

House Bill 4338
Sponsor: Rep. Jason Allen
Committee: Conservation and Outdoor
Recreation

Complete to 5-24-01

A SUMMARY OF HOUSE BILL 4338 AS INTRODUCED 2-22-01

Part 811 of the Natural Resources and Environmental Protection Act (NREPA), concerning off-road vehicles, specifies that a child under 16 years of age must complete an off-road recreational vehicle (ORV) safety education course approved by the Department of Education before operating an ORV or all-terrain vehicle (ATV). (An ORV is defined under the act to include, among other vehicles, an ATV.) The act currently specifies that the Department of Education must implement a safety education program not later than April 1, 1995. House Bill 4338 would amend the act to change the effective date of implementation to October 1, 2001. The act also specifies that the safety education and training program may include separate instruction for each type of ORV, and that the department may promulgate rules to implement the program. House Bill 4338 would delete these provisions. The bill would also amend the act to provide new requirements for ORV safety education courses and ORV safety education instructors, as follows:

Safety Education Course. Currently, the act specifies that the superintendent of public instruction must designate a person who has successfully completed ATV and ORV safety courses as the state coordinator of the ATV and ORV safety education program. The superintendent must also designate a person who has successfully completed ATV and ORV safety courses to perform annual inspections of course sites. The bill would delete these provisions. The bill would also specify additional requirements, as follows:

- A safety education course would have to provide not less than seven hours of instruction.
- A vehicle used for training in a safety education course conducted by a college, university, intermediate school district, local school district, law enforcement agency or other governmental agency or Department of Education-approved nonprofit service organization would have to be provided by the student or the course sponsor, and could not be larger than the recommended size specified in the course curriculum.
- A vehicle used for training in a safety education course conducted by a private business enterprise would have to be provided by the student or the course sponsor, and could not be larger than the recommended size specified in the course curriculum.

Instructor Qualifications. In order to qualify as an ORV or ATV safety education instructor, a person would have to possess a valid operator's license; be not less than 18 years of age; be knowledgeable of the rules and regulations that pertain to ORV operations on public and private land; have prior experience in the safe operation of an ORV; and have successfully completed an ORV safety education instructor preparation course approved by the department.

This criteria would also serve as the criteria for approval in reinstatement proceedings, as provided under the bill.

Revocation of Instructor's Approval to Teach. The bill would specify that the Department of Education could revoke an instructor's approval to teach an ORV safety education course after notice and hearing, as provided in the bill, for any of the following reasons:

- Conviction of criminal sexual conduct in any degree.
- Felonious assault on a child, child abuse, or cruelty, torture, or indecent exposure involving a child.
- Notification is received from the secretary of state that seven or more points have accumulated on the instructor's driving record within a two-year period for moving traffic violations.
- The individual does not meet the qualification requirements for the position, as specified above.

Hearing Proceedings. Before revoking an instructor's approval, the bill would require that the department cause a copy of the written charges and a Notice of Opportunity to Show Compliance to be served upon the instructor. Within 30 days after these had been served, the bill would require that a hearing conference be conducted by an authorized representative of the department. The hearing would have to be conducted by a hearing officer who had been designated by the state superintendent of public instruction, in compliance with Sections 71 to 87 of the Administrative Procedures Act (APA), concerning hearing procedures (MCL 24.271 to 24.287). However, a hearing could proceed and a decision could be made without an instructor, should he or she fail to attend. On the other hand, the department and the instructor could agree, in writing, to a settlement without a hearing.

The department would be required to take one of the following actions after the hearing conference:

- Make a finding of compliance.
- Enter into a written settlement of the matter with the instructor.
- Make a finding on noncompliance and revoke approval to teach ORV safety education courses.

After approval to teach ORV safety education had been revoked for a period of 24 or more months, the Department of Education could reinstate an individual's approval if an application for reinstatement met the existing criteria for approval.

Noncompliance. The bill would also specify that noncompliance with any section of its provisions would be considered just cause to discontinue a safety education course that had

previously been approved by the Department of Education. However, before discontinuing a program, the department would have to follow the provisions for a hearing that are specified in the bill.

MCL 324.81129 et al.

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■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.