

HOUSE BILL No. 4846

July 12, 2017, Introduced by Rep. Roberts and referred to the Committee on Transportation and Infrastructure.

A bill to amend 1994 PA 451, entitled "Natural resources and environmental protection act," by amending sections 81122, 81129, 81131, and 81133 (MCL 324.81122, 324.81129, 324.81131, and 324.81133), section 81122 as amended by 2013 PA 119, section 81129 as amended by 2013 PA 249, section 81131 as amended by 2013 PA 118, and section 81133 as amended by 2016 PA 288.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 81122. (1) A person shall not operate an ORV that is not
2 registered under the code upon a street, county road, or highway,
3 except as provided in section 81131 or under the following
4 conditions and circumstances:

5 (a) The operator of a vehicle may cross a street, county road,
6 or highway, other than a limited access highway, at right angles,

1 for the purpose of getting from 1 area to another, if the operation
2 can be done in safety. The operator shall bring the vehicle to a
3 complete stop before proceeding across a street, county road, or
4 highway, and shall yield the right-of-way to oncoming traffic.

5 (b) A vehicle may be operated on a street, county road, or
6 highway for a special event of limited duration and conducted
7 according to a prearranged schedule only under permit from the
8 governmental unit having jurisdiction. Subject to subsection (2), a
9 special event involving ORVs may be conducted on the frozen surface
10 of public waters only under permit from the department.

11 (c) A farmer, employee of a farmer, or family member of a
12 farmer who is at least 16 years of age may operate an ORV on a ~~ANY~~
13 street, county road, or highway while traveling to or from the
14 farmer's residence or work location or field during the course of
15 farming operations. An ORV shall not be operated pursuant to this
16 subdivision during the period of 30 minutes before sunset to 30
17 minutes after sunrise or when visibility is substantially reduced
18 due to weather conditions. The individual shall operate the ORV in
19 the same manner and on the same portion of the street, county road,
20 or highway as **OTHERWISE** required under section ~~81131(9)~~. **81131**. The
21 state transportation department and all of its employees are immune
22 from tort liability for injury or damages sustained by any person
23 arising in any way by reason of the operation or use of an ORV for
24 the limited purposes allowed under this subdivision. An operator of
25 an ORV under this subdivision shall have attached to the ORV a flag
26 made of reflective material. The flag shall extend not less than 8
27 feet from the surface of the street, county road, or highway and

1 not less than 4 feet above the top of the ORV. The flag shall be
2 not less than 12 inches high by 18 inches long and not measure less
3 than 100 square inches.

4 (2) The department shall not require a permit under this part
5 merely for organized group recreational ORV riding on department
6 lands, or for an ORV event on the frozen surface of public waters,
7 if conducted in compliance with applicable statutes, rules, and
8 orders. ~~Within 90 days after the effective date of the amendatory~~
9 ~~act from the 2013-2014 legislative session that added this~~
10 ~~subsection, the~~ **THE** department shall develop and establish, in
11 consultation with representatives of the Michigan snowmobile and
12 trails advisory committee and other interested parties, policy
13 criteria for determining circumstances under which notice to the
14 department or a permit is required for ORV events on department
15 lands.

16 (3) In a court action in this state, if competent evidence
17 demonstrates that a vehicle that is permitted to operate on a
18 highway pursuant to the code is in a collision on a roadway with an
19 ORV that is not registered under the code, the operator of the ORV
20 involved in the collision shall be considered prima facie
21 negligent.

22 Sec. 81129. (1) Subject to subsections (2), (3), and (17), a
23 parent or legal guardian of a child less than 16 years of age shall
24 not permit the child to operate an ORV unless the child is under
25 the direct visual supervision of an adult and the child has an ORV
26 safety certificate in his or her immediate possession.

27 (2) Subject to subsection (17), a parent or legal guardian of

1 a child less than 12 years of age shall not permit the child to
2 operate an ATV with 4 or more wheels unless the child is not less
3 than 10 years of age and is on private land owned by a parent or
4 legal guardian of the child. This subsection does not apply to the
5 operation of an ATV used in agricultural operations.

