

SENATE BILL No. 1020

March 15, 2012, Introduced by Senators CASPERSON and BOOHER and referred to the Committee on Transportation.

A bill to amend 1994 PA 451, entitled "Natural resources and environmental protection act," by amending sections 81115, 81129, and 81131 (MCL 324.81115, 324.81129, and 324.81131), sections 81115 and 81129 as amended by 2008 PA 240 and section 81131 as amended by 2011 PA 107.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 81115. (1) ~~A~~**SUBJECT TO SUBSECTIONS (2) AND (3)**, A person
2 shall not operate an ORV under any of the following conditions
3 unless the ORV is licensed with the department or a dealer as
4 provided under this part:

5 (a) Except as otherwise provided by law, on or over land,
6 snow, ice, or other natural terrain.

7 (b) Except as otherwise provided in this part, on a forest

1 trail or in a designated area.

2 (c) Except as otherwise provided in section 81102, on the
3 maintained portion of a road, ~~or~~ street, **OR HIGHWAY**.

4 (2) Licensure is not required for an ORV used exclusively in a
5 safety and training program as required in section 81129.

6 (3) **LICENSURE IS NOT REQUIRED ON A FREE ORV-RIDING DAY. THE**
7 **DEPARTMENT SHALL DESIGNATE A SATURDAY AND THE FOLLOWING SUNDAY EACH**
8 **YEAR AS FREE ORV-RIDING DAYS. IN ADDITION, THE DEPARTMENT MAY**
9 **DESIGNATE 1 OTHER DAY OR 2 OTHER CONSECUTIVE DAYS EACH YEAR AS FREE**
10 **ORV-RIDING DAYS. THE FREE ORV-RIDING DAYS SHALL CORRESPOND TO FREE**
11 **FISHING DAYS TO THE EXTENT THAT FREE FISHING DAYS ARE DESIGNATED**
12 **UNDER SECTION 43534. A PERSON OPERATING AN UNLICENSED ORV DURING A**
13 **FREE ORV-RIDING DAY HAS THE SAME PRIVILEGES AND IS SUBJECT TO THE**
14 **SAME RULES AND REGULATIONS AS A PERSON OPERATING AN ORV LICENSED OR**
15 **REQUIRED UNDER SUBSECTION (1).**

16 Sec. 81129. (1) Subject to subsections (2), (3), **AND** (17), ~~and~~
17 ~~(18)~~, a parent or legal guardian of a child less than 16 years of
18 age shall not permit the child to operate an ORV unless the child
19 is under the direct visual supervision of an adult and the child
20 has in his or her immediate possession an ORV safety certificate
21 issued pursuant to this part or a comparable ORV safety certificate
22 issued under the authority of another state or a province of
23 Canada.

24 (2) Subject to subsection ~~(18)~~, **(17)**, a parent or legal
25 guardian of a child less than 12 years of age shall not permit the
26 child to operate a 4-wheeled ATV, unless the child is not less than
27 10 years of age and is on private land owned by a parent or legal

1 guardian of the child. This subsection does not apply to the
2 operation of an ATV used in agricultural operations.

3 (3) A parent or legal guardian of a child less than 16 years
4 of age shall not permit the child to operate a 3-wheeled ATV.

5 (4) Subject to subsections (5), (6), **AND** (17), ~~and (18)~~, the
6 owner or person in charge of an ORV shall not knowingly permit the
7 vehicle to be operated by a child less than 16 years of age unless
8 the child is under the direct visual supervision of an adult and
9 the child has in his or her immediate possession an ORV safety
10 certificate issued pursuant to this part or a comparable ORV safety
11 certificate issued under the authority of another state or a
12 province of Canada.

13 (5) Subject to subsection ~~(18)~~, **(17)**, the owner or person in
14 charge of a 4-wheeled ATV shall not knowingly permit the vehicle to
15 be operated by a child less than 12 years of age, unless the child
16 is not less than 10 years of age and is on private land owned by a
17 parent or legal guardian of the child. This subsection does not
18 apply to the operation of an ATV used in agricultural operations.

19 (6) The owner or person in charge of a 3-wheeled ATV shall not
20 knowingly permit the vehicle to be operated by a child less than 16
21 years of age.

