

Legislative Analysis



ALLOWING OFF-ROAD VEHICLES ON NORTHERN MICHIGAN ROADS

Mitchell Bean, Director
Phone: (517) 373-8080
<http://www.house.mi.gov/hfa>

House Bill 4323 as passed by the House

Sponsor: Rep. Joel Sheltroun

Committee: Tourism, Outdoor Recreation, and Natural Resources

First Analysis (4-15-08)

BRIEF SUMMARY: The bill would amend Part 811 (Off-Road Recreation Vehicles) of the Natural Resources and Environmental Protection Act to authorize 43 counties (and cities and villages contained in the specified counties) in northern Michigan to adopt ordinances allowing adults and children 12 and older to drive off-road vehicles (ORVs) *on the far right of the maintained portion of county roads (primary roads and local roads) and municipal streets (city or village major or local streets), whether paved or unpaved.*

- The definition of ORV under Michigan law includes dirt bikes, hovercraft, and, all-terrain vehicles (ATVs) such as "quads."
- Counties eligible to pass ORV ordinances opening county roads would be Mason, Lake, Osceola, Clare, Gladwin, Arenac, and Bay County, and all counties north of those counties (including all of the Upper Peninsula).
- Cities and villages within eligible counties could also pass an ordinance authorizing ORV use on its municipal streets independently of the county's decision regarding its roads. Townships are not given authority to open or close roads to ORV traffic.
- If a county voted to open some or all of its roads or streets to ORV traffic, the county road commission could designate up to 30 percent of roadways in the county closed to ORV traffic for safety or environmental reasons.
- Unlike the introduced version of the bill, the bill as passed the House would allow night riding on roadways open to ORVs if the vehicle has lighted headlights and taillights.
- There would be no driver license requirement to operate an ORV on roadways. Children and adolescents between the ages of 12 and 18 could operate ORVs on roadways either (1) with a driver license or (2) under the direct supervision of a parent. Anyone under the age of 18 would have to carry an ORV certificate with them when riding on roadways and shoulders.
- The bill would require counties and municipalities to establish an ORV Fund in which to deposit civil fines for distribution equally between (1) law enforcement and (2) road maintenance and signage.
- Portions of the bill, and the ordinances adopted under the bill, would expire after five years.

FISCAL IMPACT: There would be no fiscal impact on state government. There could be an indeterminate increase in local revenue. This amount would depend on the number and nature of violations of local ORV ordinances, authorized by this bill. Fifty percent of this

revenue would be provided to the county sheriff or police department, and 50 percent would be available for road maintenance, ORV speed limit signage, and to repair environmental damage caused by off-road vehicles.

THE APPARENT PROBLEM:

Off-road vehicles, particularly four-wheeled all-terrain vehicles or "quads," have become increasingly popular for use in farming, hunting, and recreation. Michigan has an extensive trail system providing riding opportunities for recreational ORV use. On the other hand, most ATVs are not permitted on public roads and cannot be made "street legal," due to equipment and handling issues, according to the Secretary of State's website.

Currently, ATVs can operate on public roads only in a few situations, including for agricultural purposes (with proper flags during daytime hours), when crossing public roads at right angles (when this can be done safely), and on "access routes" to trailheads. The provision authorizing access routes is found at MCL 324.81131(1), which states:

A local unit of government may pass an ordinance establishing access routes along streets and highways under its jurisdiction, if those access routes do not involve state or federal highways, and if they meet the requirements of the plan developed pursuant to Section 81127. If necessary, consent of a state or federal land management agency shall be obtained for the location of the route.

Under the "access route" option, some northern Michigan counties have adopted ordinances permitting the use of off-road vehicles on all or most county roads or road shoulders in recent years. The legality of broad ordinances opening county roads to ORV traffic has been questioned, however. In an informational letter dated April 28, 2006, the then-Chief Deputy Attorney General wrote a letter to Representative Joel Sheltrown that Section 81131(1) did not authorize a county open all or most of its roads to ORV travel:

[A] county may not adopt an ordinance that designates virtually all of its roads as "access routes." Instead, a county is only authorized to designate access routes consistent with the purpose of the statute – to provide for access to a specific DNR-approved trail, route or area as an exception to the general rule against ORV use upon a public highway, street, or public right-of-way. Accordingly, an access route must have a designated beginning point and an ending point at a DNR-approved ORV trail, route, or area. If a proposed access route does not have an ending point that directly connects with a DNR-approved OR[V] trail, route, or area, MCL 324.81131(1) requires the county to obtain permission from the appropriate state or federal land management agency for the location of the portion of the access route that extends over land managed by that agency. (Attorney General letter to Sheltrown, April 28, 2006, p. 5)