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

8 (4) Subject to subsections (5), (6), and (17), the owner or
9 person in charge of an ORV shall not knowingly permit the vehicle
10 to be operated by a child less than 16 years of age unless the
11 child is under the direct visual supervision of an adult and the
12 child has an ORV safety certificate in his or her immediate
13 possession.

14 (5) Subject to subsection (17), the owner or person in charge
15 of an ATV with 4 or more wheels shall not knowingly permit the
16 vehicle to be operated by a child less than 12 years of age unless
17 the child is not less than 10 years of age and is on private land
18 owned by a parent or legal guardian of the child. This subsection
19 does not apply to the operation of an ATV used in agricultural
20 operations.

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

24 (7) The owner or person in charge of an ORV shall not
25 knowingly permit the vehicle to be operated by an individual who is
26 incompetent to operate the vehicle because of mental or physical
27 disability.

1 (8) The department shall implement a comprehensive program for
2 the training of ORV operators and the preparation and dissemination
3 of ORV information and safety advice to the public. The program
4 shall provide for the training of youthful operators and for the
5 issuance of ORV safety certificates to those who successfully
6 complete the training and may include separate instruction for each
7 type of ORV.

8 (9) In implementing a program under subsection (8), the
9 department shall cooperate with private organizations and
10 associations, private and public corporations, the department of
11 education, the department of state, and local governmental units.
12 The department shall consult with ORV and environmental
13 organizations and associations in regard to the subject matter of a
14 training program and performance testing that leads to
15 certification of ORV operators.

16 (10) The department may designate a qualified individual to
17 provide course instruction and to award ORV safety certificates.

18 (11) The department may promulgate rules to implement
19 subsections (8) to (10) and (17).

20 (12) Subject to subsections (13), (14), and (17), a child who
21 is less than 16 years of age shall not operate an ORV unless the
22 child is under the direct visual supervision of an adult and the
23 child has an ORV safety certificate in his or her immediate
24 possession.

25 (13) Subject to subsection (17), a child who is less than 12
26 years of age shall not operate an ATV with 4 or more wheels unless
27 the child is not less than 10 years of age and is on private land

1 owned by a parent or legal guardian of the child. This subsection
2 does not apply to the operation of an ATV used in agricultural
3 operations.

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

6 (15) Subject to subsection (17), when operating an ORV, a
7 child who is less than 16 years of age shall present the **CHILD'S**
8 ORV safety certificate to a peace officer upon demand.

9 (16) Notwithstanding any other provision of this section, an
10 operator who is less than 12 years of age shall not cross a street,
11 county road, or highway. An operator who is not less than 12 years
12 of age but less than 16 years of age may cross a street, county
13 road, or highway or operate an ORV pursuant to section ~~81131(9)~~
14 **81131** if the operator has an ORV safety certificate in his or her
15 immediate possession and meets any other requirements under this
16 section for operation of the vehicle.

17 (17) The requirement that a child possess an ORV safety
18 certificate to operate an ORV, and the requirement that a child who
19 is less than 12 years of age not operate an ATV with 4 or more
20 wheels unless the child is not less than 10 years of age and is on
21 private land owned by a parent or legal guardian of the child, do
22 not apply if all of the following requirements are met:

23 (a) The child is participating in an organized ORV riding or
24 racing event held on land not owned by this state.

25 (b) The child's parent or legal guardian has provided the
26 event organizer with written permission for the child to
27 participate in the event.

1 (c) The event organizer has not less than \$500,000.00
2 liability insurance coverage for the event.

3 (d) A physician or physician's assistant licensed or otherwise
4 authorized under part 170 or 175 of the public health code, 1978 PA
5 368, MCL 333.17001 to 333.17084 and 333.17501 to 333.17556, or a
6 paramedic or emergency medical technician licensed under part 209
7 of the public health code, 1978 PA 368, MCL 333.20901 to 333.20979,
8 is present at the site of the event or available on call.

9 (e) The event is at all times under the direct visual
10 supervision of adult staff of the event organizer and a staff
11 member serves as a flagger to warn participants if another
12 participant is injured or an ORV is inoperable in the ORV operating
13 area.

