

HOUSE BILL No. 5612

May 9, 2012, Introduced by Rep. Huuki and referred to the Committee on Natural Resources, Tourism, and Outdoor Recreation.

A bill to amend 1994 PA 451, entitled
"Natural resources and environmental protection act,"
by amending section 81131 (MCL 324.81131), as amended by 2011 PA
107.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 81131. (1) A municipality may pass an ordinance allowing
2 a permanently disabled person to operate an ORV in that
3 municipality.

4 (2) Subject to subsection (4), the county board of
5 commissioners of ~~an eligible~~ A county may adopt an ordinance
6 authorizing the operation of ORVs on the maintained portion of 1 or
7 more roads located within the county, **INCLUDING THE SHOULDERS OF**
8 **THOSE ROADS**. Not less than 45 days before a public hearing on the
9 ordinance, the county clerk shall send notice of the public
10 hearing, by certified mail, to the county road commission and, if

1 state forestland is located within the county, to the department.
2 **THE COUNTY SHALL NOT CHARGE A FEE FOR THE OPERATION OF ORVS ON**
3 **ROADS UNDER ITS JURISDICTION.**

4 (3) Subject to subsection (4), the township board of a
5 township ~~located in an eligible county~~ may adopt an ordinance
6 authorizing the operation of ORVs on the maintained portion of 1 or
7 more roads located within the township, **INCLUDING THE SHOULDERS OF**
8 **ROADS UNDER ITS JURISDICTION.** Not less than 28 days before a public
9 hearing on the ordinance, the township clerk shall send notice of
10 the public hearing, by certified mail, to the county road
11 commission and, if state forestland is located within the township,
12 to the department. This subsection does not apply to a township
13 until 1 year after the effective date of the amendatory act that
14 first ~~defined eligible county so as to include~~ **AUTHORIZED** the
15 county in which that township is located **FOR PURPOSES OF ADOPTING**
16 **AN ORDINANCE UNDER SUBSECTION (2). THE TOWNSHIP SHALL NOT CHARGE A**
17 **FEE FOR THE OPERATION OF ORVS ON ROADS UNDER ITS JURISDICTION.**

18 (4) The board of county road commissioners may close a road to
19 the operation of ORVs under subsection (2) or (3) ~~to protect the~~
20 ~~environment or if the operation of ORVs under subsection (2) or (3)~~
21 ~~poses a particular and demonstrable threat to public safety~~ **IF ORV**
22 **USAGE HAS CREATED A SIGNIFICANT THREAT TO PUBLIC SAFETY OR**
23 **EXTRAORDINARY DAMAGE TO THE ENVIRONMENT OR A ROAD, INCLUDING THE**
24 **SHOULDER OF THE ROAD.** A county road commission shall not under this
25 subsection close more than 30% of the linear miles of roads located
26 within the county to the operation of ORVs under subsection (2) or
27 (3). The township board of a township ~~located in an eligible county~~

1 may adopt an ordinance to close a road to the operation of ORVs
2 under subsection (2).

3 (5) The legislative body of a municipality ~~located in an~~
4 ~~eligible county~~ may adopt an ordinance authorizing the operation of
5 ORVs on the maintained portion of 1 or more streets within the
6 municipality, **INCLUDING THE SHOULDERS OF THOSE STREETS. THE**
7 **MUNICIPALITY SHALL NOT CHARGE A FEE FOR THE OPERATION OF ORVS ON**
8 **THOSE STREETS.**

9 (6) Subject to subsection (4), if a local unit of government
10 adopts an ordinance ~~pursuant to~~ **UNDER** subsection (2), (3), or (5),
11 a person may operate an ORV with the flow of traffic on the far
12 right of the maintained portion of the road or street covered by
13 the ordinance, **INCLUDING THE SHOULDER OF THAT ROAD OR STREET.** A
14 person shall not operate an ORV ~~pursuant to~~ **UNDER** subsection (2),
15 (3), or (5) at a speed greater than 25 miles per hour or a lower
16 posted ORV speed limit or in a manner that interferes with traffic
17 on the road or street.

