

HOUSE BILL No. 4323

February 27, 2007, Introduced by Reps. Sheltroun, Moolenaar, Lindberg, Casperson, Palsrok, Booher, Walker, Elsenheimer, Lahti, Hansen, Moore, Espinoza, Gillard, McDowell, Meekhof, Pavlov, Hammon, Shaffer, Spade, Polidori, Stakoe, Gaffney, Lemmons, Gonzales, Bauer, Brown, Farrah, Cushingberry, Angerer, Ebli, LeBlanc, Hood, Alma Smith, Emmons, Nitz, Huizenga, Pearce, Calley, Ward, Proos, Mayes, Clemente, Ball, Horn and Cheeks and referred to the Committee on Tourism, Outdoor Recreation and Natural Resources.

A bill to amend 1994 PA 451, entitled
"Natural resources and environmental protection act,"
by amending sections 81129, 81131, and 81133 (MCL 324.81129,
324.81131, and 324.81133), section 81129 as amended by 2003 PA 111,
section 81131 as added by 1995 PA 58, and section 81133 as amended
by 1998 PA 86.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 81129. (1) Subject to subsections (2), (3), and (17), a
2 parent or legal guardian of a child less than 16 years of age shall
3 not permit the child to operate an ORV unless the child is under
4 the direct visual supervision of an adult and the child has in his
5 or her immediate possession an ORV safety certificate issued
6 pursuant to this part or a comparable ORV safety certificate issued

1 under the authority of another state or a province of Canada.

2 (2) A parent or legal guardian of a child less than 12 years
3 of age shall not permit the child to operate a 4-wheeled ATV,
4 unless the child is not less than 10 years of age and is on private
5 land owned by a parent or legal guardian of the child. This
6 subsection does not apply to the operation of an ATV used in
7 agricultural operations.

8 (3) A parent or legal guardian of a child less than 16 years
9 of age shall not permit the child to operate a 3-wheeled ATV.

10 (4) Subject to subsections (5), (6), and (17), the owner or
11 person in charge of an ORV shall not knowingly permit the vehicle
12 to be operated by a child less than 16 years of age unless the
13 child is under the direct visual supervision of an adult and the
14 child has in his or her immediate possession an ORV safety
15 certificate issued pursuant to this part or a comparable ORV safety
16 certificate issued under the authority of another state or a
17 province of Canada.

18 (5) The owner or person in charge of a 4-wheeled ATV shall not
19 knowingly permit the vehicle to be operated by a child less than 12
20 years of age, unless the child is not less than 10 years of age and
21 is on private land owned by a parent or legal guardian of the
22 child. This subsection does not apply to the operation of an ATV
23 used in agricultural operations.

24 (6) The owner or person in charge of a 3-wheeled ATV shall not
25 knowingly permit the vehicle to be operated by a child less than 16
26 years of age.

27 (7) The owner or person in charge of an ORV shall not

1 knowingly permit the vehicle to be operated by a person who is
2 incompetent to operate the vehicle because of mental or physical
3 disability except as provided in section 81131.

4 (8) The department shall implement a comprehensive ORV
5 information, safety education, and training program that shall
6 include the training of operators and the preparation and
7 dissemination of information and safety advice to the public. The
8 program shall provide for the training of youthful operators and
9 for the issuance of ORV safety certificates to those who
10 successfully complete the training provided under the program and
11 may include separate instruction for each type of ORV.

12 (9) In implementing a program ~~that is established pursuant to~~
13 ~~this section~~ **UNDER SUBSECTION (8)**, the department shall cooperate
14 with private organizations and associations, private and public
15 corporations, the department of education, the department of state,
16 and local governmental units. The department shall consult with ORV
17 and environmental organizations and associations in regard to the
18 subject matter of a training program and performance testing that
19 leads to certification of ORV operators.

20 (10) The department may designate a person it considers
21 qualified to provide course instruction and to award ORV safety
22 certificates.

23 (11) The department may promulgate rules to implement
24 subsections (8) to (10).

25 (12) Subject to subsections (13), (14), and (17), a child who
26 is less than 16 years of age may operate an ORV if the child is
27 under the direct visual supervision of an adult and the child has

1 in his or her immediate possession an ORV safety certificate issued
2 pursuant to this section or a comparable ORV safety certificate
3 issued under the authority of another state or a province of
4 Canada.

