

# HOUSE BILL No. 5615

May 9, 2012, Introduced by Rep. Huuki and referred to the Committee on Natural Resources, Tourism, and Outdoor Recreation.

A bill to amend 1994 PA 451, entitled "Natural resources and environmental protection act," by amending sections 81133 and 81147 (MCL 324.81133 and 324.81147), section 81133 as amended by 2008 PA 365 and section 81147 as amended by 2008 PA 240.

**THE PEOPLE OF THE STATE OF MICHIGAN ENACT:**

1           Sec. 81133. (1) A person shall not operate an ORV **AS DESCRIBED**  
2 **IN ANY OF THE FOLLOWING:**

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

6           (b) Unless the person and any passenger in or on the vehicle  
7 is wearing on his or her head a crash helmet and protective eyewear  
8 approved by the United States department of transportation. This

1 subdivision does not apply if the vehicle is equipped with a roof  
2 that meets or exceeds standards for a crash helmet and the operator  
3 and each passenger is wearing a properly adjusted and fastened  
4 safety belt.

5 (c) During the hours of 1/2 hour after sunset to 1/2 hour  
6 before sunrise without displaying a lighted headlight and lighted  
7 taillight. The requirements of this subdivision are in addition to  
8 any applicable requirements of section ~~81131(8)~~-**81131(9)**.

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

18 (e) In a state game area or state park or recreation area,  
19 except on roads, trails, or areas designated for this purpose; on  
20 state owned lands under the control of the department other than  
21 game areas, state parks, or recreational areas where the operation  
22 would be in violation of rules promulgated by the department; in a  
23 forest nursery or planting area; on public lands posted or  
24 reasonably identifiable as an area of forest reproduction, and when  
25 growing stock may be damaged; in a dedicated natural area of the  
26 department; or in any area in such a manner as to create an erosive  
27 condition, or to injure, damage, or destroy trees or growing crops.

1 However, the department may permit an owner and guests of the owner  
2 to use an ORV within the boundaries of a state forest in order to  
3 access the owner's property.

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

10 (g) Unless the vehicle is equipped with a spark arrester type  
11 United States forest service approved muffler, in good working  
12 order and in constant operation. Exhaust noise emission shall not  
13 exceed 86 Db(A) or 82 Db(A) on a vehicle manufactured after January  
14 1, 1986, when the vehicle is under full throttle, traveling in  
15 second gear, and measured 50 feet at right angles from the vehicle  
16 path with a sound level meter that meets the requirement of ANSI  
17 S1.4 1983, using procedure and ancillary equipment therein  
18 described; or 99 Db(A) or 94 Db(A) on a vehicle manufactured after  
19 January 1, 1986, or that level comparable to the current sound  
20 level as provided for by the United States environmental protection  
21 agency when tested according to the provisions of the current SAE  
22 J1287, June 86 test procedure for exhaust levels of stationary  
23 motorcycles, using sound level meters and ancillary equipment  
24 therein described. A vehicle subject to this part, manufactured or  
25 assembled after December 31, 1972 and used, sold, or offered for  
26 sale in this state, shall conform to the noise emission levels  
27 established by the United States environmental protection agency

1 under the noise control act of 1972, 42 USC 4901 to 4918.

2 (h) Within 100 feet of a dwelling at a speed greater than the  
3 minimum required to maintain controlled forward movement of the  
4 vehicle, except on property owned or under the operator's control  
5 or on which the operator is an invited guest, or on a roadway,  
6 forest road, or forest trail maintained by or under the  
7 jurisdiction of the department, or on a road, ~~or~~ street, **OR HIGHWAY**  
8 on which ORV use is authorized ~~pursuant to~~ **UNDER** section 81131(2),  
9 (3), ~~or~~ (5), **OR (7)**.

10 (i) In or upon the lands of another without the written  
11 consent of the owner, the owner's agent, or a lessee, when required  
12 ~~by~~ **UNDER** part 731. The operator of the vehicle is liable for damage  
13 to private property, including, but not limited to, damage to  
14 trees, shrubs, or growing crops, injury to other living creatures,  
15 or damage caused through vehicle operation in a manner so as to  
16 create erosive or other ecological damage. The owner of the private  
17 property may recover from the person responsible nominal damages of  
18 not less than the amount of damage or injury. Failure to post  
19 private property or fence or otherwise enclose in a manner to  
20 exclude intruders or of the private property owner or other  
21 authorized person to personally communicate against trespass does  
22 not imply consent to ORV use.