14 (f) Fencing or another means of crowd control is used to keep
15 spectators out of the ORV operating area.

16 (g) If the event is on a closed course, dust is controlled in
17 the ORV operating area and the riding surface in the ORV operating
18 area is otherwise properly prepared.

19 (h) Three-wheeled ATVs are not used by participants.

20 (i) Any ATVs used by participants are equipped with a side
21 step bar or comparable safety equipment and with a tether kill
22 switch, and the tether is used by all participants.

23 (j) Each participant in the event wears a crash helmet
24 approved by the United States ~~department of transportation,~~
25 **DEPARTMENT OF TRANSPORTATION**, a protective long-sleeved shirt or
26 jacket, long pants, boots, and protective gloves.

27 (k) Any other applicable requirements of this part or rules

1 promulgated under this part are met.

2 (18) If a child less than 16 years of age participates and is
3 injured in an organized ORV riding or racing event, the organizer
4 of the event shall, within 30 days after the event, submit to the
5 department a report on a form developed by the department. The
6 report shall include all of the following information, as
7 applicable:

8 (a) Whether any participant less than 16 years of age was
9 killed or suffered an injury resulting in transportation to a
10 hospital as a result of an ORV accident at the event.

11 (b) The age of the child.

12 (c) Whether the child had been issued an ORV safety
13 certificate.

14 (d) The type of ORV operated.

15 (e) A description of the accident and injury.

16 (19) By December 31 of each year, the department shall submit
17 to the legislature a report that summarizes reports received under
18 subsection (18) during the preceding calendar year. In the report,
19 the department may recommend amendments to this part to improve the
20 safety of children less than 16 years of age participating in
21 organized ORV riding or racing events.

22 (20) The requirements of this section are in addition to any
23 applicable requirements of section ~~81131(13)~~. **81131(10)** .

24 Sec. 81131. (1) ~~A municipality may pass an ordinance allowing~~
25 ~~a permanently disabled person to operate an ORV in that~~
26 ~~municipality.~~ **SUBJECT TO THIS SECTION, AN INDIVIDUAL MAY OPERATE AN**
27 **ORV WITH THE FLOW OF TRAFFIC ON THE FAR RIGHT OF THE MAINTAINED**

1 PORTION OF A STREET OR COUNTY ROAD. SUBJECT TO THIS SECTION, AN
2 INDIVIDUAL MAY OPERATE AN ORV ON A HIGHWAY, OTHER THAN AN
3 INTERSTATE HIGHWAY, AS FOLLOWS:

4 (A) WITH THE FLOW OF TRAFFIC.

5 (B) EXCEPT AS PROVIDED IN SUBDIVISIONS (C) AND (D), ON THE
6 RIGHT SHOULDER OF THE HIGHWAY.

7 (C) EXCEPT AS PROVIDED IN SUBDIVISION (D), IF THERE IS NOT A
8 RIGHT SHOULDER OR THE RIGHT SHOULDER IS NOT OF ADEQUATE WIDTH, ON
9 THE RIGHT UNMAINTAINED PORTION OF THE HIGHWAY.

10 (D) ON THE FAR RIGHT OF THE RIGHT TRAFFIC LANE OF THE HIGHWAY,
11 IF NECESSARY TO CROSS A BRIDGE OR CULVERT AND IF THE OPERATOR
12 BRINGS THE ORV TO A COMPLETE STOP BEFORE ENTERING THE TRAFFIC LANE
13 AND YIELDS THE RIGHT-OF-WAY TO AN APPROACHING VEHICLE ON THAT
14 TRAFFIC LANE.

15 (2) ~~Subject to subsection (4), a~~ **A** county board of
16 commissioners may adopt an ordinance ~~authorizing~~ **PROHIBITING** the
17 operation of ORVs on 1 or more county roads located within the
18 county. Not less than 45 days before a public hearing on the
19 ordinance, the county clerk shall send notice of the public
20 hearing, by certified mail, to the county road commission, to the
21 legislative body of each township and municipality located within
22 the county, to the state transportation department if the **COUNTY**
23 road intersects a highway, and, if state forestland is located
24 within the county, to the department. If the county is a southern
25 county, before adopting an ordinance under this subsection, the
26 county board of commissioners shall consult with the board of
27 county road commissioners.

