

SENATE SUBSTITUTE FOR
HOUSE BILL NO. 4323

A bill to amend 1994 PA 451, entitled
"Natural resources and environmental protection act,"
by amending sections 81115, 81129, 81131, 81133, and 81147 (MCL
324.81115, 324.81129, 324.81131, 324.81133, and 324.81147),
sections 81115 as amended by 2003 PA 111, section 81129 as amended
by 2008 PA 164, section 81131 as added by 1995 PA 58, section 81133
as amended by 1998 PA 86, and section 81147 as amended by 2004 PA
587.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 81115. (1) A PERSON SHALL NOT OPERATE AN ORV UNDER ANY OF
2 THE FOLLOWING CONDITIONS UNLESS THE ORV IS LICENSED WITH THE
3 DEPARTMENT OR A DEALER AS PROVIDED UNDER THIS PART:

House Bill No. 4323 as amended June 27, 2008

1 (A) Except as otherwise provided by law, ~~an ORV shall not be~~
2 ~~operated on or over land, snow, ice, <<marsh, swampland,>> or other~~
3 ~~natural terrain. unless licensed by the owner with the department~~
4 ~~or a dealer as provided in this part.~~

5 (B) Except as otherwise provided in this part, ~~a vehicle~~
6 ~~operating on a forest trail or in a designated area. shall be~~
7 ~~licensed under this part.~~

8 (C) **EXCEPT AS OTHERWISE PROVIDED IN SECTION 81102, ON THE**
9 **MAINTAINED PORTION OF A ROAD OR STREET.**

10 (2) Licensure is not required for an ORV used exclusively in a
11 safety and training program as required in section 81129.

12 Sec. 81129. (1) Subject to subsections (2), (3), (17), and
13 (18), a parent or legal guardian of a child less than 16 years of
14 age shall not permit the child to operate an ORV unless the child
15 is under the direct visual supervision of an adult and the child
16 has in his or her immediate possession an ORV safety certificate
17 issued pursuant to this part or a comparable ORV safety certificate
18 issued under the authority of another state or a province of
19 Canada.

20 (2) Subject to subsection (18), a parent or legal guardian of
21 a child less than 12 years of age shall not permit the child to
22 operate a 4-wheeled ATV, unless the child is not less than 10 years
23 of age and is on private land owned by a parent or legal guardian
24 of the child. This subsection does not apply to the operation of an
25 ATV used in agricultural operations.

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

1 (4) Subject to subsections (5), (6), (17), and (18), the owner
2 or person in charge of an ORV shall not knowingly permit the
3 vehicle to be operated by a child less than 16 years of age unless
4 the child is under the direct visual supervision of an adult and
5 the child has in his or her immediate possession an ORV safety
6 certificate issued pursuant to this part or a comparable ORV safety
7 certificate issued under the authority of another state or a
8 province of Canada.

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

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

18 (7) The owner or person in charge of an ORV shall not
19 knowingly permit the vehicle to be operated by a person who is
20 incompetent to operate the vehicle because of mental or physical
21 disability except as provided in section 81131.

22 (8) The department shall implement a comprehensive ORV
23 information, safety education, and training program that shall
24 include the training of operators and the preparation and
25 dissemination of information and safety advice to the public. The
26 program shall provide for the training of youthful operators and
27 for the issuance of ORV safety certificates to those who

1 successfully complete the training provided under the program and
2 may include separate instruction for each type of ORV.

3 (9) In implementing a program ~~that is established pursuant to~~
4 ~~this section~~ **UNDER SUBSECTION (8)**, the department shall cooperate
5 with private organizations and associations, private and public
6 corporations, the department of education, the department of state,
7 and local governmental units. The department shall consult with ORV
8 and environmental organizations and associations in regard to the
9 subject matter of a training program and performance testing that
10 leads to certification of ORV operators.

11 (10) The department may designate a person it considers
12 qualified to provide course instruction and to award ORV safety
13 certificates.

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

16 (12) Subject to subsections (13), (14), (17), and (18), a
17 child who is less than 16 years of age ~~may~~ **SHALL NOT** operate an ORV
18 ~~if~~ **UNLESS** the child is under the direct visual supervision of an
19 adult and the child has in his or her immediate possession an ORV
20 safety certificate issued pursuant to this section or a comparable
21 ORV safety certificate issued under the authority of another state
22 or a province of Canada.

