

HOUSE BILL No. 4507

March 4, 2009, Introduced by Reps. Espinoza, Sheltroun and Terry Brown 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 section 81131 (MCL 324.81131), as amended by 2008 PA
240.

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 subsections (4) and (7), 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 subsections (4) and (7), beginning 1 year after
4 the effective date of the amendatory act that added this
5 subsection, the township board of a township located in an eligible
6 county may adopt an ordinance authorizing the operation of ORVs on
7 the maintained portion of 1 or more roads located within the
8 township. Not less than 28 days before a public hearing on the
9 ordinance, the township clerk shall send notice of the public
10 hearing, by certified mail, to the county road commission and, if
11 state forestland is located within the township, to the department.

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

22 (5) Subject to subsection (7), the legislative body of a
23 municipality located in an eligible county may adopt an ordinance
24 authorizing the operation of ORVs on the maintained portion of 1 or
25 more streets within the municipality.

26 (6) Subject to subsections (4) and (7), if a local unit of
27 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 covered by the ordinance. A person shall not operate an ORV pursuant to subsection (2), (3), or (5) at a speed greater than 25 miles per hour or a lower posted ORV speed limit or in a manner that interferes with traffic on the road or street. Unless the person possesses a license as defined in section 25 of the Michigan vehicle code, 1949 PA 300, MCL 257.25, a person shall not operate an ORV pursuant to subsection (2), (3), or (5) if the ORV is registered as a motor vehicle under chapter II of the Michigan vehicle code, 1949 PA 300, MCL 257.201 to 257.259, and either is more than 60 inches wide or has 3 wheels. ORVs operated pursuant to subsection (2), (3), or (5) shall travel single file, except that an ORV may travel abreast of another ORV when it is overtaking and passing, or being overtaken and passed by, another ORV.

(7) Subsections (2) to (6) and an ordinance adopted under subsection (2), (3), or (5) do not apply ~~beginning 5 years after the effective date of the amendatory act that added this subsection~~
AFTER JULY 16, 2013.

(8) In addition to any applicable requirement of section 81133(c), a person shall not operate an ORV pursuant to this section when visibility is substantially reduced due to weather conditions without displaying a lighted headlight and lighted taillight. Beginning January 1, 2010, a person shall not operate an ORV pursuant to this section without displaying a lighted headlight and lighted taillight.

(9) A person under 18 years of age shall not operate an ORV

1 pursuant to this section unless the person is in possession of a
2 valid driver license or under the direct supervision of a parent or
3 guardian and the person has in his or her immediate possession an
4 ORV safety certificate issued pursuant to this part or a comparable
5 ORV safety certificate issued under the authority of another state
6 or a province of Canada. A person under 12 years of age shall not
7 operate an ORV pursuant to this section. The requirements of this
8 subsection are in addition to any applicable requirements of
9 section 81129.

10 (10) A township that has authorized the operation of ORVs on a
11 road under subsection (3) does not have a duty to maintain the road
12 in a condition reasonably safe and convenient for the operation of
13 ORVs. A board of county road commissioners, a county board of
14 commissioners, or a municipality does not have a duty to maintain a
15 road or street under its jurisdiction in a condition reasonably
16 safe and convenient for the operation of ORVs, except the following
17 ORVs:

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

19 (b) ORVs permitted by an ordinance as provided in subsection
20 (1).

21 (11) Beginning October 19, 1993, a board of county road
22 commissioners, a county board of commissioners, and a county are,
23 and, beginning on April 25, 1995, a municipality is, immune from
24 tort liability for injuries or damages sustained by any person
25 arising in any way out of the operation or use of an ORV on
26 maintained or unmaintained roads, streets, shoulders, and rights-
27 of-way over which the board of county road commissioners, the

1 county board of commissioners, or the municipality has
2 jurisdiction. The immunity provided by this subsection does not
3 apply to actions that constitute gross negligence. As used in this
4 subsection, "gross negligence" means conduct so reckless as to
5 demonstrate a substantial lack of concern for whether an injury
6 results.

7 (12) In a court action in this state, if competent evidence
8 demonstrates that a vehicle that is permitted to operate on a road
9 or street pursuant to the code was in a collision with an ORV
10 required to be operated on the far right of the maintained portion
11 of a road or street pursuant to an ordinance adopted under
12 subsection (2), (3), or (5), the operator of the ORV shall be
13 considered prima facie negligent.

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

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

27 (a) Fifty percent to the county sheriff or police department

1 responsible for law enforcement in the local unit of government for
2 ORV enforcement and training.

3 (b) Fifty percent to the board of county road commissioners
4 or, in the case of a city or village, to the department responsible
5 for street maintenance in the city or village, for repairing damage
6 to roads or streets and the environment that may have been caused
7 by ORVs and for posting signs indicating ORV speed limits or
8 indicating whether roads or streets are open or closed to the
9 operation of ORVs under this section.

10 (15) As used in this section:

11 (a) "Eligible county" means **ANY OF THE FOLLOWING:**

12 (i) Mason, Lake, Osceola, Clare, Gladwin, Arenac, or Bay county
13 or a county lying north thereof, including all of the counties of
14 the Upper Peninsula.

15 (ii) **HURON, TUSCOLA, SANILAC, OR ST. CLAIR COUNTY.**

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

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

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

21 (e) "Street" means a city or village major street or city or
22 village local street as described in section 9 of 1951 PA 51, MCL
23 247.659.