

HOUSE BILL No. 5191

December 11, 2013, Introduced by Reps. Rendon, Bumstead, Kivela, Daley, Goike, Potvin, Kurtz, Pettalia, Outman, Kelly, Muxlow, Johnson, Yonker, Pagel, Lauwers, Dianda, Jenkins, Graves, Denby, Victory, Glardon, Crawford, Genetski, Hooker, Franz, McBroom, Lyons, Foster, Smiley, Brunner, Schmidt, LaVoy, Lori, Kosowski, Zorn, Haveman, Cotter, Santana, MacGregor, Somerville, VerHeulen, Jacobsen, MacMaster, Pscholka, Kowall, Forlini, Leonard, Shirkey, McMillin, Rogers, Callton and Howrylak and referred to the Committee on Tourism.

A bill to amend 1994 PA 451, entitled
"Natural resources and environmental protection act,"
by amending sections 81133 and 81147 (MCL 324.81133 and 324.81147),
as amended by 2013 PA 119.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 81133. (1) An individual shall not operate an ORV:

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

5 ~~— (b) Unless the individual and any passenger in or on the~~
6 ~~vehicle is wearing on his or her head a crash helmet and protective~~
7 ~~eyewear approved by the United States department of transportation.~~
8 ~~This subdivision does not apply to either of the following:~~

~~(i) The operator of or a passenger in a vehicle that is equipped with a roof that meets or exceeds standards for a crash helmet if the operator and each passenger is wearing a properly adjusted and fastened safety belt.~~

~~(ii) The operator of or a passenger in an ORV that is operated on a state licensed game bird hunting preserve at a speed of not greater than 10 miles per hour.~~

(B) ~~(e)~~ During the hours of 1/2 hour after sunset to 1/2 hour before sunrise without displaying a lighted headlight and lighted taillight. The requirements of this subdivision are in addition to any applicable requirements of section 81131(12).

(C) ~~(d)~~ Unless **THE VEHICLE IS** equipped with a braking system that may be operated by hand or foot, capable of producing deceleration at 14 feet per second on level ground at a speed of 20 miles per hour; a brake light, brighter than the taillight, visible from behind the vehicle when the brake is activated, if the vehicle is operated during the hours of 1/2 hour after sunset and 1/2 hour before sunrise; and a throttle so designed that when the pressure used to advance the throttle is removed, the engine speed will immediately and automatically return to idle.

(D) ~~(e)~~ In a state game area or state park or recreation area, except on roads, trails, or areas designated for this purpose; on other state-owned lands under the control of the department where the operation would be in violation of rules promulgated by the department; in a forest nursery or planting area; on public lands posted or reasonably identifiable as an area of forest

1 reproduction, and when growing stock may be damaged; in a dedicated
2 natural area of the department; or in any area in such a manner as
3 to create an erosive condition, or to injure, damage, or destroy
4 trees or growing crops. However, the department may permit an owner
5 and guests of the owner to use an ORV within the boundaries of a
6 state forest in order to access the owner's property.

7 (E) ~~(F)~~—On the frozen surface of public waters within 100 feet
8 of an individual not in or upon a vehicle, or within 100 feet of a
9 fishing shanty or shelter or an area that is cleared of snow for
10 skating purposes, except at the minimum speed required to maintain
11 controlled forward movement of the vehicle, or as may be authorized
12 by permit in special events.

13 (F) ~~(G)~~—Unless the vehicle is equipped with a spark arrester
14 type United States forest service approved muffler, in good working
15 order and in constant operation. Exhaust noise emission shall not
16 exceed 86 Db(A) or 82 Db(A) on a vehicle manufactured after January
17 1, 1986, when the vehicle is under full throttle, traveling in
18 second gear, and measured 50 feet at right angles from the vehicle
19 path with a sound level meter that meets the requirement of ANSI
20 S1.4 1983, using procedure and ancillary equipment therein
21 described; or 99 Db(A) or 94 Db(A) on a vehicle manufactured after
22 January 1, 1986, or that level comparable to the current sound
23 level as provided for by the United States environmental protection
24 agency when tested according to the provisions of the current SAE
25 J1287, June 86 test procedure for exhaust levels of stationary
26 motorcycles, using sound level meters and ancillary equipment
27 therein described. A vehicle subject to this part, manufactured or

1 assembled after December 31, 1972 and used, sold, or offered for
2 sale in this state, shall conform to the noise emission levels
3 established by the United States environmental protection agency
4 under the noise control act of 1972, 42 USC 4901 to 4918.

5 (G) ~~(h)~~—Within 100 feet of a dwelling at a speed greater than
6 the minimum required to maintain controlled forward movement of the
7 vehicle, except under any of the following circumstances:

8 (i) On property owned by or under the operator's control or on
9 which the operator is an invited guest.