1 (3) ~~Subject to subsection (4), the~~ **THE** legislative body of a
2 township or municipality may adopt an ordinance ~~authorizing~~
3 **PROHIBITING** the operation of ORVs on 1 or more county roads located
4 within the township or municipality, respectively. Not less than 28
5 days before a public hearing on the ordinance, the clerk of the
6 township or municipality shall send notice of the public hearing,
7 by certified mail, to the county road commission, to the county
8 board of commissioners, to the legislative body of every other
9 township and municipality located within the county, to the state
10 transportation department if the **COUNTY** road intersects a highway,
11 and, if state forestland is located within the township or
12 municipality, to the department. If the township or municipality is
13 located in a southern county, before adopting an ordinance under
14 this subsection, the legislative body of the township or
15 municipality shall consult with the board of county road
16 commissioners. This subsection does not apply to a township or
17 municipality until 1 year after the effective date of the
18 amendatory act that ~~first authorized the county in which that~~
19 ~~township or municipality is located to adopt an ordinance under~~
20 ~~subsection (2).~~ **ADDED SUBDIVISIONS (A) TO (D) TO SUBSECTION (1).**

21 (4) The board of county road commissioners may close a county
22 road to the operation of ORVs. ~~otherwise authorized pursuant to~~
23 ~~subsection (2) or (3).~~ A county road commission shall not under
24 this subsection close more than 30% of the linear miles of county
25 roads located within the county to the operation of ORVs. ~~otherwise~~
26 ~~authorized pursuant to subsection (2) or (3).~~ The legislative body
27 of a township or municipality may adopt an ordinance to ~~close~~ **OPEN**

1 a county road located in the township or municipality to the
 2 operation of ORVs otherwise ~~authorized~~ **PROHIBITED** pursuant to
 3 subsection (2) **OR THIS SUBSECTION**. The legislative body of a
 4 village may adopt an ordinance to ~~close~~ **OPEN** a county road located
 5 in the village to the operation of ORVs otherwise ~~authorized~~
 6 **PROHIBITED** by the township pursuant to subsection (3). A county
 7 road may be closed to the operation of ORVs under this subsection
 8 only **IF NECESSARY** to protect the environment or if the operation of
 9 ORVs poses a particular and demonstrable threat to public safety.

10 ~~—— (5) The legislative body of a municipality may adopt an~~
 11 ~~ordinance authorizing the operation of ORVs on 1 or more streets~~
 12 ~~within the municipality.~~

13 **(5)** ~~(6)~~ The legislative body of a local unit of government may
 14 request the state transportation department to authorize the local
 15 unit of government to adopt an ordinance ~~authorizing~~ **PROHIBITING**
 16 the operation of ORVs on a highway, other than an interstate
 17 highway, located within the local unit of government. ~~The request~~
 18 ~~shall describe how the authorization would meet the requirements of~~
 19 ~~subsection (7).~~ The state transportation department shall solicit
 20 comment on the request from the department, ORV clubs, and local
 21 units of government where the highway is located. The state
 22 transportation department shall consider comments received on the
 23 request before making a decision on the request. The state
 24 transportation department shall grant the request in whole or in
 25 part or deny the request not more than 60 days after the request is
 26 received. If the state transportation department grants a request
 27 in whole or in part under this subsection, the local unit of

1 government that submitted the request may adopt an ordinance
 2 ~~authorizing~~ **PROHIBITING** the operation of ORVs on the highway that
 3 was the subject of the request. A county may submit a request for
 4 authorization under this subsection on behalf of 1 or more local
 5 units of government located within that county if requested by
 6 those local units of government. ~~Before January 1, 2015, the state~~
 7 ~~transportation department may authorize the operation of ORVs on a~~
 8 ~~highway as provided in this subsection and subsection (7) on the~~
 9 ~~department's initiative and without having received a request from~~
 10 ~~a local unit of government.~~

