

SENATE BILL No. 1370

November 27, 2012, Introduced by Senators HANSEN, CASPERSON and WALKER and referred to the Committee on Outdoor Recreation and Tourism.

A bill to amend 1994 PA 451, entitled
"Natural resources and environmental protection act,"
by amending sections 81101, 81129, and 81130 (MCL 324.81101,
324.81129, and 324.81130), section 81101 as amended by 2012 PA 246,
section 81129 as amended by 2008 PA 240, and section 81130 as
amended by 2004 PA 587.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

Sec. 81101. As used in this part:

(a) "ATV" means a ~~3, 4, or 6 wheeled vehicle~~ **WITH 3 OR MORE**
WHEELS THAT IS designed for off-road use, ~~that has low pressure~~ **HAS**
NONHIGHWAY tires, ~~has a seat designed to be straddled by the rider,~~
IS 50 INCHES OR LESS IN WIDTH, and is powered by a 50cc to 1,000cc
gasoline engine, ~~or an engine of comparable size using other fuels,~~
OR AN ELECTRIC MOTOR OF COMPARABLE POWER.

1 (b) "Code" means the Michigan vehicle code, 1949 PA 300, MCL
2 257.1 to 257.923.

3 (c) "Dealer" means a person engaged in the sale, lease, or
4 rental of an ORV as a regular business or, for purposes of selling
5 licenses under section 81116, any other person authorized by the
6 department to sell licenses or permits, or both, under this act.

7 (d) "Designated", unless the context implies otherwise, means
8 posted open for ORV use with appropriate signs by the department.

9 (e) "Farm vehicle" means either of the following:

10 (i) An implement of husbandry as that term is defined in
11 section 21 of the Michigan vehicle code, 1949 PA 300, MCL 257.21.

12 (ii) A vehicle used in connection with a farm operation as that
13 term is defined in section 2 of the Michigan right to farm act,
14 1981 PA 93, MCL 286.472.

15 (f) "Forest road" means a hard surfaced road, gravel or dirt
16 road, or other route capable of travel by a 2-wheel drive, 4-wheel
17 conventional vehicle designed for highway use, except an
18 interstate, state, or county highway.

19 (g) "Forest trail" means a designated path or way capable of
20 travel only by a vehicle less than 50 inches in width.

21 (h) "Highway" means the entire width between the boundary
22 lines of a way publicly maintained when any part of the way is open
23 to the use of the public for purposes of vehicular travel.

24 (i) "Highly restricted personal information" means an
25 individual's photograph or image, social security number, digitized
26 signature, and medical and disability information.

27 (j) "Late model ORV" means an ORV manufactured in the current

1 model year or the 5 model years immediately preceding the current
2 model year.

3 (k) "Manufacturer" means a person, partnership, corporation,
4 or association engaged in the production and manufacture of ORVs as
5 a regular business.

6 (l) "Off-road vehicle account" means the off-road vehicle
7 account of the Michigan conservation and recreation legacy fund
8 established in section 2015.

9 (m) "Operate" means to ride in or on, and be in actual
10 physical control of, the operation of an ORV.

11 (n) "Operator" means ~~a person~~ **AN INDIVIDUAL** who operates or is
12 in actual physical control of the operation of an ORV.

13 (o) "ORV" or, **UNLESS THE CONTEXT IMPLIES A DIFFERENT MEANING,**
14 "vehicle" means a motor-driven off-road recreation vehicle ~~capable~~
15 ~~of~~ **DESIGNED PRIMARILY FOR** cross-country travel without benefit of a
16 road or trail, on or immediately over land, snow, ice, marsh,
17 swampland, or other natural terrain. ~~ORV or vehicle includes, but~~
18 ~~is not limited to, a~~ **A** multitrack or multiwheel drive vehicle, ~~an~~
19 ~~ATV,~~ a motorcycle or related 2-wheel **VEHICLE, A** 3-wheel, 4-wheel,
20 or 6-wheel vehicle, an amphibious machine, a ground effect air
21 cushion vehicle, or other means of transportation ~~deriving motive~~
22 ~~power from a source other than muscle or wind.~~ **MAY BE AN ORV. AN**
23 **ATV OR ROV IS AN ORV.** ORV or vehicle does not include a registered
24 snowmobile, a farm vehicle being used for farming, a vehicle used
25 for military, fire, emergency, or law enforcement purposes, a
26 vehicle owned and operated by a utility company or an oil or gas
27 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.