10 (ii) On a forest road or forest trail if the forest road or
11 forest trail is maintained by or under the jurisdiction of the
12 department.

13 (iii) On a street, county road, or highway on which ORV use is
14 authorized pursuant to section 81131(2), (3), (5), or (6).

15 (H) ~~(i)~~—In or upon the lands of another without the written
16 consent of the owner, the owner's agent, or a lessee, when required
17 by part 731. The operator of the vehicle is liable for damage to
18 private property caused by operation of the vehicle, including, but
19 not limited to, damage to trees, shrubs, or growing crops, injury
20 to other living creatures, or erosive or other ecological damage.
21 The owner of the private property may recover from the individual
22 responsible nominal damages of not less than the amount of damage
23 or injury. Failure to post private property or fence or otherwise
24 enclose in a manner to exclude intruders or of the private property
25 owner or other authorized person to personally communicate against
26 trespass does not imply consent to ORV use.

27 (I) ~~(j)~~—In an area on which public hunting is permitted during

1 the regular November firearm deer season, from 7 a.m. to 11 a.m.
2 and from 2 p.m. to 5 p.m., except during an emergency or for law
3 enforcement purposes, to go to and from a permanent residence or a
4 hunting camp otherwise inaccessible by a conventional wheeled
5 vehicle, or to remove from public land a deer, elk, or bear that
6 has been taken under a valid license; except to conduct necessary
7 work functions involving land and timber survey, communication and
8 transmission line patrol, or timber harvest operations; or except
9 on property owned or under control of the operator or on which the
10 operator is an invited guest. A hunter removing game under this
11 subdivision may leave the designated trail or forest road only to
12 retrieve the game and shall not exceed 5 miles per hour. A vehicle
13 registered under the code is exempt from this subdivision while
14 operating on a private road capable of sustaining automobile
15 traffic or a street, county road, or highway. A person holding a
16 valid permit to hunt from a standing vehicle issued under part 401,
17 or a person with a disability using an ORV to access public lands
18 for purposes of hunting or fishing through use of a designated
19 trail or forest road, is exempt from this subdivision. An
20 individual holding a valid permit to hunt from a standing vehicle
21 issued under part 401, or a person with a disability using an ORV
22 to access public lands for purposes of hunting or fishing, may
23 display a flag, the color of which the department shall determine,
24 to identify himself or herself as a person with a disability or an
25 individual holding a permit to hunt from a standing vehicle under
26 part 401.

27 (J) ~~(K)~~—Except as otherwise provided in section 40111(3) or

1 (4), while transporting on the vehicle a bow unless unstrung or
2 encased, or a firearm unless unloaded and securely encased, or
3 equipped with and made inoperative by a manufactured keylocked
4 trigger housing mechanism.

5 (K) ~~(I)~~—On or across a cemetery or burial ground, or land used
6 as an airport.

7 (I) ~~(M)~~—Within 100 feet of a slide, ski, or skating area,
8 unless the vehicle is being used for the purpose of servicing the
9 area or is being operated pursuant to section 81131(2), (3), (5),
10 or (6).

11 (M) ~~(N)~~—On an operating or nonabandoned railroad or railroad
12 right-of-way, or public utility right-of-way, other than for the
13 purpose of crossing at a clearly established site intended for
14 vehicular traffic, except railroad, public utility, or law
15 enforcement personnel while in performance of their duties, and
16 except if the right-of-way is designated as provided for in section
17 81127.

18 (N) ~~(O)~~—In or upon the waters of any stream, river, bog,
19 wetland, swamp, marsh, or quagmire except over a bridge, culvert,
20 or similar structure.

21 (O) ~~(P)~~—To hunt, pursue, worry, kill, or attempt to hunt,
22 pursue, worry, or kill an animal, whether wild or domesticated.

23 (P) ~~(Q)~~—In a manner so as to leave behind litter or other
24 debris.

25 (Q) ~~(R)~~—On public land, in a manner contrary to operating
26 regulations.

27 (R) ~~(S)~~—While transporting or possessing, in or on the

1 vehicle, alcoholic liquor in a container that is open or uncapped
2 or upon which the seal is broken, except under either of the
3 following circumstances:

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

6 (ii) If the vehicle does not have a trunk or compartment
7 separate from the passenger compartment, the container is encased
8 or enclosed.

9 **(S) ~~(t)~~**—While transporting any passenger in or upon an ORV
10 unless the manufacturing standards for the vehicle make provisions
11 for transporting passengers.

12 **(T) ~~(u)~~**—On adjacent private land, in an area zoned
13 residential, within 300 feet of a dwelling at a speed greater than
14 the minimum required to maintain controlled forward movement of the
15 vehicle except under any of the following circumstances:

16 (i) On a forest road or forest trail if the forest road or
17 forest trail is maintained by or under the jurisdiction of the
18 department.

