

**SFA**

BILL ANALYSIS

Senate Fiscal Agency

Lansing, Michigan 48909

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Senate Bill 93 (as enrolled)

Sponsor: Senator John J. H. Schwarz, M.D.

Senate Committee: Health Policy

House Committee: Transportation

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**PUBLIC ACT 241 of 1989****RECEIVED****MAR 07 1990**

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**RATIONALE**

Public Act 319 of 1975 provides for the registration and regulation of off-road recreation vehicles (ORVs). The Act was passed to address concerns about the possible conflict between ORV use and land management practices, environmental values, and other recreational activities, as well as to protect the safety of ORV operators. Since that time, the use of ORVs has risen dramatically, and operator safety is receiving heightened attention. Of particular concern is the increase in injuries and deaths associated with all terrain vehicles (ATVs), a type of ORV that generally has three or four low-pressure tires, handlebars for steering, and a seat designed to be straddled by the rider. The Specialty Vehicle Institute of America reports that the estimated number of ATVs in use grew from 1.6-1.7 million in 1984 to 2.3-2.4 million in 1986 nationwide. During that time, according to the Consumer Product Safety Commission (CPSC), ATV-related injuries rose from some 26,900 in 1983 to 63,900 in 1984, and between 1982 and September 1988, there were 1,186 ATV-related deaths, including 67 in Michigan. CPSC figures also show that 46% of the people injured in ATV accidents were under 16 years of age. Although Michigan law restricts the use of ORVs by children under the age of 16, the law does not differentiate between the more dangerous ATVs and other ORVs. In addition, although three-wheeled ATVs are no longer being manufactured, many are still in operation, and some people believe that they should not be used by children under

any circumstances.

Other ATV safety issues involve the riders' use of protective equipment, and the operation of ATVs while the operator is under the influence of alcohol. According to CPSC figures, 58% of all those injured in ATV accidents did not wear any type of protective equipment, 30% of all fatalities were associated with alcohol use.

**CONTENT**

The bill would amend Public Act 319 of 1975 to impose new restrictions on the operation of ORVs and ATVs by minors; and establish provisions for ORV operation that would parallel Michigan's drunk driving laws. The bill would:

- Provide that a child under 16 could operate an ORV only under the direct visual supervision of an adult and with a safety certificate.
- Prohibit a child under 16 from operating a three-wheeled ATV.
- Provide that a child under 10 could not operate a four-wheeled ATV, and that a 10-or 11-year-old could operate a four-wheeled ATV only on private land owned by his or her parent or guardian; and create an exemption to these provisions for agricultural operations.
- Transfer from the Department of Natural Resources to the

Department of Education the responsibility for implementing an ORV safety training program.

- Require that a helmet and protective eyewear be worn by an ORV operator or passenger unless the ORV had a roof that met certain standards.
- Require dealers to register ORVs; allow dealers to issue temporary permits; and increase ORV registration, transfer, and permit fees.
- Prohibit a person from operating an ORV while under the influence of or visibly impaired by liquor and/or a controlled substance, or with a blood alcohol content of .10% or more, and set penalties for violations, including mandatory suspension of ORV operating privileges.
- Permit a peace officer to request that the blood, breath, or urine of an ORV operator be tested if the person were arrested for operating the ORV under the influence or while impaired, or for negligent homicide or manslaughter resulting from the operation of the ORV; and allow a person who took a test to be given a test of his or her own choosing.
- Allow a person who was arrested to refuse a chemical test and permit test refusal to be admissible in evidence.
- Provide for the automatic suspension of a person's right to operate an ORV if the person refused a test, subject to the right to an administrative hearing concerning that suspension.

#### Operator's Age Requirements

The bill would establish separate age requirements for the operation of ORVs and ATVs, and would amend the definition of "ORV" specifically to include ATVs. ("ORV" currently means "a motor driven off-road recreation vehicle capable of cross-country travel without benefit of a road or trail, on or immediately over land, snow, ice, marsh, swampland, or other natural terrain".) The bill

would define "ATV" as a three- or four-wheeled vehicle that is designed for off-road use, has low pressure tires, has a seat designed to be straddled by the rider, and is powered by a 50cc to 500cc gasoline engine or an engine of comparable size using other fuel.

