

Legislative Analysis



ALLOW CHILDREN OF ANY AGE TO RIDE & RACE ORVs AT ORGANIZED EVENTS W/O SAFETY CERTIFICATES

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Senate Bill 296 (Substitute H-1)

Sponsor: Sen. Ron Jelinek

House Committee: Tourism, Outdoor Recreation and Natural Resources

Senate Committee: Transportation

First Analysis (5-27-08)

BRIEF SUMMARY: This bill would allow children of any age to operate any type of vehicle classified as an off-road vehicle (ORV) under Michigan law (except for a three-wheeled ATV) at a riding or racing event organized by any person or organization so long as the riding or racing event is not held on state-owned land and minimum requirements were met. Children driving or racing ORVs at such events would no longer need to possess an ORV safety certificate from Michigan or another state or province.

THE APPARENT PROBLEM:

In general, under Part 811 (Off-Road Vehicles) of the Natural Resources and Environmental Protection Act, children under the age of 16 may not operate, and a parent or legal guardian of a child under 16 may not permit the child to operate, an off-road vehicle (ORV) unless the child is under the direct visual supervision of an adult and has in his or her possession an ORV safety certificate from Michigan or a comparable certificate issued by another state or Canadian province. Furthermore, children who are at least 10 but less than 12 are allowed to operate one type of ORV—a four-wheeled ATV or quad—only on private land owned by a parent or legal guardian.

(The ORV definition includes, among other things, SUVs, all-terrain vehicles, or ATVs, and motorcycles. See [Background Information](#).)

Senate Bill 296 would amend Part 811 to permit children of any age to operate any type of ORV (except for a three-wheeled ATV) at an organized ORV riding or racing event conducted in accordance with the bill's requirements and any rules promulgated by the Department of Natural Resources. (However, it would appear that the DNR has never promulgated rules under Part 811). At such events, children, regardless of age, would not be required to possess an ORV safety certificate, and the rule prohibiting children between the age of 10 and 12 from operating four-wheeled ATVs except on private land owned by a parent or guardian would not apply.

Supporters of the legislation, including race track owners and motorcyclists, are concerned that some current practices may technically be unlawful. In addition, they say that greater enforcement of the current requirement for an ORV safety certificate or other requirements could lessen Michigan's attractiveness as a racing or riding destination. In particular, they say that it is too hard for children coming in from out of state to obtain a

Michigan ORV safety certificate, and it would be pointless, in any event, as such a class would be too basic for a trained motocross racer. Moreover, they say that ORV safety classes aren't readily available in all areas of the state.

In short, it has been suggested that the current restrictions should not apply to children participating in ORV riding and racing events to remove any question of the legality of current events and to make it easier for children, especially those traveling long distances, to participate without requiring safety training or limiting children between the ages of 10 and 12 to operating ATVs only on land owned by their parents.

THE CONTENT OF THE BILL:

Senate Bill 296 would amend Part 811 to permit children of any age to operate any type of ORV (except for a three-wheeled ATV) at an organized ORV riding or racing event conducted in accordance with the bill's requirements (and any rules promulgated by the Department of Natural Resources). At such events, children, regardless of age, would not be required to have an ORV safety certificate, and the rule prohibiting children between the age of 10 and 12 from operating four-wheeled ATVs except on private land owned by a parent or guardian would not apply.

Requirements. The following rules would apply:

- The racing or riding event is held on land that is not owned by the state.
- The child's parent or legal guardian has provided the event organizer with written permission for the child to participate in the event.
- The event organizer has at least \$500,000 liability insurance coverage for the event.
- A physician or physician's assistant, or a paramedic or emergency medical technician is present at the site of the event or is on call.
- The event is at all times under the direct visual supervision of adult staff of the event organizer, and a staff member serves as a "flagger" to warn ORV riders if another ORV rider is injured or an ORV is inoperable in the ORV operating area.
- Fencing or another means of crowd control is used to keep spectators out of the ORV operating area.
- If the event is on a closed course, dust is controlled in the ORV operating area and the riding surface is otherwise prepared properly.
- Participants do not use three-wheeled ATVs.
- Any ATVs used by participants are equipped with a side step bar or comparable safety equipment and with a tether kill switch, and all participants use the tether.
- Each participant in the event wears a U.S. Department of Transportation-approved crash helmet, a protective long-sleeved shirt or jacket, long pants, boots, and protective gloves.
- Any other applicable requirements of Part 811 or rules promulgated under it are met.

So long as these requirements (and any other applicable requirements of Part 811 or its rules) were satisfied, it would appear that children of any age could operate any type of ORV (except for a three-wheeled ATV) at an organized riding or racing event. It would

appear, however, that the rule requiring children under the age of 16 to be under the direct visual supervision of an adult would still apply.

