

HOUSE BILL No. 4284

February 19, 2013, Introduced by Rep. Johnson and referred to the Committee on Transportation and Infrastructure.

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
8 a public hearing on the ordinance, the county clerk shall send
9 notice of the public hearing, by certified mail, to the county road

1 commission and, if state forestland is located within the county,
2 to the department.

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

14 (4) The board of county road commissioners may close a road to
15 the operation of ORVs under subsection (2) or (3) to protect the
16 environment or if the operation of ORVs under subsection (2) or (3)
17 poses a particular and demonstrable threat to public safety. A
18 county road commission shall not under this subsection close more
19 than 30% of the linear miles of roads located within the county to
20 the operation of ORVs under subsection (2) or (3). The township
21 board of a township located in an eligible county may adopt an
22 ordinance to close a road to the operation of ORVs under subsection
23 (2).

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

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

10 (7) Unless the person possesses a license as defined in
11 section 25 of the Michigan vehicle code, 1949 PA 300, MCL 257.25, a
12 person shall not operate an ORV pursuant to subsection (2), (3), ~~or~~
13 (5), **OR (8)** if the ORV is registered as a motor vehicle under
14 chapter II of the Michigan vehicle code, 1949 PA 300, MCL 257.201
15 to 257.259, and either is more than 60 inches wide or has 3 wheels.
16 ORVs operated pursuant to subsection (2), (3), ~~or~~(5), **OR (8)** shall
17 travel single file, except that an ORV may travel abreast of
18 another ORV when it is overtaking and passing, or being overtaken
19 and passed by, another ORV.

20 **(8) IF A LOCAL UNIT OF GOVERNMENT RECEIVES AN AUTHORIZATION**
21 **FROM THE STATE TRANSPORTATION DEPARTMENT UNDER THIS SUBSECTION, THE**
22 **LOCAL UNIT OF GOVERNMENT MAY ADOPT AN ORDINANCE AUTHORIZING THE**
23 **OPERATION OF ORVS ON THE SHOULDERS OF STATE TRUNK LINE HIGHWAYS**
24 **LOCATED WITHIN THE LOCAL UNIT OF GOVERNMENT. UPON SUBMISSION OF A**
25 **REQUEST FOR AUTHORIZATION BY A LOCAL UNIT OF GOVERNMENT, THE STATE**
26 **TRANSPORTATION DEPARTMENT MAY AUTHORIZE THE OPERATION OF ORVS ON**
27 **THE SHOULDERS OF STATE TRUNK LINE HIGHWAYS WHERE THE OPERATION OF**

1 ORVS ON THE SHOULDERS OF STATE TRUNK LINE HIGHWAYS IS NECESSARY TO
2 CONNECT THE SHOULDERS OF ROADS OR OTHER AUTHORIZED ROUTES UPON
3 WHICH ORVS ARE PERMITTED TO TRAVEL, OR TO OTHERWISE COMPLEMENT
4 LOCAL ORV ORDINANCES AND TRANSPORTATION NETWORKS. THE STATE
5 TRANSPORTATION DEPARTMENT SHALL CONSIDER EASE OF USE AND THE ORV
6 ORDINANCES OF THE COUNTY WITHIN WHICH THE LOCAL UNIT OF GOVERNMENT
7 IS LOCATED IN DETERMINING WHETHER TO AUTHORIZE THE OPERATION OF
8 ORVS ON THE SHOULDERS OF STATE TRUNK LINE HIGHWAYS UNDER THIS
9 SUBSECTION. THE STATE TRANSPORTATION DEPARTMENT SHALL ISSUE A
10 DECISION ON WHETHER TO AUTHORIZE THE OPERATION OF ORVS ON THE
11 SHOULDERS OF STATE TRUNK LINE HIGHWAYS NO LATER THAN 60 DAYS AFTER
12 RECEIVING A REQUEST FOR AUTHORIZATION FROM A LOCAL UNIT OF
13 GOVERNMENT. A COUNTY MAY SUBMIT A REQUEST FOR AUTHORIZATION UNDER
14 THIS SUBSECTION TO THE STATE TRANSPORTATION DEPARTMENT ON BEHALF OF
15 1 OR MORE TOWNSHIPS OR MUNICIPALITIES LOCATED WITHIN THAT COUNTY.