Under current law, a parent or legal guardian, or an owner or person in charge of an ORV, cannot permit a child under 12 to operate the vehicle without direct adult supervision, although a parent or guardian can allow a child under 12 to operate an ORV on land owned or controlled by the parent or guardian. The Act also provides that a child under 16 but at least 12 may operate an ORV if he or she is under the direct supervision of a person who is at least 18, is on land owned or controlled by a parent or legal guardian, or possesses an ORV safety certificate issued by this State, another state, or a province of Canada. The bill would delete these provisions. The bill provides, instead, that a parent or legal guardian of a child under 16 could not permit the child to operate an ORV unless the child were under the direct visual supervision of an adult and the child had in his or her immediate possession an ORV safety certificate issued under the Act or a comparable certificate issued under the authority of another state or a province of Canada. ("Visual supervision" would mean "the direct observation of the operator with the unaided or normally corrected eye, where the observer is able to come to the immediate aid of the operator".) A parent or guardian of a child under 12 could not allow the child to operate a four-wheeled ATV, unless the child were at least 10 and were on private land owned by his or her parent or guardian; this provision would not apply to the operation of an ATV used in agricultural operations. A parent or guardian of a child under 16 could not allow the child to operate a three-wheeled ATV. The same restrictions would apply to the owner or person in charge of an ORV or ATV who allowed a child to operate the vehicle.

Under the Act, the Department of Natural Resources (DNR) is required to implement a comprehensive ORV information, safety education, and training program that provides for the training of youthful operators and the issuance of ORV safety certificates. In implementing the program, the DNR is required to cooperate with the Department of

Education, private organizations, public and private corporations, and local governmental units. The bill would transfer the responsibility for implementing a safety program to the Department of Education and would require that Department to cooperate with the DNR and the Department of State, as well as with public and private entities and local governments. The bill also would require the Education Department to promulgate rules to implement these provisions. The bill specifies that the requirement of possession or presentation of a safety certificate would not take effect until six months after the rules were promulgated.

#### Helmets

A person could not operate an ORV unless he or she and any passenger in or on the vehicle were wearing a crash helmet and protective eyewear approved by the U.S. Department of Transportation. This provision would not apply if the vehicle were equipped with a roof that met or exceeded standards for a crash helmet and the operator and each passenger were wearing a properly adjusted and fastened safety belt.

#### Dealer Registration/Temporary Permits/Fees

The Act generally requires ORV owners to register their ORV unless the vehicle is operated exclusively on land owned or controlled by the vehicle owner. Under the bill, if an ORV were sold by a dealer, the registration application would have to be submitted by the dealer in the owner's name. A dealer who failed to do so would be guilty of a misdemeanor punishable by up to 90 days' imprisonment, a maximum fine of \$100, or both.

A dealer who submitted a registration application could issue the owner a 15-day temporary permit for the use of the vehicle while the registration was being processed. Dealers also could issue a 15-day permit for a vehicle purchased in this State and delivered to the purchaser for removal out of the State, if the purchaser certified that the vehicle would be registered and primarily used and stored outside this State. Temporary permits could not be renewed or extended.

The bill would increase the three-year registration application fee from \$9 to \$15, and the transfer fee from \$2 to \$3. The registration fee to be paid upon a transfer would be increased from \$6 to \$10, and from \$3 to \$5, if the transferred registration would have expired in one year or less, or in more than a year but less than two. The fee for a replacement certificate of registration would increase from \$2 to \$3. The permit fee for an out-of-state ORV would increase from \$6 to \$10.

#### Operating Under the Influence

A person could not operate an ORV if he or she were under the influence of intoxicating liquor or a "controlled substance", as defined in the Public Health Code (MCL 333.7104), or a combination of intoxicating liquor and a controlled substance; or, if the person's blood contained 0.10% or more by weight of alcohol. The owner or person in charge or control of an ORV could not authorize or knowingly permit the ORV to be operated by a person who was under the influence of intoxicating liquor or a controlled substance or both.

