

**STATE OF MICHIGAN
96TH LEGISLATURE
REGULAR SESSION OF 2011**

Introduced by Senators Booher, Pavlov, Meekhof and Marleau

ENROLLED SENATE BILL No. 371

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 81131 (MCL 324.81131), as amended by 2009 PA 175.

The People of the State of Michigan enact:

Sec. 81131. (1) A municipality may pass an ordinance allowing a permanently disabled person to operate an ORV in that municipality.

(2) Subject to subsection (4), the county board of commissioners of an eligible county may adopt an ordinance authorizing the operation of ORVs on the maintained portion of 1 or more roads located within the county. Not less than 45 days before a public hearing on the ordinance, the county clerk shall send notice of the public hearing, by certified mail, to the county road commission and, if state forestland is located within the county, to the department.

(3) Subject to subsection (4), the township board of a township located in an eligible county may adopt an ordinance authorizing the operation of ORVs on the maintained portion of 1 or more roads located within the township. Not less than 28 days before a public hearing on the ordinance, the township clerk shall send notice of the public hearing, by certified mail, to the county road commission and, if state forestland is located within the township, to the department. This subsection does not apply to a township until 1 year after the effective date of the amendatory act that first defined eligible county so as to include the county in which that township is located.

(4) The board of county road commissioners may close a road to the operation of ORVs under subsection (2) or (3) to protect the environment or if the operation of ORVs under subsection (2) or (3) poses a particular and demonstrable threat to public safety. A county road commission shall not under this subsection close more than 30% of the linear miles of roads located within the county to the operation of ORVs under subsection (2) or (3). The township board of a township located in an eligible county may adopt an ordinance to close a road to the operation of ORVs under subsection (2).

(5) The legislative body of a municipality located in an eligible county may adopt an ordinance authorizing the operation of ORVs on the maintained portion of 1 or more streets within the municipality.

(6) Subject to subsection (4), if a local unit of government adopts an ordinance pursuant to subsection (2), (3), or (5), a person may operate an ORV with the flow of traffic on the far right of the maintained portion of the road or street covered by the ordinance. A person shall not operate an ORV pursuant to subsection (2), (3), or (5) at a speed greater

than 25 miles per hour or a lower posted ORV speed limit or in a manner that interferes with traffic on the road or street.

(7) Unless the person possesses a license as defined in section 25 of the Michigan vehicle code, 1949 PA 300, MCL 257.25, a person shall not operate an ORV pursuant to subsection (2), (3), or (5) if the ORV is registered as a motor vehicle under chapter II of the Michigan vehicle code, 1949 PA 300, MCL 257.201 to 257.259, and either is more than 60 inches wide or has 3 wheels. ORVs operated pursuant to subsection (2), (3), or (5) shall travel single file, except that an ORV may travel abreast of another ORV when it is overtaking and passing, or being overtaken and passed by, another ORV.

(8) A person shall not operate an ORV pursuant to this section without displaying a lighted headlight and lighted taillight.

(9) A person under 18 years of age shall not operate an ORV pursuant to this section unless the person is in possession of a valid driver license or under the direct supervision of a parent or guardian and the person has in his or her immediate possession an ORV safety certificate issued pursuant to this part or a comparable ORV safety certificate issued under the authority of another state or a province of Canada. A person under 12 years of age shall not operate an ORV pursuant to this section. The requirements of this subsection are in addition to any applicable requirements of section 81129.

(10) A township that has authorized the operation of ORVs on a road under subsection (3) does not have a duty to maintain the road in a condition reasonably safe and convenient for the operation of ORVs. A board of county road commissioners, a county board of commissioners, or a municipality does not have a duty to maintain a road or street under its jurisdiction in a condition reasonably safe and convenient for the operation of ORVs, except the following ORVs:

- (a) ORVs registered as motor vehicles as provided in the code.
- (b) ORVs permitted by an ordinance as provided in subsection (1).

(11) Beginning October 19, 1993, a board of county road commissioners, a county board of commissioners, and a county are, and, beginning on April 25, 1995, a municipality is, immune from tort liability for injuries or damages sustained by any person arising in any way out of the operation or use of an ORV on maintained or unmaintained roads, streets, shoulders, and rights-of-way over which the board of county road commissioners, the county board of commissioners, or the municipality has jurisdiction. The immunity provided by this subsection does not apply to actions that constitute gross negligence. As used in this subsection, "gross negligence" means conduct so reckless as to demonstrate a substantial lack of concern for whether an injury results.

(12) In a court action in this state, if competent evidence demonstrates that a vehicle that is permitted to operate on a road or street pursuant to the code was in a collision with an ORV required to be operated on the far right of the maintained portion of a road or street pursuant to an ordinance adopted under subsection (2), (3), or (5), the operator of the ORV shall be considered prima facie negligent.

(13) A violation of an ordinance described in this section is a municipal civil infraction. The ordinance may provide for a maximum fine of not more than \$500.00 for a violation of the ordinance. In addition, the court shall order the defendant to pay the cost of repairing any damage to the environment, a road or street, or public property damaged as a result of the violation.

(14) The treasurer of the local unit of government shall deposit fines collected by that local unit of government under section 8379 of the revised judicature act of 1961, 1961 PA 236, MCL 600.8379, and subsection (13) and damages collected under subsection (13) into a fund to be designated as the "ORV fund". The legislative body of the local unit of government shall appropriate revenue in the ORV fund as follows:

(a) Fifty percent to the county sheriff or police department responsible for law enforcement in the local unit of government for ORV enforcement and training.

(b) Fifty percent to the board of county road commissioners or, in the case of a city or village, to the department responsible for street maintenance in the city or village, for repairing damage to roads or streets and the environment that may have been caused by ORVs and for posting signs indicating ORV speed limits or indicating whether roads or streets are open or closed to the operation of ORVs under this section.

(15) As used in this section:

(a) "Eligible county" means any of the following:

(i) Oceana, Newaygo, Montcalm, Gratiot, Saginaw, Tuscola, or Sanilac county or a county lying north thereof, including all of the counties of the Upper Peninsula.

(ii) St. Clair county.

(b) "Local unit of government" means a county, township, or municipality.

(c) "Municipality" means a city or village.

(d) "Road" means a county primary road or county local road as described in section 5 of 1951 PA 51, MCL 247.655.

(e) "Street" means a city or village major street or city or village local street as described in section 9 of 1951 PA 51, MCL 247.659.

This act is ordered to take immediate effect.

Carol Morey Viventi

Secretary of the Senate

Sam E. Randall

Clerk of the House of Representatives

Approved

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Governor