Proponents of the bill would like to give counties and municipalities wider authority to allow ATV use on public roads beyond access routes. The bill would give eligible northern counties, cities, and villages authority to pass ordinances permitting the

operation of ORVs on *the far right maintained portion* of county roads and municipal streets. County road commissions, however, would be allowed to keep up to 30 percent of county roads closed to ORV traffic for safety or environmental reasons. Fines for violations of ORV ordinances and court-ordered repair costs for environmental and road damage, along with costs allocated to counties and municipalities under the Revised Judicature Act, would be directed to an ORV Fund to be divided equally between law enforcement and road commissions for enforcement of ORV laws and for road repairs and signs.

Proponents suggest that allowing ORVs to be operated on county and municipal roads will encourage participation in this fast-growing recreational activity, boosting northern Michigan's tourism industry. ORVs are used the most when the weather does not permit skiing or snowmobiling, which would help to tourism-dependent businesses to have steadier income. Proponents say the bill might also encourage ORV enthusiasts to schedule longer riding vacations and purchase more fuel, meals, and lodging if they can ride on almost any roadways. It is a nuisance, they say, to "trailer" their vehicles to trailheads. Further, by not restricting the operation of ORVs on roadways to adults or to licensed drivers, families would be able to participate in the recreational activity together with their young children.

On the other hand, questions have been raised about the wisdom and safety of (1) promoting the use of off-road vehicles that are designed for trails and that are inherently less safe than passenger vehicles on public roads where they may be difficult to control; (2) mixing different types of vehicles going different speeds on the roadways; (3) allowing young children and unlicensed drivers to operate ORVs on roadways, particularly because a recognized problem is that many parents allow their children to ride adult-sized ATVs; and (4) promoting the operation of ATVs on paved roads despite the fact that the ATV manufacturers (represented by the Specialty Vehicle Institute of America) and the federal Consumer Product Safety Commission advise that ATVs should *never* be operated on paved roads.

Numerous other concerns about the bill include whether opening roads to off-road vehicles would expose county road commissions and auto and health insurers to increased liabilities and whether the bill might jeopardize federal highway funds because the blood alcohol limit for ATV operators (.10) is higher than the .08 blood alcohol limit for drivers of other motor vehicles. Michigan tightened its drunk driving laws for other motor vehicles to remain eligible for federal funds.

THE CONTENT OF THE BILL:

In general, the bill would authorize specified northern Michigan counties (and cities and villages but not townships within those counties) to adopt ordinances permitting the operation of off-road vehicles (ORVs) on the far right maintained portion of county roads or municipal streets (not including state highways).

Definition of ORV and ATV. An ORV is a motor driven "off-road" recreation vehicle capable of travel over natural terrain, including all-terrain vehicles (ATVs) such as

"quads," hovercraft, and dirt bikes. The definition expressly excludes snowmobiles, farm equipment, military and law enforcement vehicles, and utility company vehicles from the ORV category. ATVs are a subset of ORVs under Michigan's ORV definition. A few ORVs, such as large SUVs capable of off-road travel, are "street licensed" as motor vehicles; that is, they have a regular license plate and can be operated on regular roads and highways as well as off road in some locations. Most ORVs are not "street licensed," however, and can currently only be operated on private land or trails and public lands open to ORV travel.

MCL 324.81101(n) defines an ORV as:

"ORV" or "vehicle" means a motor driven off-road recreation vehicle capable of cross-country travel without benefit of a road or trail, on or immediately over land, snow, ice, marsh, swampland, or other natural terrain. ORV or vehicle includes, but is not limited to, a multitrack or multiwheel drive vehicle, an ATV, a motorcycle or related 2-wheel, 3-wheel, or 4-wheel vehicle, an amphibious machine, a ground effect air cushion vehicle, or other means of transportation deriving motive power from a source other than muscle or wind. "ORV" or "vehicle" does not include a registered snowmobile, a farm vehicle being used for farming, a vehicle used for military, fire, emergency, or law enforcement purposes, a vehicle owned and operated by a utility company or an oil or gas 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.

MCL 324.81101(a) defines an ATV as:

"ATV" means a 3- or 4-wheeled vehicle designed for off-road use that has low-pressure tires, has a seat designed to be straddled by the rider, and is powered by a 50cc to 500cc gasoline engine or an engine of comparable size using other fuels.

