

Act No. 288
Public Acts of 2016
Approved by the Governor
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**STATE OF MICHIGAN
98TH LEGISLATURE
REGULAR SESSION OF 2016**

Introduced by Reps. Cole, Glenn, Chatfield, Aaron Miller, Kelly, Canfield, Smiley, Pettalia, Hughes and McBroom

ENROLLED HOUSE BILL No. 5275

AN ACT to amend 1994 PA 451, entitled "An act to protect the environment and natural resources of the state; to codify, revise, consolidate, and classify laws relating to the environment and natural resources of the state; to regulate the discharge of certain substances into the environment; to regulate the use of certain lands, waters, and other natural resources of the state; to protect the people's right to hunt and fish; to prescribe the powers and duties of certain state and local agencies and officials; to provide for certain charges, fees, assessments, and donations; to provide certain appropriations; to prescribe penalties and provide remedies; and to repeal acts and parts of acts," by amending sections 72101, 72115, 81127, and 81133 (MCL 324.72101, 324.72115, 324.81127, and 324.81133), section 72101 as amended by 2014 PA 211, section 72115 as amended by 2014 PA 213, section 81127 as amended by 1998 PA 86, and section 81133 as amended by 2014 PA 147, and by adding section 72118; and to repeal acts and parts of acts.

The People of the State of Michigan enact:

Sec. 72101. As used in this part:

- (a) "Advisory council" means the Michigan trails advisory council created in section 72110.
- (b) "Council" means a trail management council established pursuant to section 72106.
- (c) "Department" means the department of natural resources.
- (d) "Director" means the director of the department or his or her designee.
- (e) "Equine access locations" means open access roads, management roads, forestry access roads, 2-track and single-track trails that are not wildlife paths, staging areas for pack and saddle animals to be dropped off or picked up, and associated wilderness campsites.
- (f) "Forest road" means that term as defined in section 81101.
- (g) "Fund" means the Pure Michigan Trails fund created in section 72109.
- (h) "Governmental agency" means the federal government, a county, city, village, or township, or a combination of any of these entities.
- (i) "Pack and saddle trails" means trails and equine access locations that may be used by pack and saddle animals.
- (j) "Pure Michigan Trail" means a trail designated as a "Pure Michigan Trail" under section 72103.
- (k) "Pure Michigan Water Trail" means a water trail designated as a "Pure Michigan Water Trail" under section 72103.
- (l) "Pure Michigan Trail Town" means a "Pure Michigan Trail Town" designated under section 72104.
- (m) "Rail-trail" means a former railroad bed that is in public ownership and used as a trail.
- (n) "Statewide trail network" means the statewide trail network established in section 72114.

(o) "Trail" means a right-of-way adapted to foot, horseback, motorized, or other nonmotorized travel. Trail also includes a water trail.

(p) "Water trail" means a designated route on a body of water.

Sec. 72115. (1) Subject to subsections (2) and (3), pack and saddle animals shall be allowed to access pack and saddle trails on public land managed by the department as follows:

(a) Access on land of the state forest system is allowed unless restricted by statute, deed restriction, land use order, or other legal mechanism, in effect on April 2, 2010.

(b) Access on land of the state park system or state game area system is prohibited unless authorized by land use order or other legal mechanism in effect on April 2, 2010.

(c) Access on other land managed by the department is allowed according to the specific authorization or restriction applicable to the land.

(2) Access by pack and saddle animals may only be restricted on lands described in subsection (1) after April 2, 2010 if conditions are not suitable for pack and saddle animals because of public safety concerns, necessary maintenance, or for reasons related to the mission of the department. Restrictions related to the mission of the department shall be supported, to the greatest extent practicable, by a written science-based rationale that is supported with documentation that is made available to the public. Prior to determining that access by pack and saddle animals be restricted, the department shall make every effort to resolve any public safety or maintenance concerns. Subject to subsection (3), the department shall not restrict pack and saddle animals from lands described in subsection (1) unless all of the following conditions are met:

(a) The department holds a public meeting on a proposal to restrict access by pack and saddle animals on pack and saddle trails to receive testimony from the general public. The department shall invite the advisory council and the equine trails subcommittee created in section 72110a to attend the meeting.

