

**SUBSTITUTE FOR
HOUSE BILL NO. 4284**

A bill to amend 1994 PA 451, entitled
"Natural resources and environmental protection act,"
by amending sections 81131 and 81133 (MCL 324.81131 and 324.81133),
section 81131 as amended by 2011 PA 107 and section 81133 as
amended by 2012 PA 340.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

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

4 (2) Subject to subsection (4), the county board of
5 commissioners of an eligible county may adopt an ordinance
6 authorizing the operation of ORVs on the maintained portion of 1 or
7 more roads located within the county. Not less than 45 days before

1 a public hearing on the ordinance, the county clerk shall send
2 notice of the public hearing, by certified mail, to the county road
3 commission, **TO THE LEGISLATIVE BODY OF EACH TOWNSHIP AND**
4 **MUNICIPALITY LOCATED WITHIN THE COUNTY**, and, if state forestland is
5 located within the county, to the department.

6 (3) Subject to subsection (4), the **LEGISLATIVE BODY OF A**
7 township ~~board of a township~~ **OR MUNICIPALITY** located in an eligible
8 county may adopt an ordinance authorizing the operation of ORVs on
9 the maintained portion of 1 or more roads located within the
10 township **OR MUNICIPALITY, RESPECTIVELY**. Not less than 28 days
11 before a public hearing on the ordinance, the ~~township~~ clerk **OF THE**
12 **TOWNSHIP OR MUNICIPALITY** shall send notice of the public hearing,
13 by certified mail, to the county road commission, **TO THE**
14 **LEGISLATIVE BODY OF EVERY OTHER TOWNSHIP AND MUNICIPALITY LOCATED**
15 **WITHIN THE COUNTY**, and, if state forestland is located within the
16 township **OR MUNICIPALITY**, to the department. This subsection does
17 not apply to a township **OR MUNICIPALITY** until 1 year after the
18 effective date of the amendatory act that first defined eligible
19 county so as to include the county in which that township **OR**
20 **MUNICIPALITY** is located.

21 (4) The board of county road commissioners may close a road to
22 the operation of ORVs under subsection (2) or (3) to protect the
23 environment or if the operation of ORVs under subsection (2) or (3)
24 poses a particular and demonstrable threat to public safety. A
25 county road commission shall not under this subsection close more
26 than 30% of the linear miles of roads located within the county to
27 the operation of ORVs under subsection (2) or (3). The **LEGISLATIVE**

1 **BODY OF A** township ~~board of a township~~ **OR MUNICIPALITY** located in
2 an eligible county may adopt an ordinance to close a road **LOCATED**
3 **IN THE TOWNSHIP OR MUNICIPALITY** to the operation of ORVs under
4 subsection (2). **THE LEGISLATIVE BODY OF A VILLAGE MAY ADOPT AN**
5 **ORDINANCE TO CLOSE A ROAD LOCATED IN THE VILLAGE TO THE OPERATION**
6 **OF ORVS OTHERWISE AUTHORIZED UNDER SUBSECTION (3).**

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

11 (6) Subject to subsection (4), if a local unit of government
12 adopts an ordinance pursuant to subsection (2), (3), ~~or~~(5), **OR**
13 **(8)**, a person may operate an ORV with the flow of traffic on the
14 far right of the maintained portion of the road or street **OR THE**
15 **SHOULDER OF THE STATE TRUNK LINE HIGHWAY** covered by the ordinance.
16 A person shall not operate an ORV pursuant to subsection (2), (3),
17 ~~or~~(5), **OR (8)** at a speed greater than 25 miles per hour or a lower
18 posted ORV speed limit or in a manner that interferes with traffic
19 on the road or street.

20 (7) Unless the person possesses a license as defined in
21 section 25 of the Michigan vehicle code, 1949 PA 300, MCL 257.25, a
22 person shall not operate an ORV pursuant to subsection (2), (3), ~~or~~
23 (5), **OR (8)** if the ORV is registered as a motor vehicle under
24 chapter II of the Michigan vehicle code, 1949 PA 300, MCL 257.201
25 to 257.259, and either is more than 60 inches wide or has 3 wheels.
26 ORVs operated pursuant to subsection (2), (3), ~~or~~(5), **OR (8)** shall
27 travel single file, except that an ORV may travel abreast of

1 another ORV when it is overtaking and passing, or being overtaken
2 and passed by, another ORV.