A person who was convicted of a violation of these restrictions would be guilty of a misdemeanor, punishable by imprisonment for up to 90 days, or a fine of at least \$100 and not more than \$500, or both, plus prosecution costs. As part of the sentence, the court would be required to order the person not to operate an ORV for a period of at least six months but not more than two years. A subsequent offense of operating while under the influence or with a blood alcohol content (BAC) of .10% or more, would be punishable as follows:

- A person would be guilty of a misdemeanor, punishable by imprisonment for up to one year, or a fine of up to \$1,000, or both for a second conviction within seven years. The court also would have to order the person not to operate an ORV for one to two years.
- A person would be guilty of a felony on a third or subsequent conviction within 10 years, and would have to be ordered not to operate an ORV for one to two years.

Upon conviction of a person for operating an

ORV while under the influence or with a BAC of .10% or more, or for violating a similar local ordinance, the court, in addition to the penalty imposed by the bill and as part of the sentence, could order the person to perform service to the community, as designated by the court, without compensation, for up to 12 days. The person would have to reimburse the State or the appropriate local unit of government for the cost of insurance incurred by the State or local unit as a result of the person's activities under this provision.

Before imposing sentence for operating an ORV while under the influence or with a BAC of .10% or more, the court would have to order the person to undergo screening or assessment by a person or agency designated by the Office of Substance Abuse Services, to determine whether the offender was likely to benefit from rehabilitative services, including alcohol or drug education and treatment programs. As part of the sentence, the court could order the person to participate in and successfully complete one or more appropriate rehabilitative programs. The person would have to pay for the costs of the screening, assessment, and rehabilitative services.

Before accepting a plea of guilty, the court would have to advise the accused of the statutory consequences possible as a result of a guilty plea in respect to suspension of the right to operate an ORV and the penalty imposed for a violation.

#### Operating While Impaired

A person would be prohibited from operating an ORV if, due to the consumption of intoxicating liquor, a controlled substance, or a combination of the two, the person had visibly impaired his or her ability to operate the vehicle. A finding of guilty would be permissible under this provision if a person were charged with operating an ORV while under the influence or with a BAC of 0.10% or more.

A person convicted of operating while impaired would be guilty of a misdemeanor, punishable by imprisonment for up to 90 days, or fine of up to \$300, or both, plus prosecution costs. As part of the sentence, the court would have to order the person not to operate an ORV for a period of at least 90 days but not more than

one year. If a person had one or more prior convictions of operating an ORV while impaired, while under the influence, or with a BAC of at least .10%, or permitting an ORV to be operated by someone who was under the influence, the person would be guilty of a misdemeanor, punishable by imprisonment for up to one year, or a maximum fine of \$1,000, or both. If the person had only one prior conviction, the court would have to order the person not to operate an ORV for a period of at least six but not more than 18 months. A person with two or more prior convictions would have to be ordered not to operate an ORV for one to two years.

The bill also includes provisions pertaining to community service, substance abuse screening and assessment, rehabilitative services, and accepting a guilty plea, in regard to operating an ORV while impaired, that are the same as those included for operating while under the influence.

#### Implied Consent

A person who operated an ORV would be considered to have given consent to chemical tests of his or her blood, breath, or urine for the purpose of determining the amount of alcohol or the presence of a controlled substance in his or her blood, and could be requested by a peace officer to submit to chemical tests if:

- The person were arrested for operating an ORV while under the influence or impaired or with a BAC of 0.10% or more.
- The person were arrested for negligent homicide or manslaughter resulting from operating an ORV and the peace officer had reasonable grounds to believe that the person was operating the ORV while impaired or under the influence.

A person who was afflicted with hemophilia, diabetes, or a condition requiring the use of an anticoagulant under the direction of a physician would not be considered to have given consent to the withdrawal of blood.

A person who was requested to take a chemical test would have to be advised of the right to refuse to submit to chemical tests. If the

person refused a peace officer's request to submit to a chemical test, a test could not be given without a court order.