(b) The department, after considering testimony at the meeting under subdivision (a), provides a specific rationale for its determination to restrict access by pack and saddle animals.

(c) Any decision by the department to restrict access by pack and saddle animals shall not take effect for a period of time set by the department, but not less than 60 days. However, if the director determines that a restriction must be imposed because of user conflicts or due to an imminent threat to public health, safety, welfare, or to natural resources or the environment, the director may issue a temporary order restricting access by pack and saddle animals for 30 days or until the threat or user conflict is abated. A temporary order under this subdivision may be reissued if the threat or user conflict persists.

(d) A written statement shall be posted at the trailhead in which the restriction is imposed stating the cause and estimated duration of the closure.

(e) A list of pack and saddle trails on which the department has restricted access for pack and saddle animals, including temporary orders, shall be posted on the department's website and notification shall be provided to the equine trails subcommittee created in section 72110a.

(3) Any restrictions described in subsection (1) on access by pack and saddle animals that were in effect on April 2, 2010 shall remain in effect until those restrictions are reviewed using the process under subsection (2).

(4) An individual shall not use pack and saddle animals on state-owned land except on pack and saddle trails that are open for access by pack and saddle animals. However, an individual may use a pack and saddle animal in an area in which public hunting is permitted to retrieve legally harvested deer, bear, or elk using the most direct route that does not enter a stream, river, or wetland except over a bridge, culvert, or similar structure.

Sec. 72118. (1) The department shall make a comprehensive inventory of forest roads that are state roads. The department shall divide the state into 5 regions and complete the inventory in regional phases. The Upper Peninsula shall be a separate region or regions. The department shall inventory the 2 most northerly regions in the Lower Peninsula by December 31, 2017. The department shall inventory the remaining regions by December 31, 2018. The inventory shall meet both of the following requirements:

(a) Identify the location, condition, and development level of the forest roads.

(b) Determine types of motorized and nonmotorized use currently restricted on each forest road segment and the seasons during which those uses are currently restricted.

(2) Beginning when the inventory for a region is completed or required to be completed, whichever occurs first, all of the following apply:

(a) The forest roads within that region shall be open to motorized use by the public unless designated otherwise by the department pursuant to section 504(7). However, beginning on the effective date of the amendatory act that added this section, forest roads in the Upper Peninsula shall be open to motorized use by the public unless designated otherwise pursuant to section 504(7).

(b) If a timber harvest is planned for a particular area in that region, the department shall evaluate whether the timber harvest activity offers the opportunity to connect existing forest roads and trails in that area.

(c) The department shall not newly restrict a road or trail in that region from being used to access public land unless the department has provided each local unit of government in which the public land is located written notice that includes the reason for the restriction. This subdivision does not apply to a restriction imposed to protect public health or safety in an emergency situation.

(3) The department shall annually post to its website the total miles of forest roads open to motorized use in all inventoried regions and a map or maps of those forest roads.

Sec. 81127. (1) Under the comprehensive system previously approved and implemented under former section 16d of 1975 PA 319, all forest roads shall be open to ORV use as provided in section 72118. All other state owned land under the jurisdiction of the department shall be closed to ORV use except the following:

(a) Designated roads that are not forest roads.

(b) Designated trails.

(c) Designated areas.

(2) The commission shall approve any subsequent revisions to the system and shall establish an effective date for the revisions. The department shall submit the revisions approved by the commission to the secretary of the senate and the clerk of the house of representatives at least 20 session days before the effective date determined by the commission.

(3) In developing the system, the department shall consider the needs of hunters, senior citizens, and individuals with disabilities.

Sec. 81133. (1) An individual shall not operate an ORV:

(a) At a rate of speed greater than is reasonable and proper, or in a careless manner, having due regard for conditions then existing.

(b) During the hours of 1/2 hour after sunset to 1/2 hour before sunrise without displaying a lighted headlight and lighted taillight. The requirements of this subdivision are in addition to any applicable requirements of section 81131(12).

(c) Unless the vehicle is equipped with a braking system that may be operated by hand or foot, capable of producing deceleration at 14 feet per second on level ground at a speed of 20 miles per hour; a brake light, brighter than the taillight, visible from behind the vehicle when the brake is activated, if the vehicle is operated during the hours of 1/2 hour after sunset and 1/2 hour before sunrise; and a throttle so designed that when the pressure used to advance the throttle is removed, the engine speed will immediately and automatically return to idle.