The bill would retain the existing definitions of ORV or ATV.

Requirement of ORV License. [Section 81115] Under the bill, unless an exception applied, a Department of Natural Resources (DNR) or dealer license would be required to operate (1) on natural terrain (such as land, snow, ice, marsh, and swampland); (2) on forest trails or other areas designated for ORV use; or (3) on the maintained portion of a road or street under an ordinance authorized by the bill. An exception exists for ORVs used exclusively in safety and training programs. [The current annual fee for a DNR ORV license is \$16.25. For more information about DNR ORV licenses, see Background Information.]

Operation of ORVs by children. [Section 81129] Under current law, a parent or legal guardian of a child less than 16 years old must not permit the child to operate an ORV--and the child must not operate it--unless the child is under the "direct visual supervision of an adult" *and* the child has in his or her immediate possession an ORV safety certificate (issued by the DNR or its authorized designee, another state, or a Canadian

province). Likewise, an owner of an ORV must not knowingly permit it to be operated by a child under the age of 16 unless the child is both under the direct visual supervision of an adult *and* in possession of an ORV safety certificate. On land owned by a child's parent or legal guardian, children who are at least 10 but under 12 may operate one type of ORV—a four-wheeled ATV ("quad")—if they have an ORV safety certificate and are under the direct visual supervision of an adult, not necessarily a parent or guardian.

Operation of ORVs by children for agricultural purposes is governed by Section 81122(c) which allows use of ORVs by children who are at least 16 (who are farmers, employees of farmers, or family members of farmers) to operate an ORV on the extreme right side of a roadway or highway right-of-way when it is not practicable to operate off that roadway or highway right-of-way. Such operation is restricted to traveling to or from the farmer's residence or work location or field during the course of farming operations. Use of ORVs on roadways for agricultural purposes is prohibited (1) at night, (2) when visibility is poor due to weather conditions, or (3) when it would interfere with traffic.

A child under the age of 16 may never operate a 3-wheeled ATV.

In addition, under current Section 81129, children under the age of 16 operating an ORV must have a safety certificate in their possession and present it to a peace officer upon demand (provided that the DNR has implemented an ORV safety certificate program for the vehicle they propose to operate). Moreover, children under 12 are not currently allowed to cross highways or streets on ORVs. Children who are at least 12 but not 16 are allowed to cross a highway or street or operate on the right-of-way or shoulder of designated "access routes" under Section 81131.

Under House Bill 4323, most of these existing restrictions would stay in place, but Section 81129(16) would be amended to allow children 12 and over but under 16 to not only cross highways and streets on ORVs but also to operate ORVs on far right hand side of the maintained portion of any county and municipal roads opened to ORV travel so long as he or she "has a valid ORV safety certificate in his or her immediate possession and meets any other requirements under this section for operation of the vehicle."

Further, the bill would add a new Section 81131(7) requiring children under the age of 18 operating ORVs on the county and municipal roads opened by ordinances authorized by the bill to (1) have a valid driver license *or* be under the "direct supervision" of a parent or guardian (not just any adult as in the case of youngsters operating ORVs on trails) and (2) be in possession of a valid safety certificate.

[Nothing in the bill restricts children from riding at night but it should be noted that most child-sized ATVs do not have headlights and taillights because they were prohibited by voluntary industry standards in effect until July 2007; so for a youngster to ride at night, they would likely have to use adult-sized equipment.]

Eligible counties. The bill would allow the counties of Mason, Lake, Osceola, Clare, Gladwin, Arenac, or Bay, and any county lying to the north of those counties (including all of the Upper Peninsula) to pass ORV ordinances.

[In other words, the following 43 counties would be eligible: Alcona, Alger, Alpena, Antrim, Arenac, Baraga, Bay, Benzie, Charlevoix, Cheboygan, Chippewa, Clare, Crawford, Delta, Dickinson, Emmet, Gladwin, Gogebic, Grand Traverse, Houghton, Iosco, Iron, Kalkaska, Keweenaw, Lake, Leelanau, Luce, Mackinac, Manistee, Marquette, Mason, Menominee, Missaukee, Montmorency, Ogemaw, Ontonagon, Osceola, Oscoda, Otsego, Presque Isle, Roscommon, Schoolcraft, and Wexford.]

Eligible counties could adopt an ordinance authorizing the operation of ORVs on the maintained portion of one or more roads located within the county. Cities and villages within these counties could also authorize ORV use on their streets, as described below. A "road" within the meaning of the bill is a "primary road or county local road as described in Section 5 of 1951 PA 51, MCL 247.655."

Public hearing and notice requirements for adoption of county ordinance. Not less than 28 days before a public hearing on an ORV ordinance, a county clerk would be required to send notice of the public hearing, by certified mail, to the County Road Commission and to the DNR (if there is state forestland in the county). This provision would expire five years after the bill's effective date.

County road commissions could keep up to 30 percent of linear miles of roads closed to ORVs. The road commission of a county could close a road to the operation of ORVs to protect the environment or only if the operation of ORVs would pose "a particular and demonstrable threat to public safety." The road commission could close no more than 30 percent of the linear miles of roads within the county under this provision. County ordinances would expire five years after the bill's effective date.

Municipal (city and village) ORV ordinances. The legislative body of a municipality located in an eligible county could adopt an ordinance authorizing the operation of ORVs on the maintained portion of one or more streets in the municipality. "Municipality" is defined in the bill as a city or village but does not include townships. "Street" is defined as "a city or village major street or city or village local street as defined in Section 9 of 1951 PA 51, MCL 247.659." Municipal ordinances would expire five after the bill's effective date.

Safety restrictions. In addition to other already existing applicable ORV rules (such as rules requiring helmets, protective eyewear, brakes, brake lights, and the use of lighted headlights and taillights during the hours of "1/2 hour after sunset to 1/2 hour before sunrise"), the following rules would apply to the operation of ORVs on county or municipal streets and roads, where permitted:

- ORVs would have to be driven with the flow of traffic on the far right of the maintained portion of the road or street.
- A person could not operate an ORV at a speed greater than 25 miles per hour (or lower where there is a lower posted speed limit), or in a manner that interferes with traffic.
- ORVs would have to travel single file except when passing or being passed by another ORV.

- ORVs could not be operated without a lighted headlight and lighted taillight if weather conditions have caused substantially reduced visibility (in addition to the existing requirement that they must not be operated without a lighted headlight and lighted taillight at night).
- Beginning January 1, 2010, all ORVs would be required to have a headlight and taillight.
- A minor under the age of 18 could not operate an ORV on a county or municipal road unless (1) he or she has a valid driver's license or is under the direct supervision of a parent or guardian and (2) the minor has in his or her immediate possession an appropriate ORV safety certificate.
- Children under the age of 12 years are prohibited from operating ORVs on county roads and municipal streets pursuant to an ORV ordinance.
- The provision found in the introduced version of the bill allowing riding on roads only during daylight hours has been eliminated; nighttime riding would be allowed provided lighted headlights and taillights are used.
- These additional safety rules would expire five years after the bill's effective date.

Liability. [§81131(9)-(11)] A board of county road commissioners, a county board of commissioners, or a municipality (a city or village) would *not* have a duty to maintain a road or street under its jurisdiction in a condition reasonably safe and convenient for the operation of ORVs, except for (1) ORVs registered as motor vehicles (e.g., "street legal" sports utility vehicles or motorcycles), or (2) those allowed to be operated by permanently disabled persons by a municipal ordinance.

- A county board of commissioners, county road commission, or municipality would be immune from tort liability for injuries or damages sustained by a person arising in any way out of the operation or use 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 local unit of government has jurisdiction" except in cases of "gross negligence." "*Gross negligence*" is defined as "conduct so reckless as to demonstrate a substantial lack of concern for whether an injury results."
- If an ORV required to be operated on the far right of the maintained portion of a road or street under a county or municipal ORV ordinance is in a collision with another vehicle that is permitted to be operated on the road or street under the Motor Vehicle Code, the operator of the ORV would be considered *prima facie* negligent in a court case in Michigan arising from the collision.

Municipal infraction. [§81131(12)] A violation of a county or municipal ORV ordinance would be designated a "municipal infraction," subject to a maximum fine of \$500. In addition, the court would be required to order the violator to "pay the cost of repairing any damage to the environment, a street or road, or public property damaged as a result of the violation."

ORV Fund. [§81131(13)] The treasurer of a local unit of government would have to deposit the following moneys into an "ORV Fund."

- Fines collected under Section 8379 of the Revised Judicature Act of 1961.
- Fines under an ORV ordinance.
- Damages assessed under an ORV ordinance (for the cost of repairing damage to the environment, a road or street, or public property damaged as a result of the ORV violation).

