

Legislative Analysis



EXCLUDE ORVs FROM CERTAIN INSURANCE CODE REQUIREMENTS AND BENEFITS

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House Bill 5559 as enrolled

Public Act 241 of 2008

Sponsor: Rep. Gino Polidori

House Committee: Insurance

Senate Committee: Economic Development and Regulatory Reform--Discharged

Revised First Analysis (7-17-08)

BRIEF SUMMARY: The act defines "ORV" (off-road recreation vehicle) and excludes ORVs from the definition of the terms "motorcycle" and "motor vehicle" in Chapter 31 (Motor Vehicle Personal and Property Protection) of the Insurance Code with consequences as to which vehicles must be insured and eligibility for no-fault insurance benefits. The act is tie-barred to House Bill 4323 (Public Act 240 of 2008), authorizing certain counties in northern Michigan (and cities, villages, and townships within those counties) to adopt ORV ordinances allowing ORVs to travel on the far right of the maintained portion of streets and roads in those jurisdictions.

FISCAL IMPACT: The act would have no apparent fiscal impact on the state or local governments.

THE APPARENT PROBLEM: Opening certain county, city, village, and township roads and streets to ORV travel under ordinances authorized by the companion bill (House Bill 4323, Public Act 240 of 2008) will inevitably lead to an increase in the number of accidents involving ORVs, including accidents between vehicles that are insured and those that are not. Supporters of the act say that because of the way "motor vehicle" is defined in the Insurance Code, four-wheeled ATVs or "quads"—which are not insured and not registered for use on public highways—could be construed as motor vehicles under the no-fault law thus entitling ORV operators to no-fault benefits if they get into an accident, even if it is a single-vehicle ORV accident or a collision between two ORVs. The act appears to attempt to limit the Insurance Code's requirements and benefits to motor vehicles and motorcycles that have been both registered and insured for use on the public roadways. (But ORV operators would apparently remain eligible for no-fault benefits if they are in an accident with a vehicle meeting the definition of "motor vehicle.")

As introduced, House Bill 5559 would have amended Chapter 24 (Casualty Insurance Rates) of the Insurance Code to allow Michigan's insurance commissioner to order consumer refunds of certain casualty insurance rates found to be excessive or unfairly discriminatory. In contrast, as enrolled, House Bill 5559 excludes ORVs from the definitions of "motor vehicle" and "motorcycle" and adds a new definition of "ORV" to Chapter 31 of the Insurance Code.

THE CONTENT OF THE ACT:

The act amends two chapters of the Insurance Code, Chapter 24 (Casualty Insurance Rates) and Chapter 31 (Motor Vehicle Personal and Property Protection).

Chapter 24 (Casualty Insurance Rates)

The act makes a number of language changes to Chapter 24 of the Insurance Code that are apparently stylistic in nature. [The bill, as introduced, would also have amended Chapter 24 to authorize the insurance commissioner to order refunds of certain excessive or discriminatory casualty insurance rates. Those provisions were eliminated in Senate.]

Chapter 31 (Motor Vehicle and Personal Property Protection)

ORVs excluded from definition of "motorcycle" and "motor vehicle." The existing terms "motorcycle" and "motor vehicle" contained in Chapter 31 (Motor Vehicle Personal and Property Protection) of the Insurance Code are amended to exclude vehicles that meet the Insurance Code's definition of an "ORV."

Insurance Code's definition of "ORV." Section 3101(2)(g) of the act, MCL 500.3101(2)(g), defines "ORV" as follows:

"ORV" means a motor-driven recreation vehicle designed for off-road use and capable of cross-country travel without benefit of road or trail, on or immediately over land, snow, ice, marsh, swampland, or other natural terrain. ORV includes, but is not limited to, a multitrack or multiwheel drive vehicle, a motorcycle or related 2-wheel, 3-wheel, 4-wheel vehicle, an amphibious machine, a ground effect air cushion vehicle, an ATV as defined in section 81101 of the natural resources and environmental protection act, 1994 PA 451, MCL 324.81101, or other means of transportation deriving motive power from a source other than muscle or wind. ORV does not include a vehicle described in this subdivision that is registered for use upon a public highway and has the security described in section 3101 or 3103 in effect.

