intentional use of force or violence by three or more persons, acting together and without authority of law, to cause any injury to any person or any damage to property; and
- (6) "Secretary," the secretary of the Department of Public Safety.

Source: SL 2019, ch 104, § 1, eff. Mar. 27, 2019; SL 2020, ch 73, § 1; SL 2020, ch 78, § 5.

20-9-54. Liability for riot and incitement to riot.

In addition to any other liability or criminal penalty under law, a person is personally liable for riot, and jointly and severally liable for riot with any other person engaged in the same riot, to the state or a political subdivision in an action for damages if the person commits riot as defined under § [20-9-53](#).

In addition to any other liability or criminal penalty under law, a person is personally liable for incitement to riot, and jointly and severally liable for incitement to riot with any other person engaged in the same riot, to the state or a political subdivision in an action for damages if the person commits incitement to riot as defined under § [20-9-53](#).

Nothing in this section may be construed to include the oral or written advocacy of ideas or expression of belief that does not urge the commission of an act or conduct of imminent force or violence. This section may not be construed to prevent the peaceable assembly of persons for lawful purposes of protest or petition.

Source: SL 2019, ch 104, § 2, eff. Mar. 27, 2019; SL 2020, ch 73, § 2; SL 2020, ch 78, § 6.

20-9-55. Jurisdiction--Evidence--Procedure.

A person is subject to the jurisdiction of the courts of this state for incitement to riot that results in a riot in this state, regardless of whether the person engages in incitement to riot personally, or through any employee, agent, or subsidiary.

Evidence is not admissible in an action for riot or incitement to riot that shows that any damages, in whole or in part, were paid by a third party. Notwithstanding any other law, any action arising under § [20-9-54](#) is governed by the procedural and substantive law of this state.

Any action for riot or incitement to riot shall be for the exclusive benefit of the state or political subdivision and shall be brought in the name of the state or political subdivision. The state, a political subdivision, or any third party having an interest in preventing a riot or incitement to riot may enter into an agreement to establish joint representation of a cause of action under § [20-9-54](#).

Source: SL 2019, ch 104, § 3, eff. Mar. 27, 2019; SL 2020, ch 73, § 3; SL 2020, ch 78, § 7.

20-9-56. Damages for riot or incitement to riot.

The plaintiff in an action for riot or incitement to riot may recover both special and general damages, reasonable attorney's fees, disbursements, other reasonable expenses incurred from prosecuting the action, and punitive damages. A fine paid by a defendant for any violation of chapter [22-10](#) may not be applied toward payment of damages under this section.

Source: SL 2019, ch 104, § 4, eff. Mar. 27, 2019; SL 2020, ch 73, § 4; SL 2020, ch 78, § 8.

20-9-57. Riot boosting recovery fund established.

There is established in the state treasury the riot boosting recovery fund. Money in the fund may be used to pay any claim for damages arising out of or in connection with a riot or may be transferred to the pipeline engagement activity coordination expenses fund. Interest earned on money in the fund established under this section shall be credited to the fund. The fund is continuously appropriated to the Department of Public Safety, which shall administer the fund. All money received by the department for the fund shall be set forth in an informational budget pursuant to § [4-7-7.2](#) and be annually reviewed by the Legislature.

The secretary shall approve vouchers and the state auditor shall draw warrants to pay any claim authorized by §§ [20-9-53](#) to [20-9-57](#), inclusive.

Any civil recoveries shall be deposited in the fund.

Source: SL 2019, ch 104, § 5, eff. Mar. 27, 2019.