

SENATE SUBSTITUTE FOR
HOUSE BILL NO. 4299

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

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~~**A** 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 **COUNTY** roads located within the county. Not less than 45 days
8 before a public hearing on the ordinance, the county clerk shall
9 send notice of the public hearing, by certified mail, to the county
10 road commission, **TO THE LEGISLATIVE BODY OF EACH TOWNSHIP AND**

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1 MUNICIPALITY LOCATED WITHIN THE COUNTY, TO THE STATE TRANSPORTATION
2 DEPARTMENT IF THE ROAD INTERSECTS A HIGHWAY, and, if state
3 forestland is located within the county, to the department. IF THE
4 COUNTY IS A SOUTHERN COUNTY, BEFORE ADOPTING AN ORDINANCE UNDER
5 THIS SUBSECTION, THE COUNTY BOARD OF COMMISSIONERS SHALL CONSULT
6 WITH THE BOARD OF COUNTY ROAD COMMISSIONERS.

7 (3) Subject to subsection (4), ~~the township board of a~~
8 ~~township located in an eligible county~~ THE LEGISLATIVE BODY OF A
9 TOWNSHIP OR MUNICIPALITY may adopt an ordinance authorizing the
10 operation of ORVs on ~~[the maintained portion of]~~ 1 or more COUNTY
11 roads located within the township OR MUNICIPALITY, RESPECTIVELY.
12 Not less than 28 days before a public hearing on the ordinance, the
13 ~~township clerk~~ OF THE TOWNSHIP OR MUNICIPALITY shall send notice of
14 the public hearing, by certified mail, to the county road
15 commission, TO THE COUNTY BOARD OF COMMISSIONERS, TO THE
16 LEGISLATIVE BODY OF EVERY OTHER TOWNSHIP AND MUNICIPALITY LOCATED
17 WITHIN THE COUNTY, TO THE STATE TRANSPORTATION DEPARTMENT IF THE
18 ROAD INTERSECTS A HIGHWAY, and, if state forestland is located
19 within the township OR MUNICIPALITY, to the department. IF THE
20 TOWNSHIP OR MUNICIPALITY IS LOCATED IN A SOUTHERN COUNTY, BEFORE
21 ADOPTING AN ORDINANCE UNDER THIS SUBSECTION, THE LEGISLATIVE BODY
22 OF THE TOWNSHIP OR MUNICIPALITY SHALL CONSULT WITH THE BOARD OF
23 COUNTY ROAD COMMISSIONERS. This subsection does not apply to a
24 township OR MUNICIPALITY until 1 year after the effective date of
25 the amendatory act that first ~~defined eligible county so as to~~
26 ~~include~~ AUTHORIZED the county in which that township OR
27 MUNICIPALITY is located TO ADOPT AN ORDINANCE UNDER SUBSECTION (2).

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(4) The board of county road commissioners may close a **COUNTY** road to the operation of ORVs ~~under OTHERWISE AUTHORIZED PURSUANT TO~~ subsection (2) or (3) ~~[to protect the environment or if the operation of ORVs under subsection (2) or (3) poses a particular and demonstrable threat to public safety..]~~ A county road commission shall not under this subsection close more than 30% of the linear miles of **COUNTY** roads located within the county to the operation of ORVs ~~under OTHERWISE AUTHORIZED PURSUANT TO~~ subsection (2) or (3). The **LEGISLATIVE BODY OF A** township ~~board of a township located in an eligible county OR MUNICIPALITY~~ may adopt an ordinance to close a **COUNTY** road **LOCATED IN THE TOWNSHIP OR MUNICIPALITY** to the operation of ORVs ~~under OTHERWISE AUTHORIZED PURSUANT TO~~ subsection (2). **THE LEGISLATIVE BODY OF A VILLAGE MAY ADOPT AN ORDINANCE TO CLOSE A COUNTY ROAD LOCATED IN THE VILLAGE TO THE OPERATION OF ORVS OTHERWISE AUTHORIZED BY THE TOWNSHIP PURSUANT TO SUBSECTION (3). [A COUNTY ROAD MAY BE CLOSED TO THE OPERATION OF ORVS UNDER THIS SUBSECTION ONLY TO PROTECT THE ENVIRONMENT OR IF THE OPERATION OF ORVS POSES A PARTICULAR AND DEMONSTRABLE THREAT TO PUBLIC SAFETY.]**