23 (j) In an area on which public hunting is permitted, during  
24 the regular November firearm deer season from 7 a.m. to 11 a.m. and  
25 from 2 p.m. to 5 p.m., except during an emergency or for law  
26 enforcement purposes, to go to and from a permanent residence or a  
27 hunting camp otherwise inaccessible by a conventional wheeled

1 vehicle, to remove from public land a deer, elk, or bear that has  
2 been taken under a valid license; except for the conduct of  
3 necessary work functions involving land and timber survey,  
4 communication and transmission line patrol, and timber harvest  
5 operations; or except on property owned or under control of the  
6 operator or on which the operator is an invited guest. A hunter  
7 removing game under this subdivision may leave the designated trail  
8 or forest road only to retrieve the game and shall not exceed 5  
9 miles per hour. A vehicle registered under the code is exempt from  
10 this subdivision while operating on a public highway or public or  
11 private road capable of sustaining automobile traffic. A person  
12 holding a valid permit to hunt from a standing vehicle issued under  
13 part 401, or a person with disabilities using an ORV to access  
14 public lands for purposes of hunting or fishing through use of a  
15 designated trail or forest road, is exempt from this subdivision. A  
16 person holding a valid permit to hunt from a standing vehicle  
17 issued under part 401, or a person with disabilities using an ORV  
18 to access public lands for purposes of hunting or fishing, may  
19 display a flag, the color of which the department shall determine,  
20 to identify himself or herself as a person with disabilities or a  
21 person holding a permit to hunt from a standing vehicle under part  
22 401.

23 (k) While transporting on the vehicle a bow unless unstrung or  
24 encased, or a firearm unless unloaded and securely encased, or  
25 equipped with and made inoperative by a manufactured keylocked  
26 trigger housing mechanism.

27 (l) On or across a cemetery or burial ground, or land used as

1 an airport.

2 (m) Within 100 feet of a slide, ski, or skating area, unless  
3 the vehicle is being used for the purpose of servicing the area or  
4 is being operated ~~pursuant to~~ **UNDER** section 81131(2), (3), or (5),  
5 **OR (7)**.

6 (n) On an operating or nonabandoned railroad or railroad  
7 right-of-way, or public utility right-of-way, other than for the  
8 purpose of crossing at a clearly established site intended for  
9 vehicular traffic, except railroad, public utility, or law  
10 enforcement personnel while in performance of their duties, and  
11 except if the right-of-way is designated as provided for in section  
12 81127.

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

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

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

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

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

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

27 (ii) If the vehicle does not have a trunk or compartment

1 separate from the passenger compartment, the container is encased  
2 or enclosed.

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

6 (u) On adjacent private land, in an area zoned residential,  
7 within 300 feet of a dwelling at a speed greater than the minimum  
8 required to maintain controlled forward movement of the vehicle  
9 except on a roadway, forest road, or forest trail maintained by or  
10 under the jurisdiction of the department, or on a road, ~~or~~ street,  
11 **OR HIGHWAY** on which ORV use is authorized ~~pursuant to~~ **UNDER** section  
12 81131(2), (3), ~~or~~ (5), **OR** (7).

13 (2) **EACH PERSON WHO PARTICIPATES IN THE SPORT OF ORV OPERATION**  
14 **ACCEPTS THE RISKS ASSOCIATED WITH THAT SPORT INsofar AS THE DANGERS**  
15 **ARE OBVIOUS AND INHERENT. THOSE RISKS INCLUDE, BUT ARE NOT LIMITED**  
16 **TO, INJURIES TO PERSONS OR PROPERTY THAT CAN RESULT FROM VARIATIONS**  
17 **IN TERRAIN; SURFACE OR SUBSURFACE SNOW OR ICE CONDITIONS; BARE**  
18 **SPOTS; ROCKS, TREES, AND OTHER FORMS OF NATURAL GROWTH OR DEBRIS;**  
19 **AND COLLISIONS WITH SIGNS, FENCES, OR OTHER ORVS OR TRAIN**  
20 **MAINTENANCE EQUIPMENT. THOSE RISKS DO NOT INCLUDE INJURIES TO**  
21 **PERSONS OR PROPERTY THAT CAN RESULT FROM THE USE OF AN ORV BY**  
22 **ANOTHER PERSON IN A CARELESS OR NEGLIGENT MANNER LIKELY TO ENDANGER**  
23 **PERSON OR PROPERTY. WHEN AN ORV IS OPERATED IN THE VICINITY OF A**  
24 **RAILROAD RIGHT-OF-WAY, EACH PERSON WHO PARTICIPATES IN THE SPORT OF**  
25 **ORV OPERATION ADDITIONALLY ASSUMES RISKS INCLUDING, BUT NOT LIMITED**  
26 **TO, ENTANGLEMENT WITH TRACKS, SWITCHES, AND TIES AND COLLISIONS**  
27 **WITH TRAINS AND OTHER EQUIPMENT AND FACILITIES.**

1           Sec. 81147. (1) Except as otherwise provided in this part, a  
2 person who violates this part is guilty of a misdemeanor punishable  
3 by imprisonment for not more than 90 days or a fine of not less  
4 than \$50.00 or more than \$1,000.00, or both, for each violation.