#### Admissible Evidence

In a criminal prosecution for operating an ORV while under the influence or impaired, or with a BAC of 0.10% or more, or for negligent homicide or manslaughter resulting from operating an ORV while impaired or under the influence, the amount of alcohol in the operator's blood at the time alleged as shown by chemical analysis of the operator's blood, urine, or breath would be admissible into evidence.

If a chemical test were given, test results would have to be made available to the accused or his or her attorney upon written request to the prosecution, with a copy of the request filed with the court. The prosecution would have to furnish the report at least two days before the day of the trial and the results would have to be offered as evidence by the prosecution in a criminal proceeding. Failure to comply fully with the request would bar the admission of the results into evidence by the prosecution.

Except in a prosecution relating solely to operating an ORV with a BAC of 0.10% or more, the amount of alcohol in the operator's blood as shown by chemical analysis of his or her blood, urine, or breath would give rise to the following presumptions:

- If the BAC were 0.07% or less, that the operator was not under the influence of intoxicating liquor.
- If the BAC were above 0.07% but less than 0.10%, that the operator's ability to operate an ORV was impaired.
- If the BAC were 0.10% or more, that the operator was under the influence.

If, after an accident, the operator of an ORV were transported to a medical facility and a sample of his or her blood were withdrawn for the purpose of medical treatment, the results of a chemical analysis of that sample would be admissible in a criminal prosecution to show the amount of alcohol and/or the presence of a controlled substance in the person's blood, regardless of whether the person had been offered or had refused a chemical test. The

facility or person performing the analysis would have to disclose the results to a prosecutor who requested them for use in a criminal prosecution. A facility or person disclosing information in compliance with this provision would not be civilly or criminally liable for making the disclosure.

If the ORV operator involved in an accident were deceased, a sample of the decedent's blood would have to be withdrawn in the manner directed by the medical examiner for the purpose of determining blood alcohol content or the presence of a controlled substance. The medical examiner would have to give the results to the investigating law enforcement agency, which would have to forward them to the Department of State Police.

#### Sampling/Testing

A sample or specimen of urine or breath would have to be taken and collected in a reasonable manner. Only a licensed physician, or a licensed nurse or medical technician under the direction of a licensed physician and qualified to withdraw blood acting in a medical environment, at the request of a peace officer, could withdraw blood to determine its alcohol content. Liability for a crime or civil damages predicated on the withdrawing of blood and related procedures would not attach to a qualified person who withdrew blood or assisted in the withdrawal in accordance with the bill unless the withdrawal were performed in a negligent manner.

A person who was arrested and took a chemical test administered at the request of a peace officer would have to be given a reasonable opportunity to have a person of his or her own choosing administer one of the chemical tests within a reasonable time after his or her detention. Test results would be admissible and would have to be considered with other competent evidence in determining the defendant's innocence or guilt. If the person arrested were administered a chemical test by someone of his or her own choosing, the person arrested would be responsible for obtaining a chemical analysis of the test sample. The person arrested would have to be informed of these rights and requirements.

The bill specifies that the provisions on

chemical testing could not be construed as limiting the introduction of any other competent evidence bearing on the question of whether the defendant was impaired by or under the influence of intoxicating liquor or a controlled substance or whether the defendant had a BAC of .10% or more.

#### Test Refusal/Operation Suspension

A person arrested would have to be advised that if he or she refused the request of a peace officer to take a chemical test, a test could not be given without a court order, and that the refusal would result in the suspension of the person's right to operate an ORV. If the prosecution or the defendant requested a jury instruction regarding a defendant's test refusal, the jury instruction would have to be given as specified in the bill.

If a person refused the request of a peace officer to submit to a chemical test, the officer would have to give the Secretary of State a written report stating that the officer had reasonable grounds to believe the person was operating an ORV while under the influence or impaired, or committed negligent homicide or manslaughter when operating an ORV while under the influence or impaired, and that the person refused the test and was advised of the consequences of refusal. Upon receiving a report, the Secretary of State immediately would have to give the person written notice that the report had been received and that within 14 days the person could request an administrative hearing. The notice also would have to state that failure to request a hearing within 14 days would result in the suspension of the person's right to operate an ORV, and that the person was not required to retain counsel for the hearing, although counsel would be permitted.