23 (13) Subject to subsection (18), a child who is less than 12
24 years of age shall not operate a 4-wheeled ATV, unless the child is
25 not less than 10 years of age and is on private land owned by a
26 parent or legal guardian of the child. This subsection does not
27 apply to the operation of an ATV used in agricultural operations.

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

3 (15) Subject to subsection (18), when operating an ORV, ~~under~~
4 ~~subsection (12),~~ a child **WHO IS LESS THAN 16 YEARS OF AGE** shall
5 present the ORV safety certificate to a peace officer upon demand.

6 (16) Notwithstanding any other provision of this section, an
7 operator who is less than 12 years of age shall not cross a highway
8 or street. An operator who is not less than 12 years of age but
9 less than 16 years of age may cross a highway or street or operate
10 on the right-of-way or shoulder of ~~designated access routes~~ **ROADS**
11 **AND STREETS ON WHICH ORV USE IS AUTHORIZED** pursuant to section
12 ~~81131-81131~~ **(2), (3), OR (5)** if the operator has a valid ORV safety
13 certificate in his or her immediate possession and meets any other
14 requirements under this section for operation of the vehicle.

15 (17) The requirement of possession or presentation of an ORV
16 safety certificate under this section does not apply until
17 implementation of the program for the vehicle proposed to be
18 operated required by subsection (8).

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

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

27 (b) The child's parent or legal guardian has provided the

1 event organizer with written permission for the child to
2 participate in the event.

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

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

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

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

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

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

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

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

1 (k) Any other applicable requirements of this part or rules
2 promulgated under this part are met.

3 (19) If a child less than 16 years of age participates and is
4 injured in an organized ORV riding or racing event, the organizer
5 of the event shall, within 30 days after the event, submit to the
6 department a report on a form developed by the department. The
7 report shall include all of the following, as 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 under this part or a comparable ORV safety certificate
14 issued under the authority of another state or a province of
15 Canada.

16 (d) The type of ORV operated.

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

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

24 **(21) THE REQUIREMENTS OF THIS SECTION ARE IN ADDITION TO ANY**
25 **APPLICABLE REQUIREMENTS OF SECTION 81131(9).**

26 Sec. 81131. ~~(1) A local unit of government may pass an~~
27 ~~ordinance establishing access routes along streets and highways~~

~~under its jurisdiction, if those access routes do not involve state or federal highways, and if they meet the requirements of the plan developed pursuant to section 81127. If necessary, consent of a state or federal land management agency shall be obtained for the location of the route.~~

(1) ~~(2)~~ A municipality may pass an ordinance allowing a permanently disabled person to operate an ORV in that municipality.

(2) SUBJECT TO SUBSECTIONS (4) AND (7), THE COUNTY BOARD OF COMMISSIONERS OF AN ELIGIBLE COUNTY MAY ADOPT AN ORDINANCE AUTHORIZING THE OPERATION OF ORVS ON THE MAINTAINED PORTION OF 1 OR MORE ROADS LOCATED WITHIN THE COUNTY. NOT LESS THAN 45 DAYS BEFORE A PUBLIC HEARING ON THE ORDINANCE, THE COUNTY CLERK SHALL SEND NOTICE OF THE PUBLIC HEARING, BY CERTIFIED MAIL, TO THE COUNTY ROAD COMMISSION AND, IF STATE FORESTLAND IS LOCATED WITHIN THE COUNTY, TO THE DEPARTMENT.

(3) SUBJECT TO SUBSECTIONS (4) AND (7), BEGINNING 1 YEAR AFTER THE EFFECTIVE DATE OF THE AMENDATORY ACT THAT ADDED THIS SUBSECTION, THE TOWNSHIP BOARD OF A TOWNSHIP LOCATED IN AN ELIGIBLE COUNTY MAY ADOPT AN ORDINANCE AUTHORIZING THE OPERATION OF ORVS ON THE MAINTAINED PORTION OF 1 OR MORE ROADS LOCATED WITHIN THE TOWNSHIP. NOT LESS THAN 28 DAYS BEFORE A PUBLIC HEARING ON THE ORDINANCE, THE TOWNSHIP CLERK SHALL SEND NOTICE OF THE PUBLIC HEARING, BY CERTIFIED MAIL, TO THE COUNTY ROAD COMMISSION AND, IF STATE FORESTLAND IS LOCATED WITHIN THE TOWNSHIP, TO THE DEPARTMENT.