The latter provision appears to apply to motorcycles and other vehicles that are designed for off-road use but which also have the necessary equipment to be street legal and can be lawfully operated on public highways if appropriately registered and insured. Under the act, if such a vehicle is both registered and insured it would be considered a "motorcycle" or a "motor vehicle," but it would be considered an ORV if it is not both registered and insured.

Note: The definition of "ORV" added to the Insurance Code by the act is somewhat different than the definition of "ORV" in Part 811 (Off-Road Recreation Vehicles) of the Natural Resources and Environmental Protection Act, MCL 324.81101(n). Unlike Part

811's definition of ORV, the Insurance Code's definition of ORV does *not* exclude the following vehicles that are expressly excluded from the definition of ORV in Part 811: (1) registered snowmobiles, (2) farm vehicles being used for farming, (3) vehicles being used by military, fire, emergency, or law enforcement purposes, (4) vehicles owned and operated by utility companies or oil and gas companies when performing maintenance on their facilities or on property over which they have easements, and (5) construction or logging vehicles used in performance of their common functions, or (6) registered aircraft.

The act is tie-barred to House Bill 4323.

MCL 500.2418, 500.2618, and 500.3101

BACKGROUND INFORMATION:

In Michigan, motor vehicles owners are required to carry no-fault insurance that provides them with a number of benefits, including unlimited medical benefits coverage. The Michigan Catastrophic Claims Association (MCCA) assesses each insured motor vehicle to ensure that money is available to cover the cost of providing no-fault medical benefits. Motorcycle owners are required to purchase minimal liability coverage and to pay MCCA assessments. In exchange, motorcyclists are provided with unlimited medical benefits if they are involved in an accident with a motor vehicle. Currently, ORV operators are likewise provided with the no-fault medical benefits if they are involved in an accident with a motor vehicle. However, owners and operators of ORVs are not required to insure their vehicles or pay MCCA assessments. It can be difficult to determine what insurance requirements apply to "dual purpose" vehicles such as some motorcycles and other vehicles that have the necessary equipment to be street legal but which can be also be used on ORV trails. See, for example, Nelson v Transamerica Insurance Services, 441 Mich 508; 495 NW2d 370 (1992).

ARGUMENTS:

For:

Given that the owners of ORVs are not required to purchase no-fault coverage for their vehicles (at least those that are not registered for use on public highways), they should not receive no-fault benefits under the system for accidents involving a single ORV or between two or more ORVs. The tie-barred bill, House Bill 4323, authorizes more ORV travel on county, municipal, and township roads and streets in northern Michigan and will inevitably result in more accidents involving ORVs on the roadways. The bill will help keep the anticipated increase in the number of accidents from increasing losses to insurance companies and raising the rates of motor vehicle insurance policyholders.

Under the act, ORV operators will apparently remain eligible for no-fault benefits when they collide with motor vehicles, despite not having to purchase liability or no-fault insurance or pay MCCA assessments on their ORVs.

Against:

Is it fair to allow ORV operators on public roadways (under the companion bill) without requiring them to pay MCCA assessments and purchase at least the minimal liability insurance required of motorcyclists, given that they will receive lifetime no-fault medical benefits if they are involved in an accident with a motor vehicle? Will the bill weaken the no-fault system by encouraging motorcyclists or other motorists to treat their vehicles as ORVs rather than street legal vehicles, and thereby lead to more uninsured vehicles on the road? The difficult issues raised by the bill, especially as to dual-purpose vehicles that have the necessary equipment to be street legal but which can also be operated on trails, warrant more careful review.

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