If a person did not request a hearing within 14 days, the Secretary of State would have to suspend the person's right to operate an ORV for six months or, for a second or subsequent refusal within seven years, for one year. If a hearing were requested, the Secretary would have to appoint a hearing officer, and at least 10 days' notice would have to be given to the person making the request, the peace officer, and a prosecuting attorney of the county where the arrest was made if the prosecutor requested

notice. The hearing could cover only the following issues:

- Whether the peace officer had reasonable grounds to believe that the person operated an ORV while under the influence or impaired, or committed negligent homicide or manslaughter resulting from operating an ORV while under the influence or impaired.
- Whether the person was arrested for one of those crimes.
- Whether the person reasonably refused to submit to a chemical test upon the officer's request.
- Whether the person was advised of his or her rights described in the bill.

An administrative hearing would have to be conducted in an impartial manner but would not be a contested case hearing under the Administrative Procedures Act. A final decision or order of the hearing officer would have to be made in writing or stated in the record and would have to include findings of fact based exclusively on the evidence presented and matters officially noticed and specify any sanction to be imposed. A copy of the final decision or order would have to be sent to the person and the peace officer.

After the hearing, if the person were found to have unreasonably refused a test, the Secretary of State would have to suspend the person's right to operate an ORV for six months or, for a second or subsequent refusal within seven years, for one year.

Within 60 days after the final decision or order, the person could petition the circuit court to review the suspension and fine. The court's scope of review would be the same as the scope of review for contested case decisions (e.g., whether the decision or order was in violation of the Constitution or a statute; not supported by competent, material and substantial evidence; or arbitrary, capricious, or clearly an abuse of discretion). The court would have to hear the case within 60 days of the order setting the cause for hearing.

#### Preliminary Breath Test

If a peace officer had reasonable cause to believe that a person was operating an ORV

and that the person, by the consumption of intoxicating liquor, may have affected his or her ability to operate the ORV, the officer could require the person to submit to a preliminary chemical breath analysis. The officer could arrest the person based entirely or partly upon the results of that analysis. The results of the preliminary analysis would be admissible in a criminal proceeding for operating an ORV while under the influence or while impaired, or for negligent homicide or manslaughter resulting from operating an ORV, or in an administrative hearing, solely to assist the court or hearing officer in determining a challenge to the validity of an arrest; this provision would not limit the introduction of other competent evidence offered to establish the arrest's validity.

A person who submitted to a preliminary breath test would remain subject to the bill's requirements for the purposes of chemical tests. A person who refused to submit to a preliminary test upon a lawful request would be responsible for a civil infraction.

#### Other Provisions

Operator Negligence. The bill provides that, in a court action in this State in which competent evidence demonstrated that a motor vehicle was in a collision with an ORV on a roadway, the operator of the ORV would have to be considered "prima facie negligent" (that is, the operator would be presumed negligent).

Transporting Alcohol. The bill would prohibit a person from operating an ORV while transporting or possessing, in or on the vehicle, alcoholic liquor in a container that was open or uncapped or that had a broken seal, unless the container were in a trunk or compartment separate from the vehicle's passenger compartment, or, if the vehicle did not have a trunk or separate compartment, unless the container were encased or enclosed.

Penalty. The Act provides that a person who violates the Act is guilty of a misdemeanor. The bill provides that, except as otherwise prescribed, the person would be subject to imprisonment for up to 90 days, a maximum fine of \$500, or both, for each violation. The maximum fine would be \$1,000, however, for operating an ORV while one's right to operate

had been suspended.

Warrantless Arrest. If a peace officer had reasonable cause to believe that a person, at the time of an accident, was operating the ORV while his or her ability to do so was impaired due to the consumption of intoxicating liquor, a controlled substance, or a combination of the two, the peace officer could arrest the person without a warrant. The Act already permits the warrantless arrest of a person suspected of operating an ORV while under the influence.

Reporting. The Act requires that a police report concerning an ORV accident be sent to the Department of State Police. The bill would require that the report also be sent to the Department of Natural Resources. In addition, a medical facility to which a person injