

Act No. 365  
Public Acts of 2008  
Approved by the Governor  
December 23, 2008  
Filed with the Secretary of State  
December 23, 2008  
EFFECTIVE DATE: December 23, 2008

**STATE OF MICHIGAN  
94TH LEGISLATURE  
REGULAR SESSION OF 2008**

Introduced by Senators Cherry, Hardiman, Prusi, Brater, Gleason and Olshove

# **ENROLLED SENATE BILL No. 1498**

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 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 section 81133 (MCL 324.81133), as amended by 2008 PA 240.

*The People of the State of Michigan enact:*

Sec. 81133. A person 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) Unless the person and any passenger in or on the vehicle is wearing on his or her head a crash helmet and protective eyewear approved by the United States department of transportation. This subdivision does not apply if the vehicle is equipped with a roof that meets or exceeds standards for a crash helmet and the operator and each passenger is wearing a properly adjusted and fastened safety belt.

(c) 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(8).

(d) Unless 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 when the brake is activated to the rear of the vehicle when 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.

(e) In a state game area or state park or recreation area, except on roads, trails, or areas designated for this purpose; on state owned lands under the control of the department other than game areas, state parks, or recreational areas 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.

(f) On the frozen surface of public waters within 100 feet of a person 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.

(g) 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.

(h) Within 100 feet of a dwelling at a speed greater than the minimum required to maintain controlled forward movement of the vehicle, except on property owned or under the operator's control or on which the operator is an invited guest, or on a roadway, forest road, or forest trail maintained by or under the jurisdiction of the department, or on a road or street on which ORV use is authorized pursuant to section 81131(2), (3), or (5).

(i) 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, including, but not limited to, damage to trees, shrubs, or growing crops, injury to other living creatures, or damage caused through vehicle operation in a manner so as to create erosive or other ecological damage. The owner of the private property may recover from the person 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.

(j) 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 during an emergency or for law enforcement purposes, to go to and from a permanent residence or a hunting camp otherwise inaccessible by a conventional wheeled vehicle, to remove from public land a deer, elk, or bear that has been taken under a valid license; except for the conduct of necessary work functions involving land and timber survey, communication and transmission line patrol, and timber harvest operations; or except on property owned or under control of the operator or on which the operator is an invited guest. A hunter removing game under this subdivision may leave the designated trail or forest road only to retrieve the game and shall not exceed 5 miles per hour. A vehicle registered under the code is exempt from this subdivision while operating on a public highway or public or private road capable of sustaining automobile traffic. A person holding a valid permit to hunt from a standing vehicle issued under part 401, or a person with disabilities using an ORV to access public lands for purposes of hunting or fishing through use of a designated trail or forest road, is exempt from this subdivision. A person holding a valid permit to hunt from a standing vehicle issued under part 401, or a person with disabilities 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 disabilities or a person holding a permit to hunt from a standing vehicle under part 401.

(k) 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.

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

(m) 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), or (5).

(n) 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.

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

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

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

(r) In a manner contrary to operating regulations on public lands.

(s) 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.

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

(u) 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 on a roadway, forest road, or forest trail maintained by or under the jurisdiction of the department, or on a road or street on which ORV use is authorized pursuant to section 81131(2), (3), or (5).

This act is ordered to take immediate effect.

*Carol Morey Viventi*

Secretary of the Senate

*Richard J. Brown*

Clerk of the House of Representatives

Approved .....

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Governor