18 (7) **A COUNTY BOARD OF COMMISSIONERS MAY ADOPT AN ORDINANCE**
19 **AUTHORIZING THE OPERATION OF ORVS ON 1 OR MORE HIGHWAYS LOCATED**
20 **WITHIN THE COUNTY, INCLUDING THE SHOULDERS OF THOSE HIGHWAYS. THE**
21 **DESIGNATION MAY BE MADE ON A PERMANENT, SEASONAL, OR TEMPORARY**
22 **BASIS. THE COUNTY SHALL NOT CHARGE A FEE FOR THE OPERATION OF ORVS**
23 **ON THOSE HIGHWAYS. NOT LESS THAN 45 DAYS BEFORE THE COUNTY BOARD OF**
24 **COMMISSIONERS HOLDS A PUBLIC HEARING ON THE ORDINANCE, THE COUNTY**
25 **CLERK SHALL SEND NOTICE OF THE PUBLIC HEARING, BY CERTIFIED MAIL,**
26 **TO THE STATE TRANSPORTATION DEPARTMENT AND, IF STATE FORESTLAND IS**
27 **LOCATED WITHIN THE COUNTY, TO THE DEPARTMENT. THE NOTICE TO THE**

1 STATE TRANSPORTATION DEPARTMENT SHALL SOLICIT THE STATE
2 TRANSPORTATION DEPARTMENT'S COMMENT ON ENVIRONMENTAL AND PUBLIC
3 SAFETY ISSUES RELATED TO THE PROPOSED ORDINANCE. OPERATION OF AN
4 ORV MAY BE AUTHORIZED UNDER THIS SUBSECTION ONLY ON STRETCHES OF
5 HIGHWAY THAT MEET 1 OR MORE OF THE FOLLOWING REQUIREMENTS:

6 (A) WILL SERVE AS CONNECTORS BETWEEN ORV AREAS, ROUTES, OR
7 TRAILS DESIGNATED BY THE DEPARTMENT OR A LOCAL UNIT OF GOVERNMENT
8 THAT ARE NOT CURRENTLY CONNECTED.

9 (B) WILL PROVIDE ACCESS TO TOURIST ATTRACTIONS, FOOD SERVICE
10 ESTABLISHMENTS, FUEL, OR OTHER SERVICES WITHIN A REASONABLE
11 DISTANCE FROM AN APPROVED ORV ROUTE OR TRAIL, INCLUDING AN ORV
12 ROUTE OR TRAIL ON PRIVATE PROPERTY THAT IS OPEN FOR USE BY THE
13 PUBLIC, AS DETERMINED BY THE LOCAL UNIT OF GOVERNMENT OR THE
14 DEPARTMENT.

15 (8) ~~(7)~~—Unless the person possesses a license as defined in
16 section 25 of the Michigan vehicle code, 1949 PA 300, MCL 257.25, a
17 person shall not operate an ORV ~~pursuant to~~ **UNDER** subsection (2),
18 (3), ~~or~~ (5), **OR (7)** if the ORV is registered as a motor vehicle
19 under chapter II of the Michigan vehicle code, 1949 PA 300, MCL
20 257.201 to 257.259, and either is more than 60 inches wide or has 3
21 wheels. ORVs operated ~~pursuant to~~ **UNDER** subsection (2), (3), ~~or~~
22 (5), **OR (7)** shall travel single file, except that an ORV may travel
23 abreast of another ORV when it is overtaking and passing, or being
24 overtaken and passed by, another ORV.

25 (9) ~~(8)~~—A person, **OTHER THAN A PERSON OPERATING AN ORV IN AN**
26 **ORGANIZED ORV EVENT BETWEEN THE HOURS OF SUNRISE AND SUNSET**, shall
27 not operate an ORV ~~pursuant to~~ **UNDER** this section without

1 displaying a lighted headlight and lighted taillight.

2 (10) ~~(9)~~ A person under 18 years of age shall not operate an
3 ORV ~~pursuant to~~ **UNDER** this section unless the person is in
4 possession of a valid driver license or under the direct
5 supervision of a parent or guardian and the person has in his or
6 her immediate possession an ORV safety certificate issued ~~pursuant~~
7 ~~to~~ **UNDER** this part or a comparable ORV safety certificate issued
8 under the authority of another state or a province of Canada. A
9 person under 12 years of age shall not operate an ORV ~~pursuant to~~
10 **UNDER** this section. The requirements of this subsection are in
11 addition to any applicable requirements of section 81129.