(4) THE BOARD OF COUNTY ROAD COMMISSIONERS MAY CLOSE A ROAD TO THE OPERATION OF ORVS UNDER SUBSECTION (2) OR (3) TO PROTECT THE ENVIRONMENT OR IF THE OPERATION OF ORVS UNDER SUBSECTION (2) OR (3)

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1 POSES A PARTICULAR AND DEMONSTRABLE THREAT TO PUBLIC SAFETY. A
2 COUNTY ROAD COMMISSION SHALL NOT UNDER THIS SUBSECTION CLOSE MORE
3 THAN 30% OF THE LINEAR MILES OF ROADS LOCATED WITHIN THE COUNTY TO
4 THE OPERATION OF ORVS UNDER SUBSECTION (2) OR (3). THE TOWNSHIP
5 BOARD OF A TOWNSHIP LOCATED IN AN ELIGIBLE COUNTY MAY ADOPT AN
6 ORDINANCE TO CLOSE A ROAD TO THE OPERATION OF ORVS UNDER SUBSECTION
7 (2).

8 (5) SUBJECT TO SUBSECTION (7), THE LEGISLATIVE BODY OF A
9 MUNICIPALITY LOCATED IN AN ELIGIBLE COUNTY MAY ADOPT AN ORDINANCE
10 AUTHORIZING THE OPERATION OF ORVS ON THE MAINTAINED PORTION OF 1 OR
11 MORE STREETS WITHIN THE MUNICIPALITY.

12 (6) SUBJECT TO SUBSECTIONS (4) AND (7), IF A LOCAL UNIT OF
13 GOVERNMENT ADOPTS AN ORDINANCE PURSUANT TO SUBSECTION (2), (3), OR
14 (5), A PERSON MAY OPERATE AN ORV WITH THE FLOW OF TRAFFIC ON THE
15 FAR RIGHT OF THE MAINTAINED PORTION OF THE ROAD OR STREET COVERED
16 BY THE ORDINANCE. A PERSON SHALL NOT OPERATE AN ORV PURSUANT TO
17 SUBSECTION (2), (3), OR (5) AT A SPEED GREATER THAN 25 MILES PER
18 HOUR OR A LOWER POSTED ORV SPEED LIMIT OR IN A MANNER THAT
19 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
20 PURSUANT TO SUBSECTION (2), (3), OR (5) SHALL TRAVEL SINGLE FILE,
21 EXCEPT THAT AN ORV MAY TRAVEL ABREAST OF ANOTHER ORV WHEN IT IS
22 OVERTAKING AND PASSING, OR BEING OVERTAKEN AND PASSED BY, ANOTHER
23 ORV.

24 (7) SUBSECTIONS (2) TO (6) AND AN ORDINANCE ADOPTED UNDER
25 SUBSECTION (2), (3), OR (5) DO NOT APPLY BEGINNING 5 YEARS AFTER
26 THE EFFECTIVE DATE OF THE AMENDATORY ACT THAT ADDED THIS
27 SUBSECTION.

1 (8) IN ADDITION TO ANY APPLICABLE REQUIREMENT OF SECTION
2 81133(C), A PERSON SHALL NOT OPERATE AN ORV PURSUANT TO THIS
3 SECTION WHEN VISIBILITY IS SUBSTANTIALLY REDUCED DUE TO WEATHER
4 CONDITIONS WITHOUT DISPLAYING A LIGHTED HEADLIGHT AND LIGHTED
5 TAILLIGHT. BEGINNING JANUARY 1, 2010, A PERSON SHALL NOT OPERATE AN
6 ORV PURSUANT TO THIS SECTION WITHOUT DISPLAYING A LIGHTED HEADLIGHT
7 AND LIGHTED TAILLIGHT.