5           (2) A PERSON WHO OPERATES AN ORV WITHOUT WEARING ON HIS OR HER  
6 HEAD A CRASH HELMET IN VIOLATION OF SECTION 81133(1)(B) IS  
7 RESPONSIBLE FOR A STATE CIVIL INFRACTION AND SHALL BE FINED NOT  
8 LESS THAN \$50.00 OR MORE THAN \$500.00 FOR EACH VIOLATION. THIS  
9 SUBSECTION DOES NOT APPLY TO A PERSON WHILE OPERATING THE ORV AS A  
10 FARM VEHICLE OR FOR PROPERTY MAINTENANCE, INCLUDING SNOW PLOWING.

11           (3) EXCEPT AS PROVIDED IN SUBSECTION (4), A PERSON WHO  
12 OPERATES AN ORV IN VIOLATION OF SECTION 81133(1)(E), (I), (L), (M),  
13 OR (N) IS RESPONSIBLE FOR A STATE CIVIL INFRACTION AND SHALL BE  
14 FINED NOT LESS THAN \$50.00 OR MORE THAN \$500.00 FOR EACH VIOLATION.

15           (4) ~~(2)~~—A person who violates section ~~81133(e)~~—81133(1)(E) by  
16 operating an ORV in such a manner as to create an erosive condition  
17 or who violates section ~~81133(i) or (e)~~—81133(1)(O) is guilty of a  
18 misdemeanor punishable by imprisonment for not more than 90 days or  
19 a fine of not less than \$250.00 or more than \$1,000.00, or both,  
20 for each violation.

21           (5) ~~(3)~~—A person who violates section 81105, 81107, 81115,  
22 81116, 81121, 81130, or ~~81133(b), (e),~~ 81133(1)(C), (d), (f), (g),  
23 (h), OR (j) , ~~(l), or (m)~~—is responsible for a state civil  
24 infraction and may be ordered to pay a civil fine of not more than  
25 \$500.00.

26           (6) ~~(4)~~—A person shall not remove, deface, or destroy a sign  
27 or marker placed by the department indicating the boundaries of an

1 ORV trail or area or that marks a route.

2 (7) ~~(5)~~—In addition to the penalties otherwise provided under  
3 this part, a court of competent jurisdiction may order a person to  
4 restore, as nearly as possible, any land, water, stream bank,  
5 streambed, or other natural or geographic formation damaged by the  
6 violation of this part to the condition it was in before the  
7 violation occurred.

8 (8) ~~(6)~~—The department or any other peace officer may impound  
9 the ORV of a person who commits a violation of this part that is  
10 punishable as a misdemeanor or who causes damage to the particular  
11 area in which the ORV was used in the commission of the violation.

12 (9) ~~(7)~~—Upon conviction of a person for **A** violation described  
13 in subsection ~~(5)~~—(7), a court of competent jurisdiction may order  
14 the ORV and any personal property on the ORV seized as a result of  
15 the violation returned to the owner or, upon recommendation of the  
16 local prosecuting attorney, turned over to the department. An ORV  
17 or any other property turned over to the department under this  
18 subsection shall be disposed of in the manner provided for  
19 condemnation of property in part 16. The proceeds realized by the  
20 department under this subsection shall first be used to restore  
21 areas damaged by ORV use, with the balance to be deposited in the  
22 off-road vehicle account.

23 Enacting section 1. This amendatory act takes effect October  
24 1, 2012.

25 Enacting section 2. This amendatory act does not take effect  
26 unless all of the following bills of the 96th Legislature are  
27 enacted into law:

1 (a) Senate Bill No. \_\_\_\_\_ or House Bill No. 5614 (request no.  
2 03046'11 a \*).

3 (b) Senate Bill No. \_\_\_\_\_ or House Bill No. 5613 (request no.  
4 03046'11 b \*).

5 (c) Senate Bill No. \_\_\_\_\_ or House Bill No. 5612 (request no.  
6 03046'11 c \*).