12 (11) ~~(10)~~ A township that has authorized the operation of ORVs
13 on a road under subsection (3) ~~does~~ **AND A COUNTY OR THIS STATE FOR**
14 **A HIGHWAY OPEN FOR USE UNDER SUBSECTION (7) DO** not have a duty to
15 maintain the road in a condition reasonably safe and convenient for
16 the operation of ORVs. A board of county road commissioners, a
17 county board of commissioners, or a municipality does not have a
18 duty to maintain a road, ~~or~~ street, **OR HIGHWAY** under its
19 jurisdiction in a condition reasonably safe and convenient for the
20 operation of ORVs, except the following ORVs:

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

22 (b) ORVs permitted by an ordinance as provided in subsection
23 (1) .

24 (12) ~~(11) Beginning October 19, 1993, THIS STATE,~~ a board of
25 county road commissioners, a county board of commissioners, ~~and a~~
26 county, ~~are, and , beginning on April 25, 1995,~~ a municipality ~~is~~
27 **ARE**, immune from tort liability for injuries or damages sustained

1 by any person arising in any way out of the operation or use of an
 2 ORV on maintained or unmaintained roads, streets, shoulders, and
 3 rights-of-way over which **THIS STATE**, the board of county road
 4 commissioners, the county board of commissioners, or the
 5 municipality has jurisdiction. The immunity provided by this
 6 subsection does not apply to actions that constitute gross
 7 negligence. As used in this subsection, "gross negligence" means
 8 conduct so reckless as to demonstrate a substantial lack of concern
 9 for whether an injury results.

10 (13) ~~(12)~~—In a court action in this state, if competent
 11 evidence demonstrates that a vehicle that is permitted to operate
 12 on a road, ~~or street, pursuant to~~ **OR HIGHWAY UNDER** the code was in
 13 a collision with an ORV required to be operated on the far right of
 14 the maintained portion of a road or street ~~pursuant to~~ **UNDER** an
 15 ordinance adopted under subsection (2), (3), or (5), **OR WITH AN ORV**
 16 **ON A HIGHWAY OPEN FOR USE UNDER SUBSECTION (7)**, the operator of the
 17 ORV shall be considered prima facie negligent.

18 (14) ~~(13)~~—A violation of an ordinance described in this
 19 section is a municipal civil infraction. The ordinance may provide
 20 for a maximum fine of not more than \$500.00 for a violation of the
 21 ordinance. In addition, the court shall order the defendant to pay
 22 the cost of repairing any damage to the environment, a road, ~~or~~
 23 street, **OR HIGHWAY**, or public property damaged as a result of the
 24 violation.

25 (15) ~~(14)~~—The treasurer of the local unit of government shall
 26 deposit fines collected by that local unit of government under
 27 section 8379 of the revised judicature act of 1961, 1961 PA 236,

MCL 600.8379, and subsection ~~(13)~~-(14) and damages collected under subsection ~~(13)~~-(14) into a fund to be designated as the "ORV fund". The legislative body of the local unit of government shall appropriate revenue in the ORV fund as follows:

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

(b) Fifty percent to the board of county road commissioners or, in the case of a city or village, to the department responsible for street maintenance in the city or village, for repairing damage to roads or streets and the environment that may have been caused by ORVs and for posting signs indicating ORV speed limits or indicating whether roads or streets are open or closed to the operation of ORVs under this section.

(16) ~~(15)~~ As used in this section:

~~— (a) "Eligible county" means any of the following:~~

~~— (i) Oceana, Newaygo, Montcalm, Gratiot, Saginaw, Tuscola, or Sanilac county or a county lying north thereof, including all of the counties of the Upper Peninsula.~~

~~— (ii) St. Clair county.~~

(A) ~~(b)~~ "Local unit of government" means a county, township, or municipality.

(B) ~~(c)~~ "Municipality" means a city or village.

(C) ~~(d)~~ "Road" means a county primary road or county local road as described in section 5 of 1951 PA 51, MCL 247.655.

(D) ~~(e)~~ "Street" means a city or village major street or city or village local street as described in section 9 of 1951 PA 51,

1 MCL 247.659.

2 Enacting section 1. This amendatory act takes effect October
3 1, 2012.

4 Enacting section 2. This amendatory act does not take effect
5 unless all of the following bills of the 96th Legislature are
6 enacted into law:

7 (a) Senate Bill No. ____ or House Bill No. 5615(request no.
8 03046'11 *).

9 (b) Senate Bill No. ____ or House Bill No. 5614(request no.
10 03046'11 a *).

11 (c) Senate Bill No. ____ or House Bill No. 5613(request no.
12 03046'11 b *).