3 (8) IF A LOCAL UNIT OF GOVERNMENT RECEIVES AN AUTHORIZATION
4 FROM THE STATE TRANSPORTATION DEPARTMENT UNDER THIS SUBSECTION, THE
5 LOCAL UNIT OF GOVERNMENT MAY ADOPT AN ORDINANCE AUTHORIZING THE
6 OPERATION OF ORVS ON THE SHOULDERS OF STATE TRUNK LINE HIGHWAYS
7 LOCATED WITHIN THE LOCAL UNIT OF GOVERNMENT. UPON SUBMISSION OF A
8 REQUEST FOR AUTHORIZATION BY A LOCAL UNIT OF GOVERNMENT, THE STATE
9 TRANSPORTATION DEPARTMENT MAY AUTHORIZE THE OPERATION OF ORVS ON
10 THE SHOULDERS OF STATE TRUNK LINE HIGHWAYS WHERE THE OPERATION OF
11 ORVS ON THE SHOULDERS OF STATE TRUNK LINE HIGHWAYS IS NECESSARY TO
12 CONNECT THE SHOULDERS OF ROADS OR OTHER AUTHORIZED ROUTES UPON
13 WHICH ORVS ARE PERMITTED TO TRAVEL, OR TO OTHERWISE COMPLEMENT
14 LOCAL ORV ORDINANCES AND TRANSPORTATION NETWORKS. THE STATE
15 TRANSPORTATION DEPARTMENT SHALL CONSIDER EASE OF USE AND THE ORV
16 ORDINANCES OF THE COUNTY WITHIN WHICH THE LOCAL UNIT OF GOVERNMENT
17 IS LOCATED IN DETERMINING WHETHER TO AUTHORIZE THE OPERATION OF
18 ORVS ON THE SHOULDERS OF STATE TRUNK LINE HIGHWAYS UNDER THIS
19 SUBSECTION. THE STATE TRANSPORTATION DEPARTMENT SHALL ISSUE A
20 DECISION ON WHETHER TO AUTHORIZE THE OPERATION OF ORVS ON THE
21 SHOULDERS OF STATE TRUNK LINE HIGHWAYS NO LATER THAN 60 DAYS AFTER
22 RECEIVING A REQUEST FOR AUTHORIZATION FROM A LOCAL UNIT OF
23 GOVERNMENT. A COUNTY MAY SUBMIT A REQUEST FOR AUTHORIZATION UNDER
24 THIS SUBSECTION TO THE STATE TRANSPORTATION DEPARTMENT ON BEHALF OF
25 1 OR MORE TOWNSHIPS OR MUNICIPALITIES LOCATED WITHIN THAT COUNTY.

26 (9) ~~(8)~~—A person shall not operate an ORV pursuant to this
27 section without displaying a lighted headlight and lighted

1 taillight.

2 (10) ~~(9)~~—A person under 18 years of age shall not operate an
3 ORV pursuant to this section unless the person is in possession of
4 a valid driver license or under the direct supervision of a parent
5 or guardian and the person has in his or her immediate possession
6 an ORV safety certificate issued pursuant to this part or a
7 comparable ORV safety certificate issued under the authority of
8 another state or a province of Canada. A person under 12 years of
9 age shall not operate an ORV pursuant to this section. The
10 requirements of this subsection are in addition to any applicable
11 requirements of section 81129.

12 (11) ~~(10)~~—A township that has authorized the operation of ORVs
13 on a road under subsection (3) does not have a duty to maintain the
14 road in a condition reasonably safe and convenient for the
15 operation of ORVs. A board of county road commissioners, a county
16 board of commissioners, or a municipality does not have a duty to
17 maintain a road or street under its jurisdiction in a condition
18 reasonably safe and convenient for the operation of ORVs, except
19 the following ORVs:

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

21 (b) ORVs permitted by an ordinance as provided in subsection
22 (1).

23 (12) ~~(11)~~—Beginning October 19, 1993, a board of county road
24 commissioners, a county board of commissioners, and a county are,
25 and, beginning on April 25, 1995, a municipality is, immune from
26 tort liability for injuries or damages sustained by any person
27 arising in any way out of the operation or use of an ORV on

1 maintained or unmaintained roads, streets, shoulders, and rights-
2 of-way over which the board of county road commissioners, the
3 county board of commissioners, or the municipality has
4 jurisdiction. The immunity provided by this subsection does not
5 apply to actions that constitute gross negligence. As used in this
6 subsection, "gross negligence" means conduct so reckless as to
7 demonstrate a substantial lack of concern for whether an injury
8 results.