19 (ii) On a street, county road, or highway on which ORV use is
20 authorized under section 81131(2), (3), (5), or (6).

21 **(2) AN INDIVIDUAL WHO IS OPERATING OR IS A PASSENGER ON AN ORV**
22 **SHALL WEAR A CRASH HELMET AND PROTECTIVE EYEWEAR THAT ARE APPROVED**
23 **BY THE UNITED STATES DEPARTMENT OF TRANSPORTATION. THIS SUBSECTION**
24 **DOES NOT APPLY TO ANY OF THE FOLLOWING:**

25 **(A) AN INDIVIDUAL WHO OWNS THE PROPERTY ON WHICH THE ORV IS**
26 **OPERATING.**

27 **(B) AN INDIVIDUAL WEARING A PROPERLY ADJUSTED AND FASTENED**

1 SAFETY BELT IF THE ORV IS EQUIPPED WITH A ROOF THAT MEETS OR
2 EXCEEDS UNITED STATES DEPARTMENT OF TRANSPORTATION STANDARDS FOR A
3 CRASH HELMET.

4 (C) AN ORV OPERATED ON A STATE-LICENSED GAME BIRD HUNTING
5 PRESERVE AT A SPEED OF NOT GREATER THAN 10 MILES PER HOUR.

6 (3) ~~(2)~~—Each person who participates in the sport of ORV
7 riding accepts the risks associated with that sport insofar as the
8 dangers are inherent. Those risks include, but are not limited to,
9 injuries to persons or property that can result from variations in
10 terrain; defects in traffic lanes; surface or subsurface snow or
11 ice conditions; bare spots; rocks, trees, and other forms of
12 natural growth or debris; and collisions with fill material, decks,
13 bridges, signs, fences, trail maintenance equipment, or other ORVs.
14 Those risks do not include injuries to persons or property that
15 result from the use of an ORV by another person in a careless or
16 negligent manner likely to endanger person or property. When an ORV
17 is operated in the vicinity of a railroad right-of-way, each person
18 who participates in the sport of ORV riding additionally assumes
19 risks including, but not limited to, entanglement with railroad
20 tracks, switches, and ties and collisions with trains and train-
21 related equipment and facilities.

22 Sec. 81147. (1) Except as otherwise provided in this part, a
23 person who violates this part is guilty of a misdemeanor punishable
24 by imprisonment for not more than 90 days or a fine of not less
25 than \$50.00 or more than \$1,000.00, or both, for each violation.

26 (2) A person who violates section ~~81133(1)(e)~~ **81133(1)(D)** by
27 operating an ORV in such a manner as to create an erosive condition

1 or who violates section ~~81133(1)(i)~~ **81133(1)(H)** or ~~(e)~~ **(N)** is
2 guilty of a misdemeanor punishable by imprisonment for not more
3 than 90 days or a fine of not less than \$250.00 or more than
4 \$1,000.00, or both, for each violation.

5 (3) A person who violates section 81105, 81107, 81115, 81116,
6 81121, 81130, ~~or 81133(1)(b), (c), (d), (E), (f), (g), (h), (j),~~
7 **(I), (K), OR (l)**, or ~~(m)~~ **81133(2)** is responsible for a state civil
8 infraction and may be ordered to pay a civil fine of not more than
9 \$500.00.

10 (4) A person shall not remove, deface, or destroy a sign or
11 marker placed by the department indicating the boundaries of an ORV
12 trail or area or that marks a route.

13 (5) In addition to the penalties otherwise provided under this
14 part, a court of competent jurisdiction may order a person to
15 restore, as nearly as possible, any land, water, stream bank,
16 streambed, or other natural or geographic formation damaged by the
17 violation of this part to the condition it was in before the
18 violation occurred.

19 (6) The department or any other peace officer may impound the
20 ORV of a person who commits a violation of this part that is
21 punishable as a misdemeanor or who causes damage to the particular
22 area in which the ORV was used in the commission of the violation.

23 (7) Upon conviction of a person for violation described in
24 subsection (6), a court of competent jurisdiction may order the ORV
25 and any personal property on the ORV seized as a result of the
26 violation returned to the owner or, upon recommendation of the
27 local prosecuting attorney, turned over to the department. An ORV

1 or any other property turned over to the department under this
2 subsection shall be disposed of in the manner provided for
3 condemnation of property in part 16. The proceeds realized by the
4 department under this subsection shall first be used to restore
5 areas damaged by ORV use, ~~with the~~ **AND ANY** balance ~~to~~ **SHALL** be
6 deposited in the off-road vehicle account.