The legislative body of the local unit of government would distribute the revenue in the fund as follows: (1) 50 percent of the funds to the county sheriff or police department for ORV law enforcement and training; (2) 50 percent to the county road commission or municipal road maintenance department for repairing road or street damage and environmental damage caused by ORVs and for posting ORV speed limits or indicating whether roads or streets are open or closed to ORVs.

Operating an ORV close to dwellings and certain recreational areas. Generally speaking, under current law an ORV cannot be operated within 100 feet of a dwelling at a speed greater than the minimum required to maintain controlled forward motion. Exceptions include when an ORV is being operated on roads or trails maintained by the DNR or under its jurisdiction and on authorized access routes. Instead of the current exception for "access routes," the bill would create an exception for the operation of ORVs on any road or street on which ORV use is authorized under a county or municipal ordinance, thereby allowing ORVs to be driven at higher speeds within 100 feet of residences.

In addition, ORVs are not allowed to be operated within 100 feet of a slide, ski, or skating area except for servicing the area. The bill would create an exception to this rule for ORVs being operated on county or municipal roads under an ordinance authorized by the bill.

Finally, ORVs are not allowed to be operated within 300 feet of a dwelling at a speed greater than the minimum required to maintain controlled forward motion on adjacent private land in an area zoned residential, with an exception for roads and trails maintained by the DNR. The bill would add an exception for ORVs being operated under an ordinance authorized by the bill.

Criminal provisions. [§81147] The bill would retain the current provision that states that, except as otherwise provided, a person who violates Part 811 (Off Road Vehicles) is guilty of a misdemeanor punishable by imprisonment not to exceed 90 days or a fine of at least \$50 but not more than \$1,000, or both, for each violation. [Note: violations of certain specified sections are state civil infractions, not misdemeanors, and violations of county or municipal ordinances would be municipal civil infractions.]

Among other things, Section 81133(e) prohibits the use of ORVs on state lands except on roads and trails designated for this purpose and, generally speaking, prohibits them from being driven where could cause erosion and damage or destroy trees or growing crops. The bill would raise the minimum fine for a violation of this section from \$50 to \$250.

BACKGROUND INFORMATION:

Michigan's current ORV laws. Detailed descriptions of Michigan's current ORV laws can be found at the following online sources:

- Michigan Handbook of ORV Laws, www.offroad-ed.com/mi/handbook
- Traffic Benchbook, Third Edition, published by the Michigan Judicial Institute, http://www.courts.michigan.gov/mji/Resources/traffic/vol_2/Vol_2_Chap_4.pdf

DNR ORV Titles and Licenses. The DNR issues annual ORV licenses for a fee of \$16.25. Licenses are valid from April 1 through March 31 of the following year, regardless of the date of purchase. Vehicles that are licensed under the Motor Vehicle Code as street vehicles require an ORV license only when they are being used as an ORV. A "street legal" ORV does not need an ORV license to use forest roads, but it does need an ORV license if it is used on designated trails or in areas designated for cross-country use. Private land owners and their invited guests are not required to license ORVs that are operated exclusively on their private property.

[Note: An ORV license is not required for "street legal" vehicles used on the frozen surface of public waters or designated ORV routes.]

Licensing is required of ORVs used in areas open to public operation whether the ORV is owned by a resident or nonresident of Michigan.

Liability insurance. ATV operators are not currently required to purchase liability insurance.

Health insurance. Under federal HIPAA regulations, health insurance companies are allowed to exclude coverage for injuries sustained while riding motorcycles, ATVs, and other recreational vehicles. These regulations provide that an employer may not refuse health care coverage altogether to an employee on the basis of participation in recreational activities, but may deny coverage for injuries sustained while participating in these activities.

Michigan's public trails. Michigan's public Off-Road Vehicle (ORV) trail/route system provides four types of riding opportunities: (1) motorcycle trails, (2) all terrain vehicle (ATV) trails, (3) ORV routes which are open to all Secretary of State licensed vehicles, and (4) scramble areas.

There are five scramble areas, two of which are in state forests (St. Helen's Motorsport Area and Black Lake Scramble Area), one at Silver Lake State Park, one at Bull Gap in the Huron National Forest, and the Mounds, a Genesee County Park.

The ORV trail/route system covers 3,100 miles with 73% on state forests. Of the system, 40% is cycle trail, 43% is ATV trail and 17% is route. In the Lower Peninsula, the ORV trail/route system is the only legal place to ride ORVs that are not "street legal" other than

frozen waters and private land with permission. In the Upper Peninsula, it is legal for ORVs to operate on state forest roads as well as the designated trail system, unless a specific state forest road is posted closed to ORV use.