5 (13) A child who is less than 12 years of age shall not
6 operate a 4-wheeled ATV, unless the child is not less than 10 years
7 of age and is on private land owned by a parent or legal guardian
8 of the child. This subsection does not apply to the operation of an
9 ATV used in agricultural operations.

10 (14) A child who is less than 16 years of age shall not
11 operate a 3-wheeled ATV.

12 (15) When operating an ORV, ~~under subsection (12),~~ a child **WHO**
13 **IS LESS THAN 16 YEARS OF AGE** shall present the ORV safety
14 certificate to a peace officer upon demand.

15 (16) Notwithstanding any other provision of this section, an
16 operator who is less than 12 years of age shall not cross a highway
17 or street. An operator who is not less than 12 years of age but
18 less than 16 years of age may cross a highway or street or operate
19 on the right-of-way or shoulder of ~~designated access routes~~ **STREETS**
20 **AND ROADS ON WHICH ORV USE IS AUTHORIZED** pursuant to section ~~81131~~
21 **81131(2) OR (4)** if the operator has a valid ORV safety certificate
22 in his or her immediate possession and meets any other requirements
23 under this section for operation of the vehicle.

24 (17) The requirement of possession or presentation of an ORV
25 safety certificate under this section does not apply until
26 implementation of the program for the vehicle proposed to be
27 operated required by subsection (8).

1 Sec. 81131. ~~(1) A local unit of government may pass an~~
2 ~~ordinance establishing access routes along streets and highways~~
3 ~~under its jurisdiction, if those access routes do not involve state~~
4 ~~or federal highways, and if they meet the requirements of the plan~~
5 ~~developed pursuant to section 81127. If necessary, consent of a~~
6 ~~state or federal land management agency shall be obtained for the~~
7 ~~location of the route.~~

8 (1) ~~(2)~~ A municipality may pass an ordinance allowing a
9 permanently disabled person to operate an ORV in that municipality.

10 (2) THE COUNTY BOARD OF COMMISSIONERS OF A COUNTY LYING NORTH
11 OF THE SOUTH LINE OF TOWNSHIP 12 NORTH MAY ADOPT AN ORDINANCE
12 AUTHORIZING THE OPERATION OF ORVS ON THE RIGHT-OF-WAY OF PUBLIC
13 STREETS AND ROADS LOCATED WITHIN THE COUNTY.

14 (3) IF A COUNTY ADOPTS AN ORDINANCE UNDER SUBSECTION (2), THE
15 BOARD OF COUNTY ROAD COMMISSIONERS MAY CLOSE A STREET OR ROAD
16 RIGHT-OF-WAY TO THE OPERATION OF ORVS TO PROTECT THE ENVIRONMENT OR
17 IF THE OPERATION OF ORVS ON THE ROAD RIGHT-OF-WAY POSES A
18 PARTICULAR AND DEMONSTRABLE THREAT TO PUBLIC SAFETY. A COUNTY ROAD
19 COMMISSION SHALL NOT UNDER THIS SUBSECTION CLOSE MORE THAN 30% OF
20 THE LINEAR MILES OF STREETS OR ROADS LOCATED WITHIN THE COUNTY TO
21 THE OPERATION OF ORVS ON THE RIGHT-OF-WAY.

22 (4) A COUNTY BOARD OF COMMISSIONERS MAY BY RESOLUTION
23 AUTHORIZE A MUNICIPALITY WITHIN THE COUNTY TO ADOPT AN ORDINANCE
24 EXERCISING THE POWERS OF A COUNTY UNDER SUBSECTIONS (2) AND (3)
25 WITH RESPECT TO ROADS AND STREETS LOCATED WITHIN THAT MUNICIPALITY.

26 (5) IF A COUNTY OR MUNICIPALITY ADOPTS AN ORDINANCE PURSUANT
27 TO SUBSECTION (2) OR (4), RESPECTIVELY, A PERSON MAY OPERATE AN ORV