11 ~~—— (7) The state transportation department shall authorize~~
 12 ~~operation of an ORV under subsection (6) only on a highway that is~~
 13 ~~not an interstate highway and that meets 1 or more of the following~~
 14 ~~requirements:~~

15 ~~—— (a) Serves as a connector between ORV areas, routes, or trails~~
 16 ~~designated by the department or an ORV user group.~~

17 ~~—— (b) Provides access to tourist attractions, food service~~
 18 ~~establishments, fuel, motels, or other services.~~

19 ~~—— (c) Serves as a connector between 2 segments of the same~~
 20 ~~county road that run along discontinuous town lines and on which~~
 21 ~~ORV use is authorized pursuant to subsection (2) or (3).~~

22 ~~—— (d) Includes a bridge or culvert that allows an ORV to cross a~~
 23 ~~river, stream, wetland, or gully that is not crossed by a street or~~
 24 ~~county road on which ORVs are authorized to operate under~~
 25 ~~subsection (2), (3), or (5).~~

26 **(6)** ~~(8)~~ The state transportation department may ~~close~~ **OPEN** a
 27 highway to the operation of ORVs otherwise authorized ~~PROHIBITED~~

1 pursuant to subsection ~~(6)~~ **(5)** after written notice to the clerk of
 2 each local unit of government where the highway is located and the
 3 senate and house committees with primary responsibility for natural
 4 resources, recreation, and transportation. The notice shall be in
 5 writing and sent by first-class United States mail or personally
 6 delivered not less than 30 days before the adoption of the rule or
 7 order ~~closing~~ **OPENING** the highway. The notice shall set forth
 8 specific reasons for the ~~closure~~ **OPENING**.

9 ~~—— (9) Subject to subsection (4), if a local unit of government~~
 10 ~~adopts an ordinance pursuant to subsection (2), (3), or (5), a~~
 11 ~~person may operate an ORV with the flow of traffic on the far right~~
 12 ~~of the maintained portion of the street or county road covered by~~
 13 ~~the ordinance. If the operation of ORVs on a highway is authorized~~
 14 ~~pursuant to subsection (6), a person may operate an ORV with the~~
 15 ~~flow of traffic as follows:~~

16 ~~—— (a) On the right shoulder of the highway.~~

17 ~~—— (b) If there is not a right shoulder or the right shoulder is~~
 18 ~~not of adequate width, on the right unmaintained portion of the~~
 19 ~~highway.~~

20 ~~—— (c) On the far right of the right traffic lane of the highway,~~
 21 ~~if necessary to cross a bridge or culvert and if the operator~~
 22 ~~brings the ORV to a complete stop before entering and yields the~~
 23 ~~right-of-way to an approaching vehicle on that traffic lane.~~

24 **(7)** ~~(10)~~ A person shall not operate an ORV as authorized
 25 pursuant to subsection ~~(2), (3), (5), or (6)~~ **THIS SECTION** at a
 26 speed greater than 25 miles per hour or a lower posted ORV speed
 27 limit or in a manner that interferes with traffic on the street,

1 county road, or highway.

2 (8) ~~(11)~~ Unless the person possesses a license as defined in
3 section 25 of the Michigan vehicle code, 1949 PA 300, MCL 257.25, a
4 person shall not operate an ORV as authorized pursuant to
5 ~~subsection (2), (3), (5), or (6)~~ **THIS SECTION** if the ORV is
6 registered as a motor vehicle under chapter II of the Michigan
7 vehicle code, 1949 PA 300, MCL 257.201 to 257.259, and either is
8 more than 65 inches wide or has 3 wheels. ORVs operated as
9 authorized pursuant to ~~subsection (2), (3), (5), or (6)~~ **THIS**
10 **SECTION** shall travel single file, except that an ORV may travel
11 abreast of another ORV when it is overtaking and passing, or being
12 overtaken and passed by, another ORV.

13 (9) ~~(12)~~ ~~A person~~ **AN INDIVIDUAL** shall not operate an ORV as
14 authorized pursuant to this section without displaying a lighted
15 headlight and lighted taillight.