(P) "ORV SAFETY CERTIFICATE" MEANS AN ORV SAFETY CERTIFICATE ISSUED UNDER SECTION 81130 OR A COMPARABLE SAFETY CERTIFICATE ISSUED UNDER THE AUTHORITY OF ANOTHER STATE OR A PROVINCE OF CANADA.

(Q) ~~(p)~~ "Owner" means any of the following:

(i) A vendee or lessee of an ORV that is the subject of an agreement for the conditional sale or lease of the ORV, with the right of purchase upon performance of the conditions stated in the agreement, and with an immediate right of possession vested in the conditional vendee or lessee.

(ii) A person renting an ORV, or having the exclusive use of an ORV, for more than 30 days.

(iii) A person who holds legal ownership of an ORV.

(R) ~~(q)~~ "Person with a disability" means ~~a person~~ **AN INDIVIDUAL** who has 1 or more of the following physical characteristics:

(i) Blindness.

(ii) Inability, **DURING ANY TIME OF THE YEAR**, to ambulate more than 200 feet without having to stop and rest. ~~during any time of the year.~~

(iii) Loss of use of 1 or both legs or feet.

(iv) Inability to ambulate without the prolonged use of a wheelchair, walker, crutches, braces, or other device required to aid mobility.

1 (v) A lung disease from which the ~~person's~~ **INDIVIDUAL'S**
2 expiratory volume for 1 second, when measured by spirometry, is
3 less than 1 liter, or from which the ~~person's~~ **INDIVIDUAL'S** arterial
4 oxygen tension is less than 60 mm/hg of room air at rest.

5 (vi) A cardiovascular disease ~~from which the person measures~~
6 **THAT CAUSES THE INDIVIDUAL TO MEASURE** between 3 and 4 on the New
7 York heart classification scale, or ~~from which~~ **THAT RESULTS IN** a
8 marked limitation of physical activity ~~causes~~ **BY CAUSING** fatigue,
9 palpitation, dyspnea, or anginal pain.

10 (vii) Other diagnosed disease or disorder including, but not
11 limited to, severe arthritis or a neurological or orthopedic
12 impairment that creates a severe mobility limitation.

13 **(S)** ~~(r)~~ "Personal information" means information that
14 identifies an individual, including an individual's driver
15 identification number, name, address not including zip code, and
16 telephone number, but does not include information on ORV operation
17 or equipment-related violations or civil infractions, operator or
18 vehicle registration status, accidents, or other behaviorally-
19 related information.

20 **(T)** ~~(s)~~ "Public agency" means the department or a local or
21 federal unit of government.

22 **(U)** ~~(t)~~ "Roadway" means that portion of a highway improved,
23 designated, or ordinarily used for vehicular travel. If a highway
24 includes 2 or more separate roadways, the term roadway refers to a
25 roadway separately, but not to all roadways collectively.

26 **(V)** ~~(u)~~ "Route" means a forest road or other road that is
27 designated for purposes of this part by the department.

(W) "ROV" MEANS A VEHICLE WITH 4 OR MORE WHEELS THAT IS DESIGNED FOR OFF-ROAD USE, HAS NONHIGHWAY TIRES, IS MORE THAN 50 INCHES BUT NOT MORE THAN 65 INCHES IN WIDTH, AND IS POWERED BY A 50CC TO 1,000CC GASOLINE ENGINE, AN ENGINE OF COMPARABLE SIZE USING OTHER FUELS, OR AN ELECTRIC MOTOR OF COMPARABLE POWER.

(X) ~~(v)~~ "Safety chief instructor" means ~~a person~~ **AN INDIVIDUAL** who has been certified by a nationally recognized ~~ATV and~~ ORV organization to certify instructors and to do on-sight evaluations of instructors.

(Y) ~~(w)~~ "Visual supervision" means the direct observation of the operator with the unaided or normally corrected eye, where the observer is able to come to the immediate aid of the operator.

Sec. 81129. (1) Subject to subsections (2), (3), (17), and (18), a parent or legal guardian of a child **WHO IS** less than 16 years of age shall not permit the child to operate an ORV unless the child is under the direct visual supervision of an adult and the child has **AN ORV SAFETY CERTIFICATE** 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.~~

(2) Subject to subsection (18), a parent or legal guardian of a child **WHO IS** less than 12 years of age shall not permit the child to operate a 4-wheeled ATV ~~, OR~~ **4-WHEELED ROV** unless the child is not less than 10 years of age and is on private land owned by a parent or legal guardian of the child. This subsection does not apply to the operation of an ATV **OR ROV** used in agricultural operations.