1 WITH THE FLOW OF TRAFFIC ON THE EXTREME RIGHT SIDE OF A STREET OR
 2 ROAD RIGHT-OF-WAY, WHETHER OR NOT THE ORV IS LICENSED UNDER SECTION
 3 81115. A PERSON SHALL NOT OPERATE AN ORV PURSUANT TO SUBSECTION (2)
 4 OR (4) DURING THE PERIOD BEGINNING 30 MINUTES AFTER SUNSET AND
 5 ENDING 30 MINUTES BEFORE SUNRISE, WHEN VISIBILITY IS SUBSTANTIALLY
 6 REDUCED DUE TO WEATHER CONDITIONS, OR IN A MANNER THAT INTERFERES
 7 WITH TRAFFIC ON THE STREET OR ROAD. A PERSON SHALL NOT OPERATE AN
 8 ORV PURSUANT TO SUBSECTION (2) OR (4) AT A SPEED GREATER THAN 25
 9 MILES PER HOUR OR A LOWER POSTED ORV SPEED LIMIT. ORVS OPERATED ON
 10 A STREET OR ROAD RIGHT-OF-WAY PURSUANT TO SUBSECTION (2) OR (4)
 11 SHALL TRAVEL SINGLE FILE, EXCEPT THAT AN ORV MAY TRAVEL ABREAST OF
 12 ANOTHER ORV WHEN IT IS OVERTAKING AND PASSING, OR BEING OVERTAKEN
 13 AND PASSED BY, ANOTHER ORV. BEGINNING JANUARY 1, 2010, A PERSON
 14 SHALL NOT OPERATE AN ORV PURSUANT TO SUBSECTION (2) OR (4) WITHOUT
 15 DISPLAYING A LIGHTED HEADLIGHT AND LIGHTED TAILLIGHT.

16 (6) A PERSON UNDER 18 YEARS OF AGE SHALL NOT OPERATE AN ORV
 17 PURSUANT TO SUBSECTION (2) OR (4) UNLESS HE OR SHE IS IN POSSESSION
 18 OF A VALID DRIVER'S LICENSE OR UNDER THE DIRECT SUPERVISION OF A
 19 PARENT OR GUARDIAN.

20 (7) ~~(3)~~ A board of county road commissioners, a county board
 21 of commissioners, ~~and a local unit of government do~~ OR A
 22 **MUNICIPALITY DOES** not have a duty to maintain a ~~highway~~ **ROAD** under
 23 ~~their respective jurisdictions~~ **ITS JURISDICTION** in a condition
 24 reasonably safe and convenient for the operation of ORVs, except
 25 the following ORVs:

- 26 (a) ORVs registered as motor vehicles as provided in the code.
- 27 (b) ORVs permitted by an ordinance as provided in subsection

1 ~~(2)~~-(1) .

2 (8) ~~(4)~~Beginning October 19, 1993, a board of county road
3 commissioners, a county board of commissioners, and a county are,
4 and, beginning on April 25, 1995, a municipality is, immune from
5 tort liability for injuries or damages sustained by any person
6 arising in any way out of the operation or use of an ORV on
7 maintained or unmaintained ~~highways~~**ROADS, STREETS**, shoulders, and
8 rights-of-way over which the board of county road commissioners,
9 the county board of commissioners, or the local unit of government
10 has jurisdiction. The immunity provided by this subsection does not
11 apply to actions that constitute gross negligence. ~~Gross negligence~~
12 ~~is defined as~~**AS USED IN THIS SUBSECTION, "GROSS NEGLIGENCE" MEANS**
13 conduct so reckless as to demonstrate a substantial lack of concern
14 for whether an injury results.

15 (9) IN A COURT ACTION IN THIS STATE, IF COMPETENT EVIDENCE
16 DEMONSTRATES THAT A VEHICLE THAT IS PERMITTED TO OPERATE ON A
17 STREET OR ROAD PURSUANT TO THE CODE WAS IN A COLLISION WITH AN ORV
18 OPERATED ON THE RIGHT-OF-WAY PURSUANT TO AN ORDINANCE ADOPTED UNDER
19 THIS SECTION, THE OPERATOR OF THE ORV SHALL BE CONSIDERED PRIMA
20 FACIE NEGLIGENT.

21 (10) A VIOLATION OF AN ORDINANCE DESCRIBED IN THIS SECTION IS
22 A MUNICIPAL CIVIL INFRACTION. THE ORDINANCE MAY PROVIDE FOR A
23 MAXIMUM FINE OF NOT MORE THAN \$500.00 FOR A VIOLATION OF THE
24 ORDINANCE. IN ADDITION, THE COURT SHALL ORDER THE DEFENDANT TO PAY
25 THE COST OF REPAIRING ANY DAMAGE TO THE ENVIRONMENT, A STREET OR
26 ROAD, OR PUBLIC PROPERTY DAMAGED AS A RESULT OF THE VIOLATION.