8 (9) A PERSON UNDER 18 YEARS OF AGE SHALL NOT OPERATE AN ORV
9 PURSUANT TO THIS SECTION UNLESS THE PERSON IS IN POSSESSION OF A
10 VALID DRIVER LICENSE OR UNDER THE DIRECT SUPERVISION OF A PARENT OR
11 GUARDIAN AND THE PERSON HAS IN HIS OR HER IMMEDIATE POSSESSION AN
12 ORV SAFETY CERTIFICATE ISSUED PURSUANT TO THIS PART OR A COMPARABLE
13 ORV SAFETY CERTIFICATE ISSUED UNDER THE AUTHORITY OF ANOTHER STATE
14 OR A PROVINCE OF CANADA. A PERSON UNDER 12 YEARS OF AGE SHALL NOT
15 OPERATE AN ORV PURSUANT TO THIS SECTION. THE REQUIREMENTS OF THIS
16 SUBSECTION ARE IN ADDITION TO ANY APPLICABLE REQUIREMENTS OF
17 SECTION 81129.

18 (10) ~~(3)~~ A TOWNSHIP THAT HAS AUTHORIZED THE OPERATION OF ORVS
19 ON A ROAD UNDER SUBSECTION (3) DOES NOT HAVE A DUTY TO MAINTAIN THE
20 ROAD IN A CONDITION REASONABLY SAFE AND CONVENIENT FOR THE
21 OPERATION OF ORVS. A board of county road commissioners, a county
22 board of commissioners, ~~and a local unit of government do~~ OR A
23 MUNICIPALITY DOES not have a duty to maintain a ~~highway~~ ROAD OR
24 STREET under ~~their respective jurisdictions~~ ITS JURISDICTION in a
25 condition reasonably safe and convenient for the operation of ORVs,
26 except the following ORVs:

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

1 (b) ORVs permitted by an ordinance as provided in subsection
2 ~~(2)~~-(1) .

3 (11) ~~(4)~~Beginning October 19, 1993, a board of county road
4 commissioners, a county board of commissioners, and a county are,
5 and, beginning on April 25, 1995, a municipality is, immune from
6 tort liability for injuries or damages sustained by any person
7 arising in any way out of the operation or use of an ORV on
8 maintained or unmaintained ~~highways~~**ROADS, STREETS**, shoulders, and
9 rights-of-way over which the board of county road commissioners,
10 the county board of commissioners, or the ~~local unit of government~~
11 **MUNICIPALITY** has jurisdiction. The immunity provided by this
12 subsection does not apply to actions that constitute gross
13 negligence. ~~Gross negligence is defined as~~**AS USED IN THIS**
14 **SUBSECTION, "GROSS NEGLIGENCE" MEANS** conduct so reckless as to
15 demonstrate a substantial lack of concern for whether an injury
16 results.

17 (12) **IN A COURT ACTION IN THIS STATE, IF COMPETENT EVIDENCE**
18 **DEMONSTRATES THAT A VEHICLE THAT IS PERMITTED TO OPERATE ON A ROAD**
19 **OR STREET PURSUANT TO THE CODE WAS IN A COLLISION WITH AN ORV**
20 **REQUIRED TO BE OPERATED ON THE FAR RIGHT OF THE MAINTAINED PORTION**
21 **OF A ROAD OR STREET PURSUANT TO AN ORDINANCE ADOPTED UNDER**
22 **SUBSECTION (2), (3), OR (5), THE OPERATOR OF THE ORV SHALL BE**
23 **CONSIDERED PRIMA FACIE NEGLIGENT.**

24 (13) **A VIOLATION OF AN ORDINANCE DESCRIBED IN THIS SECTION IS**
25 **A MUNICIPAL CIVIL INFRACTION. THE ORDINANCE MAY PROVIDE FOR A**
26 **MAXIMUM FINE OF NOT MORE THAN \$500.00 FOR A VIOLATION OF THE**
27 **ORDINANCE. IN ADDITION, THE COURT SHALL ORDER THE DEFENDANT TO PAY**

1 THE COST OF REPAIRING ANY DAMAGE TO THE ENVIRONMENT, A ROAD OR
2 STREET, OR PUBLIC PROPERTY DAMAGED AS A RESULT OF THE VIOLATION.