BACKGROUND INFORMATION:

Definition of ORV and ATV. Under Michigan law, ORVs are motor-driven "off-road" recreation vehicles capable of travel over natural terrain, including SUVs, motorcycles, ATVs, hovercraft, and dirt bikes. The definition of ORV expressly excludes snowmobiles, farm equipment, military and law enforcement vehicles, and utility company vehicles. ATVs such as "quads" or "three-wheelers" are a subset of ORVs under Michigan's ORV definition (see below). A few ORVs, such as large SUVs or motorcycles, may have a license plate and can be operated on regular roads and highways as well as off road in some locations. Most ORVs are not "street licensed," however, and, generally speaking, cannot be operated on public roads. (But see House Bill 4323 for a proposal to open up more roads to ORV travel.)

MCL 324.81101(n) defines an ORV as:

"ORV" or "vehicle" means a motor driven off-road recreation vehicle capable of cross-country travel without benefit of a road or trail, on or immediately over land, snow, ice, marsh, swampland, or other natural terrain. ORV or vehicle includes, but is not limited to, a multitrack or multiwheel drive vehicle, an ATV, a motorcycle or related 2-wheel, 3-wheel, or 4-wheel vehicle, an amphibious machine, a ground effect air cushion vehicle, or other means of transportation deriving motive power from a source other than muscle or wind. "ORV" or "vehicle" does not include a registered snowmobile, a farm vehicle being used for farming, a vehicle used for military, fire, emergency, or law enforcement purposes, a vehicle owned and operated by a utility company or an oil or gas company when performing maintenance on its facilities or on property over which it has an easement, a construction or logging vehicle used in performance of its common function, or a registered aircraft.

MCL 324.81101(a) defines an ATV as:

"ATV" means a 3- or 4-wheeled vehicle designed for off-road use that has low-pressure tires, has a seat designed to be straddled by the rider, and is powered by a 50cc to 500cc gasoline engine or an engine of comparable size using other fuels.

The bill would retain the existing definitions of ORV or ATV.

HOUSE COMMITTEE ACTION:

At a hearing held on April 24, 2008, the House Tourism, Outdoor Recreation and Natural Resources Committee amended the bill to require such an event to be "under the *direct visual* supervision of the adult staff of the event organizer" at all times. Previously, the bill only required "supervision," not "direct visual supervision."

ARGUMENTS:

For:

The bill would authorize current practices by racing and riding groups and race tracks that do not comply with current law, placing them in a more secure legal position.

The bill would make it easier for out-of-state participants to come to Michigan for racing and riding events held here. Once they are here, there is no time for them to take a training course, and such a course would be too basic for a highly-trained child rider in any event.

Safety training should not be required for organized racing and riding events because the training courses are not readily available throughout the year in all parts of the state.

The bill would require many things to promote safety and responsibility for both child participants and spectators, including requiring an event organizer to have liability insurance and a paramedic on site or on call. Currently, this type of riding and racing is very unregulated and the bill would put some minimum standards in place.

Against:

Why not enforce the law relating to safety certificates rather than change the law to protect race track owners or event organizers?

It is not hard as the bill's sponsors say for a race participant from another state or province to comply with current law. An ORV safety certificate from a participant's home state or province meets the safety certificate requirement. So unless a race or ride participant is deciding on the spur of the moment to participate--which is probably inadvisable for other reasons--he or she would have time to obtain the required certificate, especially since the Department of Natural Resources has indicated a willingness to expand opportunities for online training and race day certification.

Although most of the testimony concerned motocross racing, the bill as drafted would apply to the operation of any type of ORV by a child of any age. Although perhaps it would be harder for an event organizer to obtain liability insurance for an event allowing really young children to race vehicles that are much too large for them, nothing in the bill would require a minimum age for operating any type of ORV.

Although supporters point to the bill's protections, the bill's requirements are minimal. For instance, the bill requires only \$500,000 of liability insurance. Is this amount sufficient to cover the health care costs and other costs associated with a serious injury or fatality? Should all participants be required to have health insurance covering this type of activity? In addition, what does it mean to have a paramedic "on call"? Is this vague requirement adequate to protect riders and spectators?

Although much of the testimony concerned riding on racetracks, such as motocross tracks, the bill covers both organized racing and "riding" events. What kind of riding

events would be covered? Although supporters say that safety training is less necessary for races because a race track is a closed, closely supervised environment, the bill also applies to "riding events," which could take place anywhere in the state that is not state land, and not necessarily on closed indoor or outdoor racetracks.

The bill applies to "organized" events, but this term is not defined. It would appear to allow any person or organization to organize an ORV racing or riding event for children.

POSITIONS:

The American Motorcyclist Association testified in support of the bill. (4-24-08)

COBRA Manufacturing testified in support of the bill. (4-24-08)

Redbud Recreation, Inc. testified in support of the bill, representing itself and 11 other racetracks holding races sanctioned by the American Motorcycle Association. (4-24-08)

The Department of Natural Resources testified in opposition to the bill. (4-24-08)

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■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.