16 (10) ~~(13)~~ ~~A person~~ **AN INDIVIDUAL** under 18 years of age shall
17 not operate an ORV as authorized pursuant to this section unless
18 the ~~person~~ **INDIVIDUAL** is in possession of a valid driver license or
19 under the direct supervision of a parent or guardian and the ~~person~~
20 **INDIVIDUAL** has in his or her immediate possession an ORV safety
21 certificate issued **TO THE INDIVIDUAL** pursuant to this part or a
22 comparable ORV safety certificate issued under the authority of
23 another state or a province of Canada. ~~A person~~ **AN INDIVIDUAL** under
24 12 years of age shall not operate an ORV as authorized pursuant to
25 this section. The requirements of this subsection are in addition
26 to any applicable requirements of section 81129.

27 (11) ~~(14)~~ ~~A township that has authorized the operation of ORVs~~

1 ~~on a county road under subsection (3)~~ does not have a duty to
 2 maintain the maintained portion or unmaintained portion of ~~the~~ **A**
 3 county road in a condition reasonably safe and convenient for the
 4 operation of ORVs. This state does not have a duty to maintain a
 5 highway in reasonable repair so that it is reasonably safe and
 6 convenient for the operation of ORVs except ORVs registered and
 7 operated as motor vehicles as provided in the code. A board of
 8 county road commissioners, a county board of commissioners, or a
 9 municipality does not have a duty to maintain the maintained
 10 portion or unmaintained portion of a county road or street under
 11 its jurisdiction in a condition reasonably safe and convenient for
 12 the operation of ORVs, ~~except the following ORVs:~~

13 ~~—— (a) ORVs registered and operated as motor vehicles as provided~~
 14 ~~in the code.~~

15 ~~—— (b) ORVs operated as authorized pursuant to subsection (1).~~

16 **(12)** ~~(15)~~ Subject to section 5 of 1964 PA 170, MCL 691.1405,
 17 this state, a board of county road commissioners, a county board of
 18 commissioners, and a local unit of government are immune from tort
 19 liability for injuries or damages sustained by any person arising
 20 in any way out of the operation or use, on the maintained portion
 21 or unmaintained portion of a highway, **COUNTY** road, or street, of an
 22 ORV that is not registered under the code or that is registered
 23 under the code but is operated as authorized pursuant to ~~subsection~~
 24 ~~(2), (3), (5), or (6).~~ **THIS SECTION.** The immunity provided by this
 25 subsection does not apply to actions of an employee of this state,
 26 an employee of a board of county road commissioners, an employee of
 27 a county board of commissioners, or an employee of a local unit of

1 government that constitute gross negligence. As used in this
2 subsection, "gross negligence" means conduct so reckless as to
3 demonstrate a substantial lack of concern for whether an injury
4 results.

5 **(13)** ~~(16)~~—In a court action in this state, if competent
6 evidence demonstrates that a vehicle that is permitted to operate
7 on a **COUNTY** road, street, or highway pursuant to the code was in a
8 collision on a roadway with an ORV that is not registered under the
9 code, the operator of the ORV shall be considered prima facie
10 negligent.

11 **(14)** ~~(17)~~—A violation of an ordinance described in this
12 section is a municipal civil infraction. The ordinance may provide
13 for a fine of not more than \$500.00 for a violation of the
14 ordinance. In addition, the court shall order the defendant to pay
15 the cost of repairing any damage to the environment, a street,
16 county road, or highway, or public property as a result of the
17 violation.

18 **(15)** ~~(18)~~—The treasurer of the local unit of government shall
19 deposit fines collected by that local unit of government under
20 section 8379 of the revised judicature act of 1961, 1961 PA 236,
21 MCL 600.8379, and subsection ~~(17)~~—**(14)** and damages collected under
22 subsection ~~(17)~~—**(14)** into a fund to be designated as the "ORV
23 fund". The legislative body of the local unit of government shall
24 appropriate revenue in the ORV fund as follows:

25 (a) Fifty percent to the county sheriff or police department
26 responsible for law enforcement in the local unit of government for
27 ORV enforcement and training.