9 (13) ~~(12)~~—In a court action in this state, if competent
10 evidence demonstrates that a vehicle that is permitted to operate
11 on a road or street pursuant to the code was in a collision with an
12 ORV required to be operated on the far right of the maintained
13 portion of a road or street pursuant to an ordinance adopted under
14 subsection (2), (3), ~~or~~ (5), **OR (8)**, the operator of the ORV shall
15 be considered prima facie negligent.

16 (14) ~~(13)~~—A violation of an ordinance described in this
17 section is a municipal civil infraction. The ordinance may provide
18 for a maximum fine of not more than \$500.00 for a violation of the
19 ordinance. In addition, the court shall order the defendant to pay
20 the cost of repairing any damage to the environment, a road or
21 street, or public property damaged as a result of the violation.

22 (15) ~~(14)~~—The treasurer of the local unit of government shall
23 deposit fines collected by that local unit of government under
24 section 8379 of the revised judicature act of 1961, 1961 PA 236,
25 MCL 600.8379, and subsection ~~(13)~~ **(14)** and damages collected under
26 subsection ~~(13)~~ **(14)** into a fund to be designated as the "ORV
27 fund". The legislative body of the local unit of government shall

1 appropriate revenue in the ORV fund as follows:

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

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

12 (16) ~~(15)~~As used in this section:

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

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

17 (ii) St. Clair county.

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

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

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

23 (e) "Street" means a city or village major street or city or
24 village local street as described in section 9 of 1951 PA 51, MCL
25 247.659.

26 Sec. 81133. An individual shall not operate an ORV:

27 (a) At a rate of speed greater than is reasonable and proper,

1 or in a careless manner having due regard for conditions then
2 existing.

3 (b) Unless the individual and any passenger in or on the
4 vehicle is wearing on his or her head a crash helmet and protective
5 eyewear approved by the United States department of transportation.
6 This subdivision does not apply to either of the following:

7 (i) The operator of or a passenger in a vehicle that is
8 equipped with a roof that meets or exceeds standards for a crash
9 helmet if the operator and each passenger is wearing a properly
10 adjusted and fastened safety belt.

11 (ii) The operator of or a passenger in an ORV that is operated
12 on a state licensed game bird hunting preserve at a speed of not
13 greater than 10 miles per hour.

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

18 (d) Unless equipped with a braking system that may be operated
19 by hand or foot, capable of producing deceleration at 14 feet per
20 second on level ground at a speed of 20 miles per hour; a brake
21 light, brighter than the taillight, visible when the brake is
22 activated to the rear of the vehicle when the vehicle is operated
23 during the hours of 1/2 hour after sunset and 1/2 hour before
24 sunrise; and a throttle so designed that when the pressure used to
25 advance the throttle is removed, the engine speed will immediately
26 and automatically return to idle.

27 (e) In a state game area or state park or recreation area,

1 except on roads, trails, or areas designated for this purpose; on
2 state owned lands under the control of the department other than
3 game areas, state parks, or recreational areas where the operation
4 would be in violation of rules promulgated by the department; in a
5 forest nursery or planting area; on public lands posted or
6 reasonably identifiable as an area of forest reproduction, and when
7 growing stock may be damaged; in a dedicated natural area of the
8 department; or in any area in such a manner as to create an erosive
9 condition, or to injure, damage, or destroy trees or growing crops.
10 However, the department may permit an owner and guests of the owner
11 to use an ORV within the boundaries of a state forest in order to
12 access the owner's property.

13 (f) On the frozen surface of public waters within 100 feet of
14 an individual not in or upon a vehicle, or within 100 feet of a
15 fishing shanty or shelter or an area that is cleared of snow for
16 skating purposes, except at the minimum speed required to maintain
17 controlled forward movement of the vehicle, or as may be authorized
18 by permit in special events.