3 (14) THE TREASURER OF THE LOCAL UNIT OF GOVERNMENT SHALL
4 DEPOSIT FINES COLLECTED BY THAT LOCAL UNIT OF GOVERNMENT UNDER
5 SECTION 8379 OF THE REVISED JUDICATURE ACT OF 1961, 1961 PA 236,
6 MCL 600.8379, AND SUBSECTION (13) AND DAMAGES COLLECTED
7 UNDER SUBSECTION (13) INTO A FUND TO BE DESIGNATED AS THE "ORV
8 FUND". THE LEGISLATIVE BODY OF THE LOCAL UNIT OF GOVERNMENT SHALL
9 APPROPRIATE REVENUE IN THE ORV FUND AS FOLLOWS:

10 (A) FIFTY PERCENT TO THE COUNTY SHERIFF OR POLICE DEPARTMENT
11 RESPONSIBLE FOR LAW ENFORCEMENT IN THE LOCAL UNIT OF GOVERNMENT FOR
12 ORV ENFORCEMENT AND TRAINING.

13 (B) FIFTY PERCENT TO THE BOARD OF COUNTY ROAD COMMISSIONERS
14 OR, IN THE CASE OF A CITY OR VILLAGE, TO THE DEPARTMENT RESPONSIBLE
15 FOR STREET MAINTENANCE IN THE CITY OR VILLAGE, FOR REPAIRING DAMAGE
16 TO ROADS OR STREETS AND THE ENVIRONMENT THAT MAY HAVE BEEN CAUSED
17 BY ORVS AND FOR POSTING SIGNS INDICATING ORV SPEED LIMITS OR
18 INDICATING WHETHER ROADS OR STREETS ARE OPEN OR CLOSED TO THE
19 OPERATION OF ORVS UNDER THIS SECTION.

20 (15) AS USED IN THIS SECTION:

21 (A) "ELIGIBLE COUNTY" MEANS MASON, LAKE, OSCEOLA, CLARE,
22 GLADWIN, ARENAC, OR BAY COUNTY OR A COUNTY LYING NORTH THEREOF,
23 INCLUDING ALL OF THE COUNTIES OF THE UPPER PENINSULA.

24 (B) "LOCAL UNIT OF GOVERNMENT" MEANS A COUNTY, TOWNSHIP, OR
25 MUNICIPALITY.

26 (C) "MUNICIPALITY" MEANS A CITY OR VILLAGE.

27 (D) "ROAD" MEANS A COUNTY PRIMARY ROAD OR COUNTY LOCAL ROAD AS

1 DESCRIBED IN SECTION 5 OF 1951 PA 51, MCL 247.655.

2 (E) "STREET" MEANS A CITY OR VILLAGE MAJOR STREET OR CITY OR
3 VILLAGE LOCAL STREET AS DESCRIBED IN SECTION 9 OF 1951 PA 51, MCL
4 247.659.

5 Sec. 81133. A person shall not operate an ORV:

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

9 (b) Unless the person and any passenger in or on the vehicle
10 is wearing on his or her head a crash helmet and protective eyewear
11 approved by the United States department of transportation. This
12 subdivision does not apply if the vehicle is equipped with a roof
13 that meets or exceeds standards for a crash helmet and the operator
14 and each passenger is wearing a properly adjusted and fastened
15 safety belt.

16 (c) During the hours of 1/2 hour after sunset to 1/2 hour
17 before sunrise without displaying a lighted headlight and lighted
18 taillight. **THE REQUIREMENTS OF THIS SUBDIVISION ARE IN ADDITION TO**
19 **ANY APPLICABLE REQUIREMENTS OF SECTION 81131(8).**

20 (d) Unless equipped with a braking system that may be operated
21 by hand or foot, capable of producing deceleration at 14 feet per
22 second on level ground at a speed of 20 miles per hour; a brake
23 light, brighter than the taillight, visible when the brake is
24 activated to the rear of the vehicle when the vehicle is operated
25 during the hours of 1/2 hour after sunset and 1/2 hour before
26 sunrise; and a throttle so designed that when the pressure used to
27 advance the throttle is removed, the engine speed will immediately

1 and automatically return to idle.

2 (e) In a state game area or state park or recreation area,
3 except on roads, trails, or areas designated for this purpose; on
4 state owned lands under the control of the department other than
5 game areas, state parks, or recreational areas where the operation
6 would be in violation of rules promulgated by the department; in a
7 forest nursery or planting area; on public lands posted or
8 reasonably identifiable as an area of forest reproduction, and when
9 growing stock may be damaged; in a dedicated natural area of the
10 department; or in any area in such a manner as to create an erosive
11 condition, or to injure, damage, or destroy trees or growing crops.
12 However, the department may permit an owner and guests of the owner
13 to use an ORV within the boundaries of a state forest in order to
14 access the owner's property.