1 (b) Fifty percent to the board of county road commissioners
2 or, in the case of a city or village, to the department responsible
3 for street maintenance in the city or village. However, if a fine
4 was collected for a violation of an ordinance adopted under
5 subsection ~~(6)~~, **(5)**, 50% of the fine revenue shall be appropriated
6 to the state transportation department. Revenue appropriated under
7 this subdivision shall be used for repairing damage to streets,
8 county roads, or highways and the environment that may have been
9 caused by ORVs and for posting signs indicating ORV speed limits or
10 indicating whether streets, county roads, or highways are open or
11 closed to the operation of ORVs under this section.

12 ~~—— (19) A person who violates a rule promulgated or order issued~~
13 ~~under subsection (6) is responsible for a state civil infraction~~
14 ~~and may be ordered to pay a civil fine of not more than \$500.00. In~~
15 ~~addition, the court shall order the defendant to pay the cost of~~
16 ~~repairing any damage to the environment, a highway, or public~~
17 ~~property as a result of the violation.~~

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

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

22 (b) During the hours of 1/2 hour after sunset to 1/2 hour
23 before sunrise without displaying a lighted headlight and lighted
24 taillight. The requirements of this subdivision are in addition to
25 any applicable requirements of section ~~81131(12)~~-**81131(9)** .

26 (c) Unless the vehicle is equipped with a braking system that
27 may be operated by hand or foot, capable of producing deceleration

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

8 (d) In a state game area or state park or recreation area,
9 except on **COUNTY** roads, trails, or areas designated for this
10 purpose, notwithstanding section 72118; on other state-owned lands
11 under the control of the department where the operation would be in
12 violation of rules promulgated by the department; in a forest
13 nursery or planting area; on public lands posted or reasonably
14 identifiable as an area of forest reproduction, and when growing
15 stock may be damaged; in a dedicated natural area of the
16 department; or in any area in such a manner as to create an erosive
17 condition, or to injure, damage, or destroy trees or growing crops.
18 However, the department may permit an owner and guests of the owner
19 to use an ORV within the boundaries of a state forest in order to
20 access the owner's property.

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

27 (f) Unless the vehicle is equipped with a spark arrester type

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

19 (g) Within 100 feet of a dwelling at a speed greater than the
20 minimum required to maintain controlled forward movement of the
21 vehicle, except under any of the following circumstances:

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

24 (ii) On a forest road or forest trail if the forest road or
25 forest trail is maintained by or under the jurisdiction of the
26 department.

27 (iii) On a street, county road, or highway on which ORV use is

1 authorized pursuant to section ~~81131(2), (3), (5), or (6)~~.**81131.**

2 (h) 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 caused by operation of the vehicle, including, but
6 not limited to, damage to trees, shrubs, or growing crops, injury
7 to other living creatures, or erosive or other ecological damage.
8 The owner of the private property may recover from the individual
9 responsible nominal damages of not less than the amount of damage
10 or injury. Failure to post private property or fence or otherwise
11 enclose in a manner to exclude intruders or of the private property
12 owner or other authorized person to personally communicate against
13 trespass does not imply consent to ORV use.

14 (i) In an area on which public hunting is permitted during the
15 regular November firearm deer season, from 7 a.m. to 11 a.m. and
16 from 2 p.m. to 5 p.m., except as follows:

17 (i) During an emergency.

18 (ii) For law enforcement purposes.

19 (iii) To go to and from a permanent residence or a hunting
20 camp otherwise inaccessible by a conventional wheeled vehicle.

21 (iv) To remove legally harvested deer, bear, or elk from
22 public land. An individual shall operate an ORV under this
23 subparagraph at a speed not exceeding 5 miles per hour, using the
24 most direct route that complies with subdivision (n).

25 (v) To conduct necessary work functions involving land and
26 timber survey, communication and transmission line patrol, or
27 timber harvest operations.

1 (vi) On property owned or under control of the operator or on
2 which the operator is an invited guest.

3 (vii) While operating a vehicle registered under the code on a
4 private road capable of sustaining automobile traffic or a street,
5 county road, or highway.