27 (11) THE TREASURER OF THE LOCAL UNIT OF GOVERNMENT SHALL

1 DEPOSIT FINES AND DAMAGES COLLECTED UNDER SUBSECTION (10) INTO A
2 FUND TO BE DESIGNATED AS THE "ORV FUND". THE LEGISLATIVE BODY OF
3 THE LOCAL UNIT OF GOVERNMENT SHALL APPROPRIATE REVENUE IN THE ORV
4 FUND AS FOLLOWS:

5 (A) FIFTY PERCENT TO THE COUNTY SHERIFF OR POLICE DEPARTMENT
6 RESPONSIBLE FOR LAW ENFORCEMENT IN THE LOCAL UNIT OF GOVERNMENT FOR
7 ORV ENFORCEMENT AND TRAINING.

8 (B) FIFTY PERCENT TO THE BOARD OF COUNTY ROAD COMMISSIONERS
9 OR, IN THE CASE OF A CITY OR VILLAGE, TO THE DEPARTMENT RESPONSIBLE
10 FOR STREET MAINTENANCE IN THE CITY OR VILLAGE, FOR REPAIRING DAMAGE
11 TO STREETS OR ROADS AND THE ENVIRONMENT CAUSED BY ORVS AND FOR
12 POSTING ORV SPEED LIMITS.

13 Sec. 81133. A person shall not operate an ORV:

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

17 (b) Unless the person and any passenger in or on the vehicle
18 is wearing on his or her head a crash helmet and protective eyewear
19 approved by the United States department of transportation. This
20 subdivision does not apply if the vehicle is equipped with a roof
21 that meets or exceeds standards for a crash helmet and the operator
22 and each passenger is wearing a properly adjusted and fastened
23 safety belt.

24 (c) During the hours of 1/2 hour after sunset to 1/2 hour
25 before sunrise without displaying a lighted headlight and lighted
26 taillight.

27 (d) Unless equipped with a braking system that may be operated

1 by hand or foot, capable of producing deceleration at 14 feet per
2 second on level ground at a speed of 20 miles per hour; a brake
3 light, brighter than the taillight, visible when the brake is
4 activated to the rear of the vehicle when the vehicle is operated
5 during the hours of 1/2 hour after sunset and 1/2 hour before
6 sunrise; and a throttle so designed that when the pressure used to
7 advance the throttle is removed, the engine speed will immediately
8 and automatically return to idle.

9 (e) In a state game area or state park or recreation area,
10 except on roads, trails, or areas designated for this purpose; on
11 state owned lands under the control of the department other than
12 game areas, state parks, or recreational areas where the operation
13 would be in violation of rules promulgated by the department; in a
14 forest nursery or planting area; on public lands posted or
15 reasonably identifiable as an area of forest reproduction, and when
16 growing stock may be damaged; in a dedicated natural area of the
17 department; or in any area in such a manner as to create an erosive
18 condition, or to injure, damage, or destroy trees or growing crops.
19 However, the department may permit an owner and guests of the owner
20 to use an ORV within the boundaries of a state forest in order to
21 access the owner's property.

22 (f) On the frozen surface of public waters within 100 feet of
23 a person not in or upon a vehicle, or within 100 feet of a fishing
24 shanty or shelter or an area that is cleared of snow for skating
25 purposes, except at the minimum speed required to maintain
26 controlled forward movement of the vehicle, or as may be authorized
27 by permit in special events.

1 (g) Unless the vehicle is equipped with a spark arrester type
2 United States forest service approved muffler, in good working
3 order and in constant operation. Exhaust noise emission shall not
4 exceed 86 Db(A) or 82 Db(A) on a vehicle manufactured after January
5 1, 1986, when the vehicle is under full throttle, traveling in
6 second gear, and measured 50 feet at right angles from the vehicle
7 path with a sound level meter ~~which~~ **THAT** meets the requirement of
8 ANSI S1.4 1983, using procedure and ancillary equipment therein
9 described; or 99 Db(A) or 94 Db(A) on a vehicle manufactured after
10 January 1, 1986, or that level comparable to the current sound
11 level as provided for by the United States environmental protection
12 agency when tested according to the provisions of the current SAE
13 J1287, June 86 test procedure for exhaust levels of stationary
14 motorcycles, using sound level meters and ancillary equipment
15 therein described. A vehicle subject to this part, manufactured or
16 assembled after December 31, 1972 and used, sold, or offered for
17 sale in this state, shall conform to the noise emission levels
18 established by the United States environmental protection agency
19 under the noise control act of 1972, ~~Public Law 92-574, 86 Stat.~~
20 ~~1234-42 USC 4901 TO 4918.~~