22 (7) The owner or person in charge of an ORV shall not
23 knowingly permit the vehicle to be operated by a person who is
24 incompetent to operate the vehicle because of mental or physical
25 disability except as provided in section 81131.

26 (8) The department shall implement a comprehensive ORV
27 ~~information, safety education, and training program that shall~~

1 ~~include~~ **PROGRAM FOR** the training of **ORV** operators and the
2 preparation and dissemination of **ORV** information and safety advice
3 to the public. The program shall provide for the training of
4 youthful operators and for the issuance of ORV safety certificates
5 to those who successfully complete the training ~~provided under the~~
6 ~~program~~ and may include separate instruction for each type of ORV.

7 (9) In implementing a program under subsection (8), the
8 department shall cooperate with private organizations and
9 associations, private and public corporations, the department of
10 education, the department of state, and local governmental units.
11 The department shall consult with ORV and environmental
12 organizations and associations in regard to the subject matter of a
13 training program and performance testing that leads to
14 certification of ORV operators.

15 (10) The department may designate a person it considers
16 qualified to provide course instruction and to award ORV safety
17 certificates.

18 (11) The department may promulgate rules to implement
19 subsections (8) to (10) and ~~(18)~~ **(17)**.

20 (12) Subject to subsections (13), (14), **AND** (17), ~~and (18)~~, a
21 child who is less than 16 years of age shall not operate an ORV
22 unless the child is under the direct visual supervision of an adult
23 and the child has in his or her immediate possession an ORV safety
24 certificate issued pursuant to this section or a comparable ORV
25 safety certificate issued under the authority of another state or a
26 province of Canada.

27 (13) Subject to subsection ~~(18)~~ **(17)**, a child who is less

1 than 12 years of age shall not operate a 4-wheeled ATV, unless the
2 child is not less than 10 years of age and is on private land owned
3 by a parent or legal guardian of the child. This subsection does
4 not apply to the operation of an ATV used in agricultural
5 operations.

6 (14) A child who is less than 16 years of age shall not
7 operate a 3-wheeled ATV.

8 (15) Subject to subsection ~~(18)~~, **(17)**, when operating an ORV,
9 a child who is less than 16 years of age shall present the ORV
10 safety certificate to a peace officer upon demand.

11 (16) Notwithstanding any other provision of this section, an
12 operator who is less than 12 years of age shall not cross a highway
13 or street. An operator who is not less than 12 years of age but
14 less than 16 years of age may cross a highway or street or operate
15 on the right-of-way or shoulder of roads, ~~and streets,~~ **AND HIGHWAYS**
16 on which ORV use is authorized pursuant to section 81131(2), (3),
17 ~~or (5),~~ **OR (6)** if the operator has a valid ORV safety certificate
18 in his or her immediate possession and meets any other requirements
19 under this section for operation of the vehicle.

20 ~~—— (17) The requirement of possession or presentation of an ORV~~
21 ~~safety certificate under this section does not apply until~~
22 ~~implementation of the program for the vehicle proposed to be~~
23 ~~operated required by subsection (8).~~

24 (17) ~~(18)~~ The requirement that a child possess an ORV safety
25 certificate to operate an ORV, and the requirement that a child who
26 is less than 12 years of age not operate a 4-wheeled ATV unless the
27 child is not less than 10 years of age and is on private land owned

1 by a parent or legal guardian of the child, do not apply if all of
2 the following requirements are met:

3 (a) The child is participating in an organized ORV riding or
4 racing event held on land not owned by this state.

5 (b) The child's parent or legal guardian has provided the
6 event organizer with written permission for the child to
7 participate in the event.

8 (c) The event organizer has not less than \$500,000.00
9 liability insurance coverage for the event.

10 (d) A physician or physician's assistant licensed or otherwise
11 authorized under part 170 or 175 of the public health code, 1978 PA
12 368, MCL 333.17001 to 333.17084 and 333.17501 to 333.17556, or a
13 paramedic or emergency medical technician licensed under part 209
14 of the public health code, 1978 PA 368, MCL 333.20901 to 333.20979,
15 is present at the site of the event or available on call.

16 (e) The event is at all times under the direct visual
17 supervision of adult staff of the event organizer and a staff
18 member serves as a flagger to warn ORV riders if another ORV rider
19 is injured or an ORV is inoperable in the ORV operating area.