Helmets and protective eyewear. In Michigan, all ORV operators and passengers must wear a crash helmet approved by the U.S. Department of Transportation and protective eyewear or goggles (unless the ORV is equipped with an approved roof and the operator and passengers are wearing properly adjusted and fastened safety belts).

Higher blood alcohol limit allowed if operating an ORV. In Public Act 61 of 2003, Michigan lowered the blood alcohol limit for operators of motor vehicles to .08, in part so as not to jeopardize federal highway transportation funding. However, drunk driving laws pertaining to ORVs, watercraft, and snowmobiles remain at the higher level of .10. Bills designed to make Michigan's ORV, watercraft, and snowmobile drunk driving laws conform with the drunk driving provisions of the Michigan Vehicle Code have been introduced in the current legislative session but have not been adopted.

Under current MCL 324.81140a, however, a driver whose license has been suspended or revoked in Michigan or any other state commits a misdemeanor if he or she operates an ORV in Michigan.

Consumer Product Safety Commission. Major ATV manufacturers agreed in Consent Decrees in 1988 and in subsequent voluntary action plans, that they would not manufacture three-wheel ATVs; they would place engine size restrictions on ATVs sold for use by children under 16; and they would offer driver-training programs.

The CPSC recommends the following rules for ATV use:

- Children and young people under the age of 16 should not ride adult ATVs.
- All ATV users should take a hands-on safety training course.
- Always wear a helmet and safety gear such as boots and gloves while on an ATV.
- Never drive an ATV on paved roads.
- Never drive while under the influence of drugs or alcohol.
- Never drive a youth or single-rider adult ATV with a passenger, and never ride these vehicles as a passenger.
- There are some ATVs that are designed for two riders. Passengers on tandem ATVs should be at least 12 years old.

The CPSC has also recently proposed federal rule changes concerning ATV training and other issues. The main provisions of the ATV proposed rules include (1) mechanical requirements for ATVs; (2) a ban on the sale of new three-wheel ATVs; (3) speed limitations on ATVs intended for children under 16 years of age; (4) requirements for warnings and recommendations to be provided to purchasers of new ATVs through hang tags, labels, videos, and owner's manuals; (5) requirements for a disclosure statement to be provided to purchasers warning against the use of adult ATVs by children; (6) a requirement that all purchasers of new ATVs be offered free safety training; and (7)

requirements that purchasers of new ATVs be provided with a means for reporting safety related complaints to the manufacturer and the CPSC.

Among many other things, the CPSC proposal would require that the following warning labels be placed on all ATVs sold (similar to what was agreed to voluntarily by some manufacturers in the 1988 consent decree):

General warning label. The proposed rule requires a general warning label that contains the same statements, or substantially equivalent ones, as the general warning label required by the Consent Decrees. This label warns that ATVs can be hazardous to operate and that severe injury or death can result if the operator does not follow instructions to: Read the owners manual and all labels; never operate the ATV without proper instruction; never carry a passenger; never operate the ATV on paved surfaces or on public roads; always wear a helmet and protective clothing; never consume alcohol or drugs before or while operating ATVs; never operate the ATV at excessive speeds; and never attempt wheelies, jumps or other stunts.

To read the entire proposed rule, see: www.cpsc.gov/businfo/frnotices/fr06/066703.html

American Academy of Pediatrics (AAP). Since 1987, the AAP has had a policy concerning the use of motorized cycles and ATVs by children. Since 2000 (reaffirmed in 2004) the AAP's policy on ATV injury prevention recommends that all states pass legislation banning the use of 2- and 4-wheeled off-road vehicles by children younger than 16 years, as well the sale of new and used 3-wheelers, and proposing a recall of all used 3-wheeled ATVs. The AAP's policy statement entitled, "All-Terrain Vehicle Injury Prevention: Two-, Three-, and Four-Wheeled Unlicensed Motor Vehicles" published in Pediatrics, Vol. 105, No. 6 (June 2000) contains the following discussion of ATV injuries involving children:

(available at <http://aappolicy.aappublications.org/cgi/content/full/pediatrics;105/6/1352>)

Children younger than 16 years accounted for 47% of the injuries in 1997 and 36% of the deaths since 1985. Head injuries account for most of the deaths, which usually are instantaneous. Serious nonfatal injuries include head and spinal trauma, abdominal injuries, and multiple trauma. Abrasions, lacerations, and clavicle and extremity fractures are common and less serious. Some studies have suggested that children suffer more severe injuries. The severity of injury is the same for 3-and 4-wheeled ATVs. Currently, 4-wheeled vehicles account for 75% of the injuries, largely because of changes in the manufacture and sales of 3-wheeled ATVs after the 1988 consent decree, although many 3-wheeled ATVs remain in use. More injuries occur when ATVs are used for recreation than when they are used for nonrecreational purposes, for example as farm vehicles.