(d) In a state game area or state park or recreation area, except on roads, trails, or areas designated for this purpose, notwithstanding section 72118; on other state-owned lands under the control of the department where the operation would be in violation of rules promulgated by the department; in a forest nursery or planting area; on public lands posted or reasonably identifiable as an area of forest reproduction, and when growing stock may be damaged; in a dedicated natural area of the department; or in any area in such a manner as to create an erosive condition, or to injure, damage, or destroy trees or growing crops. However, the department may permit an owner and guests of the owner to use an ORV within the boundaries of a state forest in order to access the owner's property.

(e) On the frozen surface of public waters within 100 feet of an individual not in or upon a vehicle, or within 100 feet of a fishing shanty or shelter or an area that is cleared of snow for skating purposes, except at the minimum speed required to maintain controlled forward movement of the vehicle, or as may be authorized by permit in special events.

(f) Unless the vehicle is equipped with a spark arrester type United States Forest Service approved muffler, in good working order and in constant operation. Exhaust noise emission shall not exceed 86 Db(A) or 82 Db(A) on a vehicle manufactured after January 1, 1986, when the vehicle is under full throttle, traveling in second gear, and measured 50 feet at right angles from the vehicle path with a sound level meter that meets the requirement of ANSI S1.4 1983, using procedure and ancillary equipment therein described; or 99 Db(A) or 94 Db(A) on a vehicle manufactured after January 1, 1986, or that level comparable to the current sound level as provided for by the United States Environmental Protection Agency when tested according to the provisions of the current SAE J1287, June 86 test procedure for exhaust levels of stationary motorcycles, using sound level meters and ancillary equipment therein described. A vehicle subject to this part, manufactured or assembled after December 31, 1972 and used, sold, or offered for sale in this state, shall conform to the noise emission levels established by the United States Environmental Protection Agency under the noise control act of 1972, 42 USC 4901 to 4918.

(g) Within 100 feet of a dwelling at a speed greater than the minimum required to maintain controlled forward movement of the vehicle, except under any of the following circumstances:

(i) On property owned by or under the operator's control or on which the operator is an invited guest.

(ii) On a forest road or forest trail if the forest road or forest trail is maintained by or under the jurisdiction of the department.

(iii) On a street, county road, or highway on which ORV use is authorized pursuant to section 81131(2), (3), (5), or (6).

(h) In or upon the lands of another without the written consent of the owner, the owner's agent, or a lessee, when required by part 731. The operator of the vehicle is liable for damage to private property caused by operation of the vehicle, including, but not limited to, damage to trees, shrubs, or growing crops, injury to other living creatures, or erosive or other ecological damage. The owner of the private property may recover from the individual responsible nominal damages of not less than the amount of damage or injury. Failure to post private property or fence or otherwise enclose in a manner to exclude intruders or of the private property owner or other authorized person to personally communicate against trespass does not imply consent to ORV use.

(i) In an area on which public hunting is permitted during the regular November firearm deer season, from 7 a.m. to 11 a.m. and from 2 p.m. to 5 p.m., except as follows:

(i) During an emergency.

(ii) For law enforcement purposes.

(iii) To go to and from a permanent residence or a hunting camp otherwise inaccessible by a conventional wheeled vehicle.

(iv) To remove legally harvested deer, bear, or elk from public land. An individual shall operate an ORV under this subparagraph at a speed not exceeding 5 miles per hour, using the most direct route that complies with subdivision (n).

(v) To conduct necessary work functions involving land and timber survey, communication and transmission line patrol, or timber harvest operations.

(vi) On property owned or under control of the operator or on which the operator is an invited guest.

(vii) While operating a vehicle registered under the code on a private road capable of sustaining automobile traffic or a street, county road, or highway.

(viii) If the individual holds a valid permit to hunt from a standing vehicle issued under part 401 or is a person with a disability using an ORV to access public lands for purposes of hunting or fishing through use of a designated trail or forest road. An individual holding a valid permit to hunt from a standing vehicle issued under part 401, or a person with a disability using an ORV to access public lands for purposes of hunting or fishing, may display a flag, the color of which the department shall determine, to identify himself or herself as a person with a disability or an individual holding a permit to hunt from a standing vehicle under part 401.