6 (viii) If the individual holds a valid permit to hunt from a
7 standing vehicle issued under part 401 or is a person with a
8 disability using an ORV to access public lands for purposes of
9 hunting or fishing through use of a designated trail or forest
10 road. An individual holding a valid permit to hunt from a standing
11 vehicle issued under part 401, or a person with a disability using
12 an ORV to access public lands for purposes of hunting or fishing,
13 may display a flag, the color of which the department shall
14 determine, to identify himself or herself as a person with a
15 disability or an individual holding a permit to hunt from a
16 standing vehicle under part 401.

17 (j) Except as otherwise provided in section 40111, while
18 transporting on the vehicle a bow unless unstrung or encased, or a
19 firearm unless unloaded and securely encased, or equipped with and
20 made inoperative by a manufactured keylocked trigger housing
21 mechanism.

22 (k) On or across a cemetery or burial ground, or land used as
23 an airport.

24 (l) Within 100 feet of a slide, ski, or skating area, unless
25 the vehicle is being used for the purpose of servicing the area or
26 is being operated pursuant to section ~~81131(2), (3), (5), or~~
27 ~~(6)~~. **81131.**

1 (m) On an operating or nonabandoned railroad or railroad
2 right-of-way, or public utility right-of-way, ~~other than~~ **EXCEPT**
3 **UNDER ANY OF THE FOLLOWING CIRCUMSTANCES:**

4 (i) **THE ORV IS OPERATED** for the purpose of crossing at a
5 clearly established site intended for vehicular traffic. ~~, except~~

6 (ii) **THE INDIVIDUAL IS** railroad, public utility, or law
7 enforcement personnel ~~while~~ **ACTING** in performance of ~~their~~ **HIS OR**
8 **HER** duties. ~~, and except if the~~

9 (iii) **THE** right-of-way is designated as provided for in
10 section 81127.

11 (n) In or upon the waters of any stream, river, bog, wetland,
12 swamp, marsh, or quagmire except over a bridge, culvert, or similar
13 structure.

14 (o) To hunt, pursue, worry, kill, or attempt to hunt, pursue,
15 worry, or kill an animal, whether wild or domesticated.

16 (p) In a manner so as to leave behind litter or other debris.

17 (q) On public land, in a manner contrary to operating
18 regulations.

19 (r) While transporting or possessing, in or on the vehicle,
20 alcoholic liquor in a container that is open or uncapped or upon
21 which the seal is broken, except under either of the following
22 circumstances:

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

25 (ii) If the vehicle does not have a trunk or compartment
26 separate from the passenger compartment, the container is encased
27 or enclosed.

1 (s) While transporting any passenger in or upon an ORV unless
2 the manufacturing standards for the vehicle make provisions for
3 transporting passengers.

4 (t) On adjacent private land, in an area zoned residential,
5 within 300 feet of a dwelling at a speed greater than the minimum
6 required to maintain controlled forward movement of the vehicle
7 except under any of the following circumstances:

8 (i) On a forest road or forest trail if the forest road or
9 forest trail is maintained by or under the jurisdiction of the
10 department.

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

13 (u) On a forest trail if the ORV is greater than 50 inches in
14 width.

15 (2) An individual who is operating or is a passenger on an ORV
16 shall wear a crash helmet and protective eyewear that are approved
17 by the United States Department of Transportation. This subsection
18 does not apply to any of the following:

19 (a) An individual who owns the property on which the ORV is
20 operating, is a family member of the owner and resides at that
21 property, or is an invited guest of an individual who owns the
22 property. An exception under this subdivision does not apply to any
23 of the following:

24 (i) An individual less than 16 years of age.

25 (ii) An individual 16 or 17 years of age, unless the
26 individual has consent from his or her parent or guardian to ride
27 without a crash helmet.

1 (iii) An individual participating in an organized ORV riding
2 or racing event if an individual who owns the property receives
3 consideration for use of the property for operating ORVs.

4 (b) An individual wearing a properly adjusted and fastened
5 safety belt if the ORV is equipped with a roof that meets or
6 exceeds United States Department of Transportation standards for a
7 crash helmet.

8 (c) An ORV operated on a state-licensed game bird hunting
9 preserve at a speed of not greater than 10 miles per hour.

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

26 Enacting section 1. This amendatory act takes effect 90 days
27 after the date it is enacted into law.