20 (f) Fencing or another means of crowd control is used to keep
21 spectators out of the ORV operating area.

22 (g) If the event is on a closed course, dust is controlled in
23 the ORV operating area and the riding surface in the ORV operating
24 area is otherwise properly prepared.

25 (h) Three-wheeled ATVs are not used by participants.

26 (i) Any ATVs used by participants are equipped with a side
27 step bar or comparable safety equipment and with a tether kill

1 switch, and the tether is used by all participants.

2 (j) Each participant in the event wears a crash helmet
3 approved by the United States department of transportation, a
4 protective long-sleeved shirt or jacket, long pants, boots, and
5 protective gloves.

6 (k) Any other applicable requirements of this part or rules
7 promulgated under this part are met.

8 **(18)** ~~(19)~~—If a child less than 16 years of age participates
9 and is injured in an organized ORV riding or racing event, the
10 organizer of the event shall, within 30 days after the event,
11 submit to the department a report on a form developed by the
12 department. The report shall include all of the following, as
13 applicable:

14 (a) Whether any participant less than 16 years of age was
15 killed or suffered an injury resulting in transportation to a
16 hospital as a result of an ORV accident at the event.

17 (b) The age of the child.

18 (c) Whether the child had been issued an ORV safety
19 certificate under this part or a comparable ORV safety certificate
20 issued under the authority of another state or a province of
21 Canada.

22 (d) The type of ORV operated.

23 (e) A description of the accident and injury.

24 **(19)** ~~(20)~~—By December 31 of each year, the department shall
25 submit to the legislature a report that summarizes reports received
26 under subsection ~~(19)~~—**(18)** during the preceding calendar year. In
27 the report, the department may recommend amendments to this part to

1 improve the safety of children less than 16 years of age
2 participating in organized ORV riding or racing events.

3 (20) ~~(21)~~The requirements of this section are in addition to
4 any applicable requirements of section ~~81131(9)~~.**81131(10)**.

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

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

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

27 (4) The board of county road commissioners may close a road to

1 the operation of ORVs ~~under OTHERWISE AUTHORIZED PURSUANT TO~~
2 subsection (2) or (3) to protect the environment or if the
3 operation of ORVs ~~under OTHERWISE AUTHORIZED PURSUANT TO~~ subsection
4 (2) or (3) poses a particular and demonstrable threat to public
5 safety. A county road commission shall not under this subsection
6 close **TO THE OPERATION OF ORVS** more than 30% of the linear miles of
7 roads located within the county ~~to the operation of ORVs OR LOCATED~~
8 **WITHIN A TOWNSHIP THAT HAS ADOPTED AN ORDINANCE** under subsection
9 (2) or (3). The township board of a township located in an eligible
10 county may adopt an ordinance to close a road to the operation of
11 ORVs ~~under OTHERWISE AUTHORIZED PURSUANT TO~~ subsection (2).

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

16 (6) **THE COUNTY BOARD OF COMMISSIONERS OF AN ELIGIBLE COUNTY**
17 **MAY ADOPT AN ORDINANCE AUTHORIZING THE OPERATION OF ORVS ON THE**
18 **MAINTAINED PORTION OF 1 OR MORE HIGHWAYS LOCATED WITHIN THE COUNTY.**
19 **NOT LESS THAN 45 DAYS BEFORE THE COUNTY BOARD OF COMMISSIONERS**
20 **HOLDS A PUBLIC HEARING ON THE ORDINANCE, THE COUNTY CLERK SHALL**
21 **SEND NOTICE OF THE PUBLIC HEARING, BY CERTIFIED MAIL, TO THE STATE**
22 **TRANSPORTATION DEPARTMENT AND, IF STATE FORESTLAND IS LOCATED**
23 **WITHIN THE COUNTY, TO THE DEPARTMENT. THE NOTICE TO THE STATE**
24 **TRANSPORTATION DEPARTMENT SHALL SOLICIT THE STATE TRANSPORTATION**
25 **DEPARTMENT'S COMMENT ON ENVIRONMENTAL AND PUBLIC SAFETY ISSUES**
26 **RELATED TO THE PROPOSED ORDINANCE. THE COUNTY BOARD OF**
27 **COMMISSIONERS SHALL AUTHORIZE OPERATION OF AN ORV UNDER THIS**

1 SUBSECTION ONLY ON A STRETCH OF HIGHWAY THAT MEETS 1 OR MORE OF THE
2 FOLLOWING REQUIREMENTS:

3 (A) SERVES AS A CONNECTOR BETWEEN ORV AREAS, ROUTES, OR
4 TRAILS.