(j) Except as otherwise provided in section 40111, while transporting on the vehicle a bow unless unstrung or encased, or a firearm unless unloaded and securely encased, or equipped with and made inoperative by a manufactured keylocked trigger housing mechanism.

(k) On or across a cemetery or burial ground, or land used as an airport.

(l) Within 100 feet of a slide, ski, or skating area, unless the vehicle is being used for the purpose of servicing the area or is being operated pursuant to section 81131(2), (3), (5), or (6).

(m) On an operating or nonabandoned railroad or railroad right-of-way, or public utility right-of-way, other than for the purpose of crossing at a clearly established site intended for vehicular traffic, except railroad, public utility, or law enforcement personnel while in performance of their duties, and except if the right-of-way is designated as provided for in section 81127.

(n) In or upon the waters of any stream, river, bog, wetland, swamp, marsh, or quagmire except over a bridge, culvert, or similar structure.

(o) To hunt, pursue, worry, kill, or attempt to hunt, pursue, worry, or kill an animal, whether wild or domesticated.

(p) In a manner so as to leave behind litter or other debris.

(q) On public land, in a manner contrary to operating regulations.

(r) While transporting or possessing, in or on the vehicle, alcoholic liquor in a container that is open or uncapped or upon which the seal is broken, except under either of the following circumstances:

(i) The container is in a trunk or compartment separate from the passenger compartment of the vehicle.

(ii) If the vehicle does not have a trunk or compartment separate from the passenger compartment, the container is encased or enclosed.

(s) While transporting any passenger in or upon an ORV unless the manufacturing standards for the vehicle make provisions for transporting passengers.

(t) On adjacent private land, in an area zoned residential, within 300 feet of a dwelling at a speed greater than the minimum required to maintain controlled forward movement of the vehicle except under any of the following circumstances:

(i) On a forest road or forest trail if the forest road or forest trail is maintained by or under the jurisdiction of the department.

(ii) On a street, county road, or highway on which ORV use is authorized under section 81131(2), (3), (5), or (6).

(u) On a forest trail if the ORV is greater than 50 inches in width.

(2) An individual who is operating or is a passenger on an ORV shall wear a crash helmet and protective eyewear that are approved by the United States Department of Transportation. This subsection does not apply to any of the following:

(a) An individual who owns the property on which the ORV is operating, is a family member of the owner and resides at that property, or is an invited guest of an individual who owns the property. An exception under this subdivision does not apply to any of the following:

(i) An individual less than 16 years of age.

(ii) An individual 16 or 17 years of age, unless the individual has consent from his or her parent or guardian to ride without a crash helmet.

(iii) An individual participating in an organized ORV riding or racing event if an individual who owns the property receives consideration for use of the property for operating ORVs.

(b) An individual wearing a properly adjusted and fastened safety belt if the ORV is equipped with a roof that meets or exceeds United States Department of Transportation standards for a crash helmet.

(c) An ORV operated on a state-licensed game bird hunting preserve at a speed of not greater than 10 miles per hour.

(3) Each person who participates in the sport of ORV riding accepts the risks associated with that sport insofar as the dangers are inherent. Those risks include, but are not limited to, injuries to persons or property that can result from variations in terrain; defects in traffic lanes; surface or subsurface snow or ice conditions; bare spots; rocks, trees, and other forms of natural growth or debris; and collisions with fill material, decks, bridges, signs, fences, trail maintenance equipment, or other ORVs. Those risks do not include injuries to persons or property that result from the use of an ORV by another person in a careless or negligent manner likely to endanger person or property. When an ORV is operated in the vicinity of a railroad right-of-way, each person who participates in the sport of ORV riding additionally assumes risks including, but not limited to, entanglement with railroad tracks, switches, and ties and collisions with trains and train-related equipment and facilities.

Enacting section 1. Section 81126 of the natural resources and environmental protection act, 1994 PA 451, MCL 324.81126, is repealed.

This act is ordered to take immediate effect.



Clerk of the House of Representatives



Secretary of the Senate

Approved

Governor