16 (9) ~~(8)~~—A person shall not operate an ORV pursuant to this
17 section without displaying a lighted headlight and lighted
18 taillight.

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

1 requirements of section 81129.

2 (11) ~~(10)~~—A township that has authorized the operation of ORVs
3 on a road under subsection (3) does not have a duty to maintain the
4 road in a condition reasonably safe and convenient for the
5 operation of ORVs. A board of county road commissioners, a county
6 board of commissioners, or a municipality does not have a duty to
7 maintain a road or street under its jurisdiction in a condition
8 reasonably safe and convenient for the operation of ORVs, except
9 the following ORVs:

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

11 (b) ORVs permitted by an ordinance as provided in subsection
12 (1).

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

26 (13) ~~(12)~~—In a court action in this state, if competent
27 evidence demonstrates that a vehicle that is permitted to operate

1 on a road or street pursuant to the code was in a collision with an
2 ORV required to be operated on the far right of the maintained
3 portion of a road or street pursuant to an ordinance adopted under
4 subsection (2), (3), ~~or~~ (5), **OR (8)**, the operator of the ORV shall
5 be considered prima facie negligent.

6 (14) ~~(13)~~—A violation of an ordinance described in this
7 section is a municipal civil infraction. The ordinance may provide
8 for a maximum fine of not more than \$500.00 for a violation of the
9 ordinance. In addition, the court shall order the defendant to pay
10 the cost of repairing any damage to the environment, a road or
11 street, or public property damaged as a result of the violation.

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

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

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

1 operation of ORVs under this section.

2 (16) ~~(15)~~—As used in this section:

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

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

7 (ii) St. Clair county.

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

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

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

13 (e) "Street" means a city or village major street or city or
14 village local street as described in section 9 of 1951 PA 51, MCL
15 247.659.

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

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

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

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

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

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

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

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

1 to use an ORV within the boundaries of a state forest in order to
2 access the owner's property.

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

9 (g) Unless the vehicle is equipped with a spark arrester type
10 United States forest service approved muffler, in good working
11 order and in constant operation. Exhaust noise emission shall not
12 exceed 86 Db(A) or 82 Db(A) on a vehicle manufactured after January
13 1, 1986, when the vehicle is under full throttle, traveling in
14 second gear, and measured 50 feet at right angles from the vehicle
15 path with a sound level meter that meets the requirement of ANSI
16 S1.4 1983, using procedure and ancillary equipment therein
17 described; or 99 Db(A) or 94 Db(A) on a vehicle manufactured after
18 January 1, 1986, or that level comparable to the current sound
19 level as provided for by the United States environmental protection
20 agency when tested according to the provisions of the current SAE
21 J1287, June 86 test procedure for exhaust levels of stationary
22 motorcycles, using sound level meters and ancillary equipment
23 therein described. A vehicle subject to this part, manufactured or
24 assembled after December 31, 1972 and used, sold, or offered for
25 sale in this state, shall conform to the noise emission levels
26 established by the United States environmental protection agency
27 under the noise control act of 1972, 42 USC 4901 to 4918.

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

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

21 (j) In an area on which public hunting is permitted during the
22 regular November firearm deer season from 7 a.m. to 11 a.m. and
23 from 2 p.m. to 5 p.m., except during an emergency or for law
24 enforcement purposes, to go to and from a permanent residence or a
25 hunting camp otherwise inaccessible by a conventional wheeled
26 vehicle, to remove from public land a deer, elk, or bear that has
27 been taken under a valid license; except for the conduct of

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

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

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

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

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

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

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

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

17 (r) In a manner contrary to operating regulations on public
18 lands.

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

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

25 (ii) If the vehicle does not have a trunk or compartment
26 separate from the passenger compartment, the container is encased
27 or enclosed.

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

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