5 (B) PROVIDES ACCESS TO TOURIST ATTRACTIONS, FOOD SERVICE
6 ESTABLISHMENTS, FUEL, OR OTHER SERVICES AND EXTENDS FROM THE END OF
7 AN ORV ROUTE OR TRAIL FOR A DISTANCE OF NOT MORE THAN 10 HIGHWAY
8 MILES, UNLESS THE COUNTY BOARD OF COMMISSIONERS DETERMINES THAT A
9 LONGER DISTANCE IS NECESSARY TO PROVIDE SUFFICIENT ACCESS TO FOOD
10 SERVICE ESTABLISHMENTS, FUEL, OR OTHER SERVICES.

11 (C) SERVES AS A CONNECTOR BETWEEN 2 SEGMENTS OF THE SAME
12 COUNTY ROAD THAT RUN ALONG DISCONTINUOUS TOWN LINES.

13 (D) INCLUDES A BRIDGE THAT ALLOWS AN ORV TO CROSS A STREAM,
14 WETLAND, OR GULLY THAT IS NOT CROSSED BY A ROAD OR STREET ON WHICH
15 ORVS ARE AUTHORIZED TO OPERATE UNDER SUBSECTION (2) OR (3).

16 (7) ~~(6)~~ Subject to subsection (4), if a local unit of
17 government adopts an ordinance pursuant to subsection (2), (3), ~~or~~
18 (5), OR (6), a person may operate an ORV with the flow of traffic
19 on the far right of the maintained portion of the road, ~~or~~ street,
20 OR HIGHWAY covered by the ordinance. A person shall not operate an
21 ORV AS AUTHORIZED pursuant to subsection (2), (3), ~~or~~ (5), OR (6)
22 at a speed greater than 25 miles per hour or a lower posted ORV
23 speed limit or in a manner that interferes with traffic on the
24 road, ~~or~~ street, OR HIGHWAY.

25 (8) ~~(7)~~ Unless the person possesses a license as defined in
26 section 25 of the Michigan vehicle code, 1949 PA 300, MCL 257.25, a
27 person shall not operate an ORV AS AUTHORIZED pursuant to

1 subsection (2), (3), ~~or~~ (5), **OR (6)** if the ORV is registered as a
2 motor vehicle under chapter II of the Michigan vehicle code, 1949
3 PA 300, MCL 257.201 to 257.259, and either is more than ~~60~~65
4 inches wide or has 3 wheels. ORVs operated **AS AUTHORIZED** pursuant
5 to subsection (2), (3), ~~or~~ (5), **OR (6)** shall travel single file,
6 except that an ORV may travel abreast of another ORV when it is
7 overtaking and passing, or being overtaken and passed by, another
8 ORV.

9 (9) ~~(8)~~—A person shall not operate an ORV **AS AUTHORIZED**
10 pursuant to this section without displaying a lighted headlight and
11 lighted taillight.

12 (10) ~~(9)~~—A person under 18 years of age shall not operate an
13 ORV **AS AUTHORIZED** pursuant to this section unless the person is in
14 possession of a valid driver license or under the direct
15 supervision of a parent or guardian and the person has in his or
16 her immediate possession an ORV safety certificate issued pursuant
17 to this part or a comparable ORV safety certificate issued under
18 the authority of another state or a province of Canada. A person
19 under 12 years of age shall not operate an ORV **AS AUTHORIZED**
20 pursuant to this section. The requirements of this subsection are
21 in addition to any applicable requirements of section 81129.