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

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

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

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

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

25 (8) The department shall implement a comprehensive ORV
26 information, safety education, and training program that ~~shall~~
27 ~~include~~ **INCLUDES** the training of operators and the preparation and

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

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

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

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

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

26 (13) Subject to subsection (18), a child who is less than 12
27 years of age shall not operate a 4-wheeled ATV ~~, OR 4-WHEELED ROV~~

1 unless the child is not less than 10 years of age and is on private
2 land owned by a parent or legal guardian of the child. This
3 subsection does not apply to the operation of an ATV **OR ROV** used in
4 agricultural operations.

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

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

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

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

23 (18) The requirement that a child possess an ORV safety
24 certificate to operate an ORV, and the requirement that a child who
25 is less than 12 years of age not operate a 4-wheeled ATV **OR 4-**
26 **WHEELED ROV** unless the child is not less than 10 years of age and
27 is on private land owned by a parent or legal guardian of the

1 child, do not apply if all of the following requirements are met:

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

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

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

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

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

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

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

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

25 (i) Any ~~ATVs~~**ORVS** used by participants are equipped with a
26 side step bar or comparable safety equipment and with a tether kill
27 switch, and the tether is used by all participants.

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

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

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

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

16 (b) The age of the child.

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

21 (d) The type of ORV operated.

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

23 (20) By December 31 of each year, the department shall submit
24 to the legislature a report that summarizes reports received under
25 subsection (19) during the preceding calendar year. In the report,
26 the department may recommend amendments to this part to improve the
27 safety of children **WHO ARE** less than 16 years of age participating

1 in organized ORV riding or racing events.

2 (21) The requirements of this section are in addition to any
3 applicable requirements of section 81131(9).

4 Sec. 81130. (1) ~~A person~~ **AN INDIVIDUAL** who is ~~under~~ **LESS THAN**
5 16 years of age, before operating an ~~ATV or~~ ORV, shall complete an
6 ORV safety education course approved by the department. ~~This~~ **THE**
7 course may include a written examination and a driving test
8 designed to test the competency of the applicant. Upon successful
9 completion of ~~this~~ **THE** safety education course, ~~a person~~ **AN**
10 **INDIVIDUAL** shall receive an ORV safety certificate.

11 (2) A safety education course **MAY BE** conducted by a college or
12 university, an intermediate school district, a local school
13 district, a law enforcement agency, or another governmental agency
14 located in this state, ~~or by a department approved nonprofit~~
15 ~~service organization, shall be conducted in compliance with this~~
16 ~~section.~~ **OR BY A PRIVATE BUSINESS.** An agency or a school conducting
17 a course under this subsection may apply to the department for a
18 grant from the off-road vehicle account for costs associated with
19 conducting a course.

20 (3) ~~Except for a course conducted by a private business~~
21 ~~enterprise as provided by subsection (4), an applicant for~~ **A PERSON**
22 **OTHER THAN A PRIVATE BUSINESS CONDUCTING** a safety education course
23 **REQUIRED** under this section shall ~~pay not more than a \$25.00~~ **NOT**
24 **CHARGE A** course fee **OF MORE THAN \$25.00** or, in the case of a
25 university or community college, ~~a fee not more than the cost of 1~~
26 credit hour of instruction. The course fees shall only be used for
27 funding the administration and implementation of the course.

1 (4) ~~An ATV or ORV, or both, safety education course required~~
2 ~~by this section and approved by the department may be conducted by~~
3 ~~a private business enterprise. A private business enterprise may~~
4 charge a course fee not to exceed the cost of conducting the
5 course.

6 (5) The director shall designate ~~a person~~ **AN INDIVIDUAL** to be
7 the state coordinator of the ~~ATV and ORV~~ safety education program.
8 ~~A person designated under this subsection shall have successfully~~
9 ~~completed ATV and ORV safety courses.~~

10 ~~——(6) The director shall~~ **ALSO** designate ~~a person who has~~
11 ~~successfully completed ATV and ORV safety courses~~ **AN INDIVIDUAL** to
12 perform annual inspections of course sites. **AN INDIVIDUAL IS NOT**
13 **QUALIFIED TO BE DESIGNATED UNDER THIS SUBSECTION UNLESS THE**
14 **INDIVIDUAL HAS SUCCESSFULLY COMPLETED AN ORV SAFETY COURSE.**