15 (f) On the frozen surface of public waters within 100 feet of
16 a person not in or upon a vehicle, or within 100 feet of a fishing
17 shanty or shelter or an area that is cleared of snow for skating
18 purposes, except at the minimum speed required to maintain
19 controlled forward movement of the vehicle, or as may be authorized
20 by permit in special events.

21 (g) Unless the vehicle is equipped with a spark arrester type
22 United States forest service approved muffler, in good working
23 order and in constant operation. Exhaust noise emission shall not
24 exceed 86 Db(A) or 82 Db(A) on a vehicle manufactured after January
25 1, 1986, when the vehicle is under full throttle, traveling in
26 second gear, and measured 50 feet at right angles from the vehicle
27 path with a sound level meter ~~which~~ **THAT** meets the requirement of

1 ANSI S1.4 1983, using procedure and ancillary equipment therein
 2 described; or 99 Db(A) or 94 Db(A) on a vehicle manufactured after
 3 January 1, 1986, or that level comparable to the current sound
 4 level as provided for by the United States environmental protection
 5 agency when tested according to the provisions of the current SAE
 6 J1287, June 86 test procedure for exhaust levels of stationary
 7 motorcycles, using sound level meters and ancillary equipment
 8 therein described. A vehicle subject to this part, manufactured or
 9 assembled after December 31, 1972 and used, sold, or offered for
 10 sale in this state, shall conform to the noise emission levels
 11 established by the United States environmental protection agency
 12 under the noise control act of 1972, ~~Public Law 92-574, 86 Stat.~~
 13 ~~1234-42~~ **42 USC 4901 TO 4918.**

14 (h) Within 100 feet of a dwelling at a speed greater than the
 15 minimum required to maintain controlled forward movement of the
 16 vehicle, except on property owned or under the operator's control
 17 or on which the operator is an invited guest, or on a roadway,
 18 forest road, or forest trail maintained by or under the
 19 jurisdiction of the department, or on ~~an ORV access route as~~
 20 ~~authorized by local ordinance~~ **A ROAD OR STREET ON WHICH ORV USE IS**
 21 **AUTHORIZED PURSUANT TO SECTION 81131(2), (3), OR (5).**

22 (i) In or upon the lands of another without the written
 23 consent of the owner, **THE** owner's agent, or **A** lessee, when required
 24 by part 731. The operator of the vehicle is liable for damage to
 25 private property, including, but not limited to, damage to trees,
 26 shrubs, **OR** growing crops, ~~ex~~-injury to **OTHER** living creatures, or
 27 damage caused through vehicle operation in a manner so as to create

1 erosive or other ecological damage. ~~to private property.~~ The owner
2 of the private property may recover from the person responsible
3 nominal damages of not less than the amount of damage or injury.
4 Failure to post private property or fence or otherwise enclose in a
5 manner to exclude intruders or of the private property owner or
6 other authorized person to personally communicate against trespass
7 does not imply consent to ORV use.

8 (j) In an area on which public hunting is permitted during the
9 regular November firearm deer season from 7 a.m. to 11 a.m. and
10 from 2 p.m. to 5 p.m., except during an emergency or for law
11 enforcement purposes, to go to and from a permanent residence or a
12 hunting camp otherwise inaccessible by a conventional wheeled
13 vehicle, to remove **FROM PUBLIC LAND** a deer, elk, or bear ~~from~~
14 ~~public land which~~ **THAT** has been taken under a valid license; ~~or~~
15 except for the conduct of necessary work functions involving land
16 and timber survey, communication and transmission line patrol, and
17 timber harvest operations; or **EXCEPT** on property owned or under
18 control of the operator or on which the operator is an invited
19 guest. A hunter removing game pursuant to this subdivision ~~shall be~~
20 ~~allowed to~~ **MAY** leave the designated trail or forest road only to
21 retrieve the game and shall not exceed 5 miles per hour. A vehicle
22 registered under the code is exempt from this subdivision while
23 operating on a public highway or public or private road capable of
24 sustaining automobile traffic. A person holding a valid permit to
25 hunt from a standing vehicle issued pursuant to part 401, or a
26 person with disabilities using an ORV to access public lands for
27 purposes of hunting or fishing through use of a designated trail or

1 forest road, is exempt from this subdivision.