The AAP recommends that pediatricians advocate for state ATV laws that:

- Prohibit the use of ATVs, on-or off-road, by children and adolescents younger than 16 years.

- Require an automobile drivers' license, and preferably some additional certification in ATV use.
- Prohibit the use of ATVs on public streets and highways.
- Prohibit passengers from riding on ATVs.
- Prohibit operating an ATV under the influence of alcohol.
- Prohibit the use of ATVs between sundown and sunrise.

Specialty Vehicle Institute of America's position on ATVs on roads. The manufacturers of ATVs are opposed their use on public roads. The SVIA's position statement on this issue concludes: "SVIA emphasizes that ATVs are not designed, manufactured, or in any way intended for use on public streets, roads or highways and urges that on-highway use of ATVs be prohibited and law enforcement efforts be strengthened to eliminate this dangerous practice."

ARGUMENTS:

For:

Maintaining or expanding ORVs on public roadways in northern Michigan would provide a boost to Michigan's tourism industry. Much of the House committee testimony centered on the importance of maintaining or expanding northern Michigan's attractiveness as a destination for ATV enthusiasts. The popularity of the recreational use of ATVs by individuals and families is reportedly on the increase and could be further expanded if ATVs could be operated more freely on the roads.

Michigan's trail system provides many riding opportunities and the popularity of the activity may increase if we allow riders broader access to county and municipal roads and streets to purchase fuel, beverages, snacks, or meals while riding to and from trails open to ATV use. Many ATV trail riders consider it a nuisance to have to "trailer" their vehicles to trailhead parking lots, rather than simply riding to the trailheads from their homes, motels, or campgrounds.

Some other states, notably West Virginia, have riding areas (in West Virginia, the Hatfield-McCoy trails) that are major tourist attractions. Northern Michigan is an attractive destination for ATV riders, as well, and could be made even more attractive if county and municipal roads could be opened to ORV use. Given the struggling state of Michigan's economy, especially in northern Michigan and the Upper Peninsula, which are increasingly dependent on tourism, the Legislature should do everything it can to boost the popularity of this activity. ATV riding helps smooth out the peaks and valleys of the tourism industry because the prime ATV months are the months when skiing and snowmobiling are not possible.

Response:

Much of what the proponents of the bill are seeking—access to fuel, food, and small businesses—for ATV riders using Michigan's trail system could be obtained through county-designated "access routes" permitted under the current law. The bill, as written, would go further and unnecessarily open up many or all county roads to ATV traffic. The bill would allow riding for any purpose and in areas of counties not close to trails. Some people who want to lower their gas bills or go without auto insurance might even

be encouraged to use their ATVs as a primary, low-cost method of transportation. This would not encourage tourism, but would simply put uninsured, dangerous vehicles on roads for which they are not designed.

For:

The bill would give local control. The bill would not require northern counties and municipalities to open their roads to ORV traffic but would allow them to do so if they so chose.

The bill would legalize existing ordinances. Many northern counties have had ORV ordinances on the books for several years although the 2006 Attorney General letter has cast doubt upon their legality. The bill would legalize the existing ordinances which proponents say have worked well.

Against:

Most ORVs, including four-wheel ATVs (quads), are not manufactured for use on paved roads and have serious handling issues on paved roads. The Michigan Secretary of State's website says that three and four-wheel ATVs cannot be upgraded for on-road use because they are manufactured with a live axle, rather than a differential gear, which seriously affects their handling characteristics when operated on paved surfaces. Others note that the low-pressure tires typically found on ATVs are not made for paved road use and also cause ATVs to handle poorly on paved roads.

The Consumer Product Safety Commission, and the Specialty Vehicle Institute of America (a group representing ATV manufacturers), both recommend that ATVs be banned from use on paved roads. The CPSC maintains a website "atvsafety.gov" that lists not riding ATVs on paved roads or at night among its "essential life-saving tips" for ATV use. The bill would allow counties to permit both of these practices (riding on paved roads and night-time riding) strongly discouraged as dangerous by the CPSC.