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

(6) **THE LEGISLATIVE BODY OF A LOCAL UNIT OF GOVERNMENT MAY REQUEST THE STATE TRANSPORTATION DEPARTMENT TO AUTHORIZE THE LOCAL UNIT OF GOVERNMENT TO ADOPT AN ORDINANCE AUTHORIZING THE OPERATION OF ORVS ON A HIGHWAY, OTHER THAN AN INTERSTATE HIGHWAY, LOCATED WITHIN THE LOCAL UNIT OF GOVERNMENT. THE REQUEST SHALL DESCRIBE HOW THE AUTHORIZATION WOULD MEET THE REQUIREMENTS OF SUBSECTION (7). THE STATE TRANSPORTATION DEPARTMENT SHALL SOLICIT COMMENT ON THE REQUEST FROM THE DEPARTMENT, ORV CLUBS, AND LOCAL UNITS OF**

1 GOVERNMENT WHERE THE HIGHWAY IS LOCATED. THE STATE TRANSPORTATION
2 DEPARTMENT SHALL CONSIDER COMMENTS RECEIVED ON THE REQUEST BEFORE
3 MAKING A DECISION ON THE REQUEST. THE STATE TRANSPORTATION
4 DEPARTMENT SHALL GRANT THE REQUEST IN WHOLE OR IN PART OR DENY THE
5 REQUEST NOT MORE THAN 60 DAYS AFTER THE REQUEST IS RECEIVED. IF THE
6 STATE TRANSPORTATION DEPARTMENT GRANTS A REQUEST IN WHOLE OR IN
7 PART UNDER THIS SUBSECTION, THE LOCAL UNIT OF GOVERNMENT THAT
8 SUBMITTED THE REQUEST MAY ADOPT AN ORDINANCE AUTHORIZING THE
9 OPERATION OF ORVS ON THE HIGHWAY THAT WAS THE SUBJECT OF THE
10 REQUEST. A COUNTY MAY SUBMIT A REQUEST FOR AUTHORIZATION UNDER THIS
11 SUBSECTION ON BEHALF OF 1 OR MORE LOCAL UNITS OF GOVERNMENT LOCATED
12 WITHIN THAT COUNTY IF REQUESTED BY THOSE LOCAL UNITS OF GOVERNMENT.
13 BEFORE JANUARY 1, 2015, THE STATE TRANSPORTATION DEPARTMENT MAY
14 AUTHORIZE THE OPERATION OF ORVS ON A HIGHWAY AS PROVIDED IN THIS
15 SUBSECTION AND SUBSECTION (7) ON THE DEPARTMENT'S INITIATIVE AND
16 WITHOUT HAVING RECEIVED A REQUEST FROM A LOCAL UNIT OF GOVERNMENT.

17 (7) THE STATE TRANSPORTATION DEPARTMENT SHALL AUTHORIZE
18 OPERATION OF AN ORV UNDER SUBSECTION (6) ONLY ON A HIGHWAY THAT IS
19 NOT AN INTERSTATE HIGHWAY AND THAT MEETS 1 OR MORE OF THE FOLLOWING
20 REQUIREMENTS:

21 (A) SERVES AS A CONNECTOR BETWEEN ORV AREAS, ROUTES, OR TRAILS
22 DESIGNATED BY THE DEPARTMENT OR AN ORV USER GROUP.

23 (B) PROVIDES ACCESS TO TOURIST ATTRACTIONS, FOOD SERVICE
24 ESTABLISHMENTS, FUEL, MOTELS, OR OTHER SERVICES.

25 (C) SERVES AS A CONNECTOR BETWEEN 2 SEGMENTS OF THE SAME
26 COUNTY ROAD THAT RUN ALONG DISCONTINUOUS TOWN LINES AND ON WHICH
27 ORV USE IS AUTHORIZED PURSUANT TO SUBSECTION (2) OR (3).

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(D) INCLUDES A BRIDGE OR CULVERT THAT ALLOWS AN ORV TO CROSS A RIVER, STREAM, WETLAND, OR GULLY THAT IS NOT CROSSED BY A STREET OR COUNTY ROAD ON WHICH ORVS ARE AUTHORIZED TO OPERATE UNDER SUBSECTION (2), (3), OR (5).