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

6 (l) On or across a cemetery or burial ground, or land used as
7 an airport.

8 (m) Within 100 feet of a slide, ski, or skating area, unless
9 the vehicle is being used for the purpose of servicing the area **OR**
10 **IS BEING OPERATED PURSUANT TO SECTION 81131(2), (3), OR (5).**

11 (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 ~~established~~ **PROVIDED**
17 **FOR** in section 81127.

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

21 (p) To hunt, pursue, worry, kill, or attempt to hunt, pursue,
22 worry, or kill ~~a bird or~~ **AN** animal, **WHETHER** wild or domesticated.

23 (q) In a manner so as to leave behind litter or other debris.

24 (r) In a manner contrary to operating regulations on public
25 lands.

26 (s) While transporting or possessing, in or on the vehicle,
27 alcoholic liquor in a container that is open or uncapped or upon

1 which the seal is broken, except under either of the following
2 circumstances:

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

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

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

11 (u) On adjacent private land, in an area zoned residential,
12 within 300 feet of a dwelling at a speed greater than the minimum
13 required to maintain controlled forward movement of the vehicle
14 except on a roadway, forest road, or forest trail maintained by or
15 under the jurisdiction of the department, or on ~~an ORV access route~~
16 ~~as authorized by local ordinance~~ **A ROAD OR STREET ON WHICH ORV USE**
17 **IS AUTHORIZED PURSUANT TO SECTION 81131(2), (3), OR (5).**

18 Sec. 81147. (1) Except as otherwise provided in this part, a
19 person who violates ~~a provision of this part~~ is guilty of a
20 misdemeanor ~~—~~ punishable by imprisonment for not more than 90 days
21 ~~—~~ or a fine of not less than \$50.00 or more than \$1,000.00, or
22 both, for each violation. ~~of the part.~~

23 **(2) A PERSON WHO VIOLATES SECTION 81133(E) BY OPERATING AN ORV**
24 **IN SUCH A MANNER AS TO CREATE AN EROSION CONDITION OR WHO VIOLATES**
25 **SECTION 81133(I) OR (O) IS GUILTY OF A MISDEMEANOR PUNISHABLE BY**
26 **IMPRISONMENT FOR NOT MORE THAN 90 DAYS OR A FINE OF NOT LESS THAN**
27 **\$250.00 OR MORE THAN \$1,000.00, OR BOTH, FOR EACH VIOLATION.**

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

6 (4) ~~(3)~~ A person shall not remove, deface, or destroy a sign
 7 or marker placed by the department indicating the boundaries of an
 8 ORV trail or area or that marks a route.

9 (5) ~~(4)~~ In addition to the penalties otherwise provided under
 10 this part, a court of competent jurisdiction may order a person to
 11 restore, as nearly as possible, any land, water, stream bank,
 12 streambed, or other natural or geographic formation damaged by the
 13 violation of this part to the condition it was in before the
 14 violation occurred.

15 (6) ~~(5)~~ The department or any other peace officer may impound
 16 the ORV of a person who ~~violates a provision~~ **COMMITTS A VIOLATION** of
 17 this part that is punishable as a misdemeanor or who causes damage
 18 to the particular area in which the ORV was used in the commission
 19 of the violation.

20 (7) ~~(6)~~ Upon conviction of a person for violation ~~of a~~
 21 ~~provision of this part that is punishable as a misdemeanor or any~~
 22 ~~other provision of this part that results in damage to the~~
 23 ~~particular area in which the ORV was used~~ **DESCRIBED IN SUBSECTION**
 24 **(5)**, a court of competent jurisdiction may order ~~an~~ **THE** ORV and any
 25 personal property on the ORV seized as a result of the violation
 26 returned to the owner or, upon recommendation of the local
 27 prosecuting attorney, turned over to the department. ~~If the~~ **AN** ORV

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

7 Enacting section 1. This amendatory act does not take effect
8 unless House Bill No. 5559 of the 94th Legislature is enacted into
9 law.