Statistics supplied by the County Road Association of Michigan shows in almost all of the 43 eligible counties, more than 30 percent of the streets and roads are paved. For instance, one eligible county, Bay County which includes Bay City, the vast majority of roads are paved. Because the bill would limit county road commissions to closing no more than 30 percent of county roads to ORV traffic, the bill would promote ATV riding on paved roads, a dangerous practice.

It is also unsafe to have ORVs traveling on same roadways at a different speed than other traffic. The bill establishes a maximum speed limit of 25 miles per hour (or lower, where posted) for ORVs operating on the far right portion of county roads. Some have expressed concern that on roads where the speed limit for other vehicles is higher than 25 miles per hour, having two types of vehicles traveling at different speeds may lead to collisions and accidents, increasing the number of injuries and deaths on Michigan roadways.

Anyone operating an ORV on a county or municipal road or street should have a valid driver license. Under the bill, children as young as 12 would be allowed to operate ORVs on "opened" county and municipal roads. Some contend that the bill should be amended

to require anyone operating an ORV on a public road to have a valid driver license. The bill does not require this.

If allowed on the roads and road shoulders, should ATV operators be required to carry insurance? Under Michigan law, motor vehicle operators must carry no-fault insurance, including personal injury protection or PIP coverage. Motorcycle operators do not have to carry personal injury protection or PIP insurance, but are required to carry some liability insurance. On the other hand, ATV operators are not required to be insured at all. Further, some health insurance companies exclude coverage for ATV accidents. Is it wise to allow more uninsured vehicles on the roads?

The bill might encourage irresponsible drinkers to drive their ORVs instead of safer motor vehicles and could jeopardize federal highway funds. Unless the drunk driving limit for ORV operators is lowered from its current .10 to the .08 blood alcohol content limit applicable to other drivers, the bill might encourage irresponsible drinkers to drive their motorbikes or ATVs where allowed instead of regular motor vehicles. ATVs are inherently less safe than passenger vehicles and do not have standard safety equipment such as turn signals.

In addition, some have questioned whether Michigan would jeopardize federal highway funds if it allows ORV operators on public roadways with a higher blood alcohol concentration than is allowed for other motor vehicle drivers. Michigan tightened its drunk driving laws in recent years in part to remain eligible for federal funds.

The bill will impose increased liability on county road commissions, which are not given enough authority to close roads where ATVs would be problematic. As noted above, the bill would not give county road commissions enough authority even to close all paved roads in most counties, much less close roads with other features that make the unsafe or unsuitable for ORV traffic.

The bill should prohibit night-time riding. The bill allows night time riding for both children and adults if they use headlights and taillights. Is this wise given that most child-sized ATVs do not have headlights and taillights? If families want to ride together at night, they might be tempted to allow children to drive adult-sized ATVs, a dangerous practice that already accounts for a number of ATV accidents. Allowing ATVs to operate on public roads after dark would compound other safety issues.

The law would be difficult to enforce. ORV laws are currently already difficult to enforce. Violators can evade arrest easily by racing across fields. The bill will expand law enforcement costs without an adequate expansion of funding.

The bill raises environmental concerns. ATV operators sometimes run roughshod over private and public property rights, damaging hiking trails, stream banks, and wildlife habitats. ATVs are also noisy and often have highly-polluting two-cylinder engines. The bill would give ATVs easier access to off-limit lands.

POSITIONS:

The American Motorcyclist Association supports the bill (but supports removing the prima facie liability provision). (3-3-07)

The ATV Off Road Club of Michigan supports the bill. (3-22-07)

The Huston Real Estate Company supports the bill. (3-6-07)

The Michigan Association of Counties supports the bill. (3-22-07)

The Ogemaw County Road Commission supports the bill. (2-22-07)

The Ogemaw County Board of Commissioners supports the bill. (Undated resolution posted on Tourism Committee website)

The Presque Isle Road Commission supports the bill (but would like to see a higher registration fee dedicated to road maintenance and the elimination of the 30% limit on road commissions' authority to close roads to ORV traffic). (4-13-07)

Michigan Sheriffs' Association is neutral on the bill. (3-26-07)

The Department of Transportation is opposed to the bill. (4-11-08)

The County Road Association of Michigan is opposed to the bill. (3-15-07)

The Michigan Townships Association is opposed to the bill because it does not grant townships authority to open or close roads to ORV traffic. (3-23-07)

The Specialty Vehicle Institute of America (representing manufacturers of off-road vehicles) is opposed to the bill. (4-2-07)

Legislative Analyst: Shannan Kane
Fiscal Analyst: Kirk Lindquist

■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.