21 (h) Within 100 feet of a dwelling at a speed greater than the
22 minimum required to maintain controlled forward movement of the
23 vehicle, except on property owned or under the operator's control
24 or on which the operator is an invited guest, or on a roadway,
25 forest road, or forest trail maintained by or under the
26 jurisdiction of the department, or on ~~an ORV access route as~~
27 ~~authorized by local ordinance~~ **A STREET OR ROAD ON WHICH ORV USE IS**

1 **AUTHORIZED PURSUANT TO SECTION 81131(2) OR (4).**

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

15 (j) In an area on which public hunting is permitted during the
16 regular November firearm deer season from 7 a.m. to 11 a.m. and
17 from 2 p.m. to 5 p.m., except during an emergency or for law
18 enforcement purposes, to go to and from a permanent residence or a
19 hunting camp otherwise inaccessible by a conventional wheeled
20 vehicle, to remove **FROM PUBLIC LAND** a deer, elk, or bear ~~from~~
21 ~~public land which~~ **THAT** has been taken under a valid license; ~~or~~
22 except for the conduct of necessary work functions involving land
23 and timber survey, communication and transmission line patrol, and
24 timber harvest operations; or **EXCEPT** on property owned or under
25 control of the operator or on which the operator is an invited
26 guest. A hunter removing game pursuant to this subdivision ~~shall be~~
27 ~~allowed to~~ **MAY** leave the designated trail or forest road only to

1 retrieve the game and shall not exceed 5 miles per hour. A vehicle
2 registered under the code is exempt from this subdivision while
3 operating on a public highway or public or private road capable of
4 sustaining automobile traffic. A person holding a valid permit to
5 hunt from a standing vehicle issued pursuant to part 401, or a
6 person with disabilities using an ORV to access public lands for
7 purposes of hunting or fishing through use of a designated trail or
8 forest road, is exempt from this subdivision.

9 (k) While transporting on the vehicle a bow unless unstrung or
10 encased, or a firearm unless unloaded and securely encased, or
11 equipped with and made inoperative by a manufactured keylocked
12 trigger housing mechanism.

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

15 (m) Within 100 feet of a slide, ski, or skating area, unless
16 the vehicle is being used for the purpose of servicing the area **OR**
17 **IS BEING OPERATED PURSUANT TO SECTION 81131(2) OR (4).**

18 (n) On an operating or nonabandoned railroad or railroad
19 right-of-way, or public utility right-of-way, other than for the
20 purpose of crossing at a clearly established site intended for
21 vehicular traffic, except railroad, public utility, or law
22 enforcement personnel while in performance of their duties, and
23 except if the right-of-way is designated as ~~established~~ **PROVIDED**
24 **FOR** in section 81127.

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

1 (p) To hunt, pursue, worry, kill, or attempt to hunt, pursue,
2 worry, or kill ~~a bird or~~ **AN** animal, **WHETHER** wild or domesticated.

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

4 (r) In a manner contrary to operating regulations on public
5 lands.

6 (s) While transporting or possessing, in or on the vehicle,
7 alcoholic liquor in a container that is open or uncapped or upon
8 which the seal is broken, except under either of the following
9 circumstances:

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

12 (ii) If the vehicle does not have a trunk or compartment
13 separate from the passenger compartment, the container is encased
14 or enclosed.

15 (t) While transporting any passenger in or upon an ORV unless
16 the manufacturing standards for the vehicle make provisions for
17 transporting passengers.

18 (u) On adjacent private land, in an area zoned residential,
19 within 300 feet of a dwelling at a speed greater than the minimum
20 required to maintain controlled forward movement of the vehicle
21 except on a roadway, forest road, or forest trail maintained by or
22 under the jurisdiction of the department, or on ~~an ORV access route~~
23 ~~as authorized by local ordinance~~ **A STREET OR ROAD ON WHICH ORV USE**
24 **IS AUTHORIZED PURSUANT TO SECTION 81131(2) OR (4).**