

HOUSE BILL No. 5322

January 31, 2012, Introduced by Reps. Heise, McMillin, Yonker and Hooker and referred to the Committee on Judiciary.

A bill to amend 1994 PA 451, entitled "Natural resources and environmental protection act," by amending sections 40111 and 81133 (MCL 324.40111 and 324.81133), section 40111 as added by 1995 PA 57 and section 81133 as amended by 2008 PA 365.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 40111. (1) Except as otherwise provided in this part or
2 in a department order authorized under section 40107, ~~a person~~ **AN**
3 **INDIVIDUAL** shall not take an animal from in or upon a vehicle.

4 (2) Except as otherwise provided in **SUBSECTION (3)**, this part,
5 or in a department order authorized under section 40107, ~~a person~~
6 **AN INDIVIDUAL** shall not transport or ~~have in possession~~ **POSSESS** a
7 firearm in or upon a vehicle, unless the firearm is unloaded in
8 both barrel and magazine and enclosed in a case, carried in the
9 trunk of a vehicle, or unloaded in a motorized boat.

1 (3) **AN INDIVIDUAL MAY TRANSPORT OR POSSESS A LOADED FIREARM IN**
2 **OR UPON A VEHICLE ON A SPORTING CLAYS RANGE.**

3 (4) ~~(3)~~ Except as otherwise provided in this part, ~~a person~~ **AN**
4 **INDIVIDUAL** shall not transport or ~~have in possession~~ **POSSESS** a bow
5 in or upon a vehicle, unless the bow is unstrung, enclosed in a
6 case, or carried in the trunk of a vehicle.

7 (5) ~~(4)~~ ~~A person~~ **AN INDIVIDUAL** shall not hunt or discharge a
8 firearm within 150 yards of an occupied building, dwelling, house,
9 residence, or cabin, or any barn or other building used in
10 connection with a farm operation, without obtaining the written
11 permission of the owner, renter, or occupant of the property.

12 Sec. 81133. ~~A person~~ **AN INDIVIDUAL** shall not operate an ORV:

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

16 (b) Unless the ~~person~~ **INDIVIDUAL** and any passenger in or on
17 the vehicle is wearing on his or her head a crash helmet and
18 protective eyewear approved by the United States department of
19 transportation. This subdivision does not apply if the vehicle is
20 equipped with a roof that meets or exceeds standards for a crash
21 helmet and the operator and each passenger is wearing a properly
22 adjusted and fastened safety belt.

23 (c) During the hours of 1/2 hour after sunset to 1/2 hour
24 before sunrise without displaying a lighted headlight and lighted
25 taillight. The requirements of this subdivision are in addition to
26 any applicable requirements of section 81131(8).

27 (d) Unless equipped with a braking system that may be operated

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

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

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

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

20 (h) Within 100 feet of a dwelling at a speed greater than the
21 minimum required to maintain controlled forward movement of the
22 vehicle, except on property owned or under the operator's control
23 or on which the operator is an invited guest, or on a roadway,
24 forest road, or forest trail maintained by or under the
25 jurisdiction of the department, or on a road or street on which ORV
26 use is authorized ~~pursuant to~~ **UNDER** section 81131(2), (3), or (5).

27 (i) In or upon the lands of another without the written

1 consent of the owner, the owner's agent, or a lessee, when required
2 by part 731. The operator of the vehicle is liable for damage to
3 private property, including, but not limited to, damage to trees,
4 shrubs, or growing crops, injury to other living creatures, or
5 damage caused through vehicle operation in a manner so as to create
6 erosive or other ecological damage. The owner of the private
7 property may recover from the ~~person~~**INDIVIDUAL** responsible nominal
8 damages of not less than the amount of damage or injury. Failure to
9 post private property or fence or otherwise enclose in a manner to
10 exclude intruders or of the private property owner or other
11 authorized person to personally communicate against trespass does
12 not imply consent to ORV use.

13 (j) In an area on which public hunting is permitted during the
14 regular November firearm deer season from 7 a.m. to 11 a.m. and
15 from 2 p.m. to 5 p.m., except during an emergency or for law
16 enforcement purposes, to go to and from a permanent residence or a
17 hunting camp otherwise inaccessible by a conventional wheeled
18 vehicle, to remove from public land a deer, elk, or bear that has
19 been taken under a valid license; except for the conduct of
20 necessary work functions involving land and timber survey,
21 communication and transmission line patrol, and timber harvest
22 operations; or except on property owned or under control of the
23 operator or on which the operator is an invited guest. A hunter
24 removing game under this subdivision may leave the designated trail
25 or forest road only to retrieve the game and shall not exceed 5
26 miles per hour. A vehicle registered under the code is exempt from
27 this subdivision while operating on a public highway or public or

1 private road capable of sustaining automobile traffic. A person
2 holding a valid permit to hunt from a standing vehicle issued under
3 part 401, or a person with disabilities using an ORV to access
4 public lands for purposes of hunting or fishing through use of a
5 designated trail or forest road, is exempt from this subdivision. A
6 ~~person~~**AN INDIVIDUAL** holding a valid permit to hunt from a standing
7 vehicle issued under part 401, or a person with disabilities using
8 an ORV to access public lands for purposes of hunting or fishing,
9 may display a flag, the color of which the department shall
10 determine, to identify himself or herself as a person with
11 disabilities or a ~~person~~**AN INDIVIDUAL** holding a permit to hunt
12 from a standing vehicle under part 401.

13 (k) ~~While~~**EXCEPT AS OTHERWISE PROVIDED IN SECTION 40111, WHILE**
14 transporting on the vehicle a bow unless unstrung or encased, or a
15 firearm unless unloaded and securely encased, or equipped with and
16 made inoperative by a manufactured keylocked trigger housing
17 mechanism.

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

20 (m) Within 100 feet of a slide, ski, or skating area, unless
21 the vehicle is being used for the purpose of servicing the area or
22 is being operated pursuant to section 81131(2), (3), or (5).

23 (n) On an operating or nonabandoned railroad or railroad
24 right-of-way, or public utility right-of-way, other than for the
25 purpose of crossing at a clearly established site intended for
26 vehicular traffic, except railroad, public utility, or law
27 enforcement personnel while in performance of their duties, and

1 except if the right-of-way is designated as provided for in section
2 81127.

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

6 (p) To hunt, pursue, worry, kill, or attempt to hunt, pursue,
7 worry, or kill an animal, whether wild or domesticated.

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

9 (r) In a manner contrary to operating regulations on public
10 lands.

11 (s) While transporting or possessing, in or on the vehicle,
12 alcoholic liquor in a container that is open or uncapped or upon
13 which the seal is broken, except under either of the following
14 circumstances:

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

17 (ii) If the vehicle does not have a trunk or compartment
18 separate from the passenger compartment, the container is encased
19 or enclosed.

20 (t) While transporting any passenger in or upon an ORV unless
21 the manufacturing standards for the vehicle make provisions for
22 transporting passengers.

23 (u) On adjacent private land, in an area zoned residential,
24 within 300 feet of a dwelling at a speed greater than the minimum
25 required to maintain controlled forward movement of the vehicle
26 except on a roadway, forest road, or forest trail maintained by or
27 under the jurisdiction of the department, or on a road or street on

1 which ORV use is authorized ~~pursuant to~~ **UNDER** section 81131(2),
2 (3), or (5).