(8) THE STATE TRANSPORTATION DEPARTMENT MAY CLOSE A HIGHWAY TO THE OPERATION OF ORVS OTHERWISE AUTHORIZED PURSUANT TO SUBSECTION (6) AFTER WRITTEN NOTICE TO THE CLERK OF EACH LOCAL UNIT OF GOVERNMENT WHERE THE HIGHWAY IS LOCATED AND THE SENATE AND HOUSE COMMITTEES WITH PRIMARY RESPONSIBILITY FOR NATURAL RESOURCES, RECREATION, AND TRANSPORTATION. THE NOTICE SHALL BE IN WRITING AND SENT BY FIRST-CLASS UNITED STATES MAIL OR PERSONALLY DELIVERED NOT LESS THAN 30 DAYS BEFORE THE ADOPTION OF THE RULE OR ORDER CLOSING THE HIGHWAY. THE NOTICE SHALL SET FORTH SPECIFIC REASONS FOR THE CLOSURE.

(9) ~~(6)~~ Subject to subsection (4), if a local unit of government adopts an ordinance pursuant to subsection (2), (3), or (5), a person may operate an ORV with the flow of traffic on the far right of the maintained portion of the ~~road or~~ street OR COUNTY ROAD covered by the ordinance. IF THE OPERATION OF ORVS ON A [] HIGHWAY IS AUTHORIZED PURSUANT TO SUBSECTION (6), A PERSON MAY OPERATE AN ORV WITH THE FLOW OF TRAFFIC AS FOLLOWS:

(A) ON THE RIGHT SHOULDER OF THE HIGHWAY.

(B) IF THERE IS NOT A RIGHT SHOULDER OR THE RIGHT SHOULDER IS NOT OF ADEQUATE WIDTH, ON THE RIGHT UNMAINTAINED PORTION OF THE HIGHWAY.

(C) ON THE FAR RIGHT OF THE RIGHT TRAFFIC LANE OF THE HIGHWAY, IF NECESSARY TO CROSS A BRIDGE OR CULVERT AND IF THE OPERATOR

1 BRINGS THE ORV TO A COMPLETE STOP BEFORE ENTERING AND YIELDS THE
2 RIGHT-OF-WAY TO AN APPROACHING VEHICLE ON THAT TRAFFIC LANE.

3 (10) A person shall not operate an ORV **AS AUTHORIZED** pursuant
4 to subsection (2), (3), ~~or~~ (5), **OR (6)** at a speed greater than 25
5 miles per hour or a lower posted ORV speed limit or in a manner
6 that interferes with traffic on the ~~road or street~~, **COUNTY ROAD, OR**
7 **HIGHWAY**.

8 (11) ~~(7)~~ Unless the person possesses a license as defined in
9 section 25 of the Michigan vehicle code, 1949 PA 300, MCL 257.25, a
10 person shall not operate an ORV **AS AUTHORIZED** pursuant to
11 subsection (2), (3), ~~or~~ (5), **OR (6)** if the ORV is registered as a
12 motor vehicle under chapter II of the Michigan vehicle code, 1949
13 PA 300, MCL 257.201 to 257.259, and either is more than ~~60~~ **65**
14 inches wide or has 3 wheels. ORVs operated **AS AUTHORIZED** pursuant
15 to subsection (2), (3), ~~or~~ (5), **OR (6)** shall travel single file,
16 except that an ORV may travel abreast of another ORV when it is
17 overtaking and passing, or being overtaken and passed by, another
18 ORV.

19 (12) ~~(8)~~ A person shall not operate an ORV **AS AUTHORIZED**
20 pursuant to this section without displaying a lighted headlight and
21 lighted taillight.

22 (13) ~~(9)~~ A person under 18 years of age shall not operate an
23 ORV **AS AUTHORIZED** pursuant to this section unless the person is in
24 possession of a valid driver license or under the direct
25 supervision of a parent or guardian and the person has in his or
26 her immediate possession an ORV safety certificate issued pursuant
27 to this part or a comparable ORV safety certificate issued under

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the authority of another state or a province of Canada. A person

under 12 years of age shall not operate an ORV **AS AUTHORIZED** pursuant to this section. The requirements of this subsection are in addition to any applicable requirements of section 81129.

(14) ~~(10)~~ A township that has authorized the operation of ORVs on a **COUNTY** road under subsection (3) does not have a duty to

maintain **[THE MAINTAINED PORTION OR UNMAINTAINED PORTION OF]** the **COUNTY** road in a condition reasonably safe and

convenient for the operation of ORVs. **THIS STATE DOES NOT HAVE A**

DUTY TO MAINTAIN A HIGHWAY IN [REASONABLE REPAIR SO THAT IT IS] REASONABLY SAFE AND

CONVENIENT FOR THE OPERATION OF ORVS [EXCEPT ORVS REGISTERED AND OPERATED AS MOTOR VEHICLES AS PROVIDED IN THE CODE]. A board of county road

commissioners, a county board of commissioners, or a municipality

does not have a duty to maintain **[THE MAINTAINED PORTION OR UNMAINTAINED PORTION OF]** a **COUNTY** road or street under its

jurisdiction in a condition reasonably safe and convenient for the

operation of ORVs, except the following ORVs:

(a) ORVs registered **[AND OPERATED]** as motor vehicles as provided in the code.