22 (11) ~~(10)~~—A township that has authorized the operation of ORVs
23 on a road under subsection (3) **OR A COUNTY THAT HAS AUTHORIZED THE**
24 **OPERATION OF ORVS ON A HIGHWAY UNDER SUBSECTION (6)** does not have a
25 duty to maintain the road **OR HIGHWAY** in a condition reasonably safe
26 and convenient for the operation of ORVs. A board of county road
27 commissioners, a county board of commissioners, or a municipality

1 does not have a duty to maintain a **HIGHWAY**, road, or street under
2 its jurisdiction in a condition reasonably safe and convenient for
3 the operation of ORVs, except the following ORVs:

4 (a) ORVs registered as motor vehicles as provided in the code.

5 (b) ORVs permitted by an ordinance as provided in subsection
6 (1).

7 **(12)** ~~(11)~~—Beginning October 19, 1993, a board of county road
8 commissioners, a county board of commissioners, and a county are,
9 and, beginning on April 25, 1995, a municipality is, immune from
10 tort liability for injuries or damages sustained by any person
11 arising in any way out of the operation or use of an ORV on
12 maintained or unmaintained roads, streets, shoulders, and rights-
13 of-way over which the board of county road commissioners, the
14 county board of commissioners, or the municipality has
15 jurisdiction. The immunity provided by this subsection does not
16 apply to actions that constitute gross negligence. As used in this
17 subsection, "gross negligence" means conduct so reckless as to
18 demonstrate a substantial lack of concern for whether an injury
19 results.

20 **(13)** ~~(12)~~—In a court action in this state, if competent
21 evidence demonstrates that a vehicle that is permitted to operate
22 on a road or street pursuant to the code was in a collision with an
23 ORV required to be operated on the far right of the maintained
24 portion of a road, ~~or~~ street, **OR HIGHWAY** pursuant to an ordinance
25 adopted under subsection (2), (3), ~~or~~ (5), **OR (6)**, the operator of
26 the ORV shall be considered prima facie negligent.

27 **(14)** ~~(13)~~—A violation of an ordinance described in this

1 section is a municipal civil infraction. The ordinance may provide
 2 for a ~~maximum~~ fine of not more than \$500.00 for a violation of the
 3 ordinance. In addition, the court shall order the defendant to pay
 4 the cost of repairing any damage to the environment ~~, OR TO~~ a road,
 5 ~~or~~ street, **HIGHWAY**, or public property ~~damaged~~ as a result of the
 6 violation.

7 (15) ~~(14)~~ The treasurer of the local unit of government shall
 8 deposit fines collected by that local unit of government under
 9 section 8379 of the revised judicature act of 1961, 1961 PA 236,
 10 MCL 600.8379, and subsection ~~(13)~~ **(14)** and damages collected under
 11 subsection ~~(13)~~ **(14)** into a fund to be designated as the "ORV
 12 fund". The legislative body of the local unit of government shall
 13 appropriate revenue in the ORV fund as follows:

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

17 (b) Fifty percent to the board of county road commissioners
 18 or, in the case of a city or village, to the department responsible
 19 for street maintenance in the city or village. ~~, HOWEVER, IF A FINE~~
 20 **WAS COLLECTED FOR A VIOLATION OF AN ORDINANCE ADOPTED UNDER**
 21 **SUBSECTION (6), 50% OF THE FINE REVENUE SHALL BE APPROPRIATED TO**
 22 **THE STATE TRANSPORTATION DEPARTMENT. REVENUE APPROPRIATED UNDER**
 23 **THIS SUBDIVISION SHALL BE USED** for repairing damage to roads, ~~or~~
 24 streets, **OR HIGHWAYS** and the environment that may have been caused
 25 by ORVs and for posting signs indicating ORV speed limits or
 26 indicating whether roads, ~~or~~ streets, **OR HIGHWAYS** are open or
 27 closed to the operation of ORVs ~~under~~ **AS AUTHORIZED PURSUANT TO**

1 this section.

2 (16) THE STATE TRANSPORTATION DEPARTMENT SHALL POST SIGNS
3 INDICATING HIGHWAYS ON WHICH ORV USE IS AUTHORIZED UNDER SUBSECTION
4 (6).

5 (17) ~~(15)~~As used in this section:

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

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

10 (ii) St. Clair county.

11 (B) "HIGHWAY" MEANS A STATE TRUNKLINE HIGHWAY OTHER THAN AN
12 INTERSTATE HIGHWAY.

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

15 (D) ~~(c)~~"Municipality" means a city or village.

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

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