

ORV SAFETY EDUCATION

House Bill 4338 as passed by the House

Second Analysis (4-5-02)

Sponsor: Rep. Jason Allen

**Committee: Conservation and Outdoor
Recreation**

THE APPARENT PROBLEM:

Off-road vehicle (ORV) use has increased rapidly over the past few years, and “off-roading” is a popular recreational sport around the state. According to the Department of Natural Resources (DNR), 144,000 ORV permits were issued during the 2000-2001 license year and to date 164,000 permits have been issued for the 2001-2002 license year, although some licenses that have been purchased by authorized dealers will most likely be returned. However, as has become customary with the increased popularity of any such sport, concern about the safe and responsible operation of these vehicles has prompted legislative action. Although less is heard about ORV accidents than is reported about those involving snowmobiles, ORV accidents generated enough publicity in 1999 to induce the legislature to include ORVs when enacting

legislation that prohibited those who lost their drivers' licenses from operating their recreational vehicles.

ORV use is particularly prevalent in northern Michigan and in the Upper Peninsula, where the vehicles are used more for everyday transportation than for recreational use during winter months. This is also true of children under 16 years of age. It is especially important that these children, who are exposed to the risks of everyday traffic more than other children on ORVs, receive proper safety training on the use of these machines. However, although the law has required that the Department of Education implement a safety education program (Public Act 26 of 1995 imposed a deadline of April 1, 1995 on the development of an ORV safety education and training program), reportedly the programs have not been established in a satisfactory manner. Consequently, legislation has been introduced to establish comprehensive standards for ORV safety education programs.

THE CONTENT OF THE BILL:

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. Instead, the bill would specify the following requirements:

- 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, or meet an equivalent level of skill, knowledge, and experience. These 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 would have to revoke an instructor's approval to teach an ORV safety education course after serving notice, as provided in the bill, for any of the following reasons:

- Conviction of criminal sexual conduct in any degree.
- Conviction of 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.

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 by the Department of Education. However, before discontinuing a program, the department would have to conduct a hearing.

MCL 324.81129 et al., and 324.81130

BACKGROUND INFORMATION:

As the popularity of off-road vehicles (ORVs) has increased over the past few years, concern over the safe and responsible operation of these vehicles has prompted legislative action. Public Act 56 of 1990 requires all persons under 16 years of age to complete a safety education course before operating an ORV, and established a safety education fund, from which grants may be made to schools and governmental agencies to cover the cost of courses. Public Act 71 of 1990 create the ORV Trail Improvement Fund to place signs, and to improve, maintain, and construct ORV trails. Public Act 17 of 1991 subsequently provided for the disbursement and expenditure of money from the fund, required the Department of Natural Resources (DNR) to develop a comprehensive trail system for ORV use, and created various ORV boards and advisory committees. Many of these provisions contained a sunset date of January 1, 1995, to provide for their review. Public Act 26 of 1995 repealed the sunset date, and also, among other provisions, imposed a deadline on the development of an ORV safety education and training program. Finally, Public Act 43 of 1999 provided that those who lost their driver's licenses also lost the right to operate a snowmobile or an ORV.

FISCAL IMPLICATIONS:

The Department of Education currently employs nine administrative law judges to address statutory due process rights dealing with teacher tenure, property transfer, teacher certification, and driver education instructor appeals. For fiscal year 2002, nearly \$861,000 Has been allocated to adjudicate issues related to people and property rights. The House Fiscal Agency (HFA) estimates that the bill would not require any additional funds above the fiscal year 2002 appropriations level to grant off-road and all-terrain safety education instructors hearings. (2-11-02)

ARGUMENTS:

For:

One of the most critical components of any attempt to ensure the safe operation of ORVs is a requirement that operators receive sufficient training in the proper use of the vehicle and the appropriate driving practices for the type of vehicle used and the terrain upon which it is driven. This is especially significant in northern lower Michigan and in the Upper Peninsula, where many ORV operators are children, and where ORVs are used more for everyday transportation than for recreational use during winter months. For example, during the area's long winter months, a child might often use an ORV to run errands for one parent, or to gain access to the "back 40" to help another parent. However, in many of these situations, these children are exposed to more risk than are ORV operators on recreational trails. Consequently, there is a need for greater safety, and, especially, for more safety education.

The bill would mandate that young ORV operators receive the necessary education and training to make them safer drivers, provide for statewide coordination of such programs, and ensure that the course instructors were competent and qualified. Most importantly, by making these changes, the bill would reduce avoidable injuries and deaths that result from the use of ORVs by inexperienced operators.

POSITIONS:

The Department of Education does not support the bill. (4-8-02)

Analyst: R. Young