(b) ORVs ~~permitted by an ordinance as provided in~~ **OPERATED AS AUTHORIZED PURSUANT TO** subsection (1).

(15) ~~(11) Beginning October 19, 1993,~~ **[SUBJECT TO SECTION 5 OF 1964 PA 170, MCL 691.1405, THIS] STATE,** a board of

county road commissioners, a county board of commissioners, ~~and a~~

~~county, are, and, beginning on April 25, 1995, a municipality is, and a~~ **LOCAL UNIT OF GOVERNMENT]**

ARE immune from tort liability for injuries or damages sustained by

any person arising in any way out of the operation or use[, **ON THE MAINTAINED PORTION OR UNMAINTAINED PORTION OF A HIGHWAY, ROAD, OR STREET,**] of an ORV

~~on maintained or unmaintained roads, streets, shoulders, and~~

~~rights-of-way over which the board of county road commissioners,~~

~~the county board of commissioners, or the municipality has~~

~~jurisdiction.~~ **THAT IS NOT REGISTERED UNDER THE CODE OR THAT IS**

REGISTERED UNDER THE CODE BUT IS OPERATED AS AUTHORIZED PURSUANT TO

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SUBSECTION (2), (3), (5), OR (6). The immunity provided by this

subsection does not apply to actions **[OF AN EMPLOYEE OF THIS STATE, AN EMPLOYEE OF A BOARD OF COUNTY ROAD COMMISSIONERS, AN EMPLOYEE OF A COUNTY BOARD OF COMMISSIONERS, OR AN EMPLOYEE OF A LOCAL UNIT OF GOVERNMENT]** that constitute gross

negligence. As used in this subsection, "gross negligence" means conduct so reckless as to demonstrate a substantial lack of concern for whether an injury results.

(16) ~~(12)~~ In a court action in this state, if competent evidence demonstrates that a vehicle that is permitted to operate on a road, ~~or street,~~ **OR HIGHWAY** pursuant to the code was in a collision **ON A ROADWAY** with an ORV ~~required to be operated on the far right of the maintained portion of a road or street pursuant to an ordinance adopted under subsection (2), (3), or (5),~~ **THAT IS NOT REGISTERED UNDER THE CODE,** the operator of the ORV shall be considered prima facie negligent.

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

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

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

(b) Fifty percent to the board of county road commissioners or, in the case of a city or village, to the department responsible for street maintenance in the city or village. ~~7-HOWEVER, IF A FINE WAS COLLECTED FOR A VIOLATION OF AN ORDINANCE ADOPTED UNDER SUBSECTION (6), 50% OF THE FINE REVENUE SHALL BE APPROPRIATED TO THE STATE TRANSPORTATION DEPARTMENT. REVENUE APPROPRIATED UNDER THIS SUBDIVISION SHALL BE USED~~ for repairing damage to ~~roads or~~ streets, **COUNTY ROADS, OR HIGHWAYS** and the environment that may have been caused by ORVs and for posting signs indicating ORV speed limits or indicating whether ~~roads or~~ streets, **COUNTY ROADS, OR HIGHWAYS** are open or closed to the operation of ORVs under this section.

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

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

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

~~———— (ii) St. Clair county.—~~

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

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

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

~~———— (e) "Street" means a city or village major street or city or~~

1 ~~village local street as described in section 9 of 1951 PA 51, MCL~~
2 ~~247.659.~~

3 (19) A PERSON WHO VIOLATES A RULE PROMULGATED OR ORDER ISSUED
4 UNDER SUBSECTION (6) IS RESPONSIBLE FOR A STATE CIVIL INFRACTION
5 AND MAY BE ORDERED TO PAY A CIVIL FINE OF NOT MORE THAN \$500.00. IN
6 ADDITION, THE COURT SHALL ORDER THE DEFENDANT TO PAY THE COST OF
7 REPAIRING ANY DAMAGE TO THE ENVIRONMENT, A HIGHWAY, OR PUBLIC
8 PROPERTY AS A RESULT OF THE VIOLATION.