19 (g) Unless the vehicle is equipped with a spark arrester type
20 United States forest service approved muffler, in good working
21 order and in constant operation. Exhaust noise emission shall not
22 exceed 86 Db(A) or 82 Db(A) on a vehicle manufactured after January
23 1, 1986, when the vehicle is under full throttle, traveling in
24 second gear, and measured 50 feet at right angles from the vehicle
25 path with a sound level meter that meets the requirement of ANSI
26 S1.4 1983, using procedure and ancillary equipment therein
27 described; or 99 Db(A) or 94 Db(A) on a vehicle manufactured after

1 January 1, 1986, or that level comparable to the current sound
2 level as provided for by the United States environmental protection
3 agency when tested according to the provisions of the current SAE
4 J1287, June 86 test procedure for exhaust levels of stationary
5 motorcycles, using sound level meters and ancillary equipment
6 therein described. A vehicle subject to this part, manufactured or
7 assembled after December 31, 1972 and used, sold, or offered for
8 sale in this state, shall conform to the noise emission levels
9 established by the United States environmental protection agency
10 under the noise control act of 1972, 42 USC 4901 to 4918.

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

18 (i) In or upon the lands of another without the written
19 consent of the owner, the owner's agent, or a lessee, when required
20 by part 731. The operator of the vehicle is liable for damage to
21 private property, including, but not limited to, damage to trees,
22 shrubs, or growing crops, injury to other living creatures, or
23 damage caused through vehicle operation in a manner so as to create
24 erosive or other ecological damage. The owner of the private
25 property may recover from the individual responsible nominal
26 damages of not less than the amount of damage or injury. Failure to
27 post private property or fence or otherwise enclose in a manner to

1 exclude intruders or of the private property owner or other
2 authorized person to personally communicate against trespass does
3 not imply consent to ORV use.

4 (j) In an area on which public hunting is permitted during the
5 regular November firearm deer season from 7 a.m. to 11 a.m. and
6 from 2 p.m. to 5 p.m., except during an emergency or for law
7 enforcement purposes, to go to and from a permanent residence or a
8 hunting camp otherwise inaccessible by a conventional wheeled
9 vehicle, to remove from public land a deer, elk, or bear that has
10 been taken under a valid license; except for the conduct of
11 necessary work functions involving land and timber survey,
12 communication and transmission line patrol, and timber harvest
13 operations; or except on property owned or under control of the
14 operator or on which the operator is an invited guest. A hunter
15 removing game under this subdivision may leave the designated trail
16 or forest road only to retrieve the game and shall not exceed 5
17 miles per hour. A vehicle registered under the code is exempt from
18 this subdivision while operating on a public highway or public or
19 private road capable of sustaining automobile traffic. A person
20 holding a valid permit to hunt from a standing vehicle issued under
21 part 401, or a person with a disability using an ORV to access
22 public lands for purposes of hunting or fishing through use of a
23 designated trail or forest road, is exempt from this subdivision.
24 An individual holding a valid permit to hunt from a standing
25 vehicle issued under part 401, or a person with a disability using
26 an ORV to access public lands for purposes of hunting or fishing,
27 may display a flag, the color of which the department shall

1 determine, to identify himself or herself as a person with a
2 disability or an individual holding a permit to hunt from a
3 standing vehicle under part 401.

4 (k) Except as otherwise provided in section 40111(3) or (4),
5 while transporting on the vehicle a bow unless unstrung or encased,
6 or a firearm unless unloaded and securely encased, or equipped with
7 and made inoperative by a manufactured keylocked trigger housing
8 mechanism.

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

11 (m) Within 100 feet of a slide, ski, or skating area, unless
12 the vehicle is being used for the purpose of servicing the area or
13 is being operated pursuant to section 81131(2), (3), or (5).

14 (n) On an operating or nonabandoned railroad or railroad
15 right-of-way, or public utility right-of-way, other than for the
16 purpose of crossing at a clearly established site intended for
17 vehicular traffic, except railroad, public utility, or law
18 enforcement personnel while in performance of their duties, and
19 except if the right-of-way is designated as provided for in section
20 81127.

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

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

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

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

1 lands.

2 (s) While transporting or possessing, in or on the vehicle,
3 alcoholic liquor in a container that is open or uncapped or upon
4 which the seal is broken, except under either of the following
5 circumstances:

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

8 (ii) If the vehicle does not have a trunk or compartment
9 separate from the passenger compartment, the container is encased
10 or enclosed.

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

14 (u) On adjacent private land, in an area zoned residential,
15 within 300 feet of a dwelling at a speed greater than the minimum
16 required to maintain controlled forward movement of the vehicle
17 except on a roadway, forest road, or forest trail maintained by or
18 under the jurisdiction of the department, or on a road or street on
19 which ORV use is authorized under section 81131(2), (3), ~~or~~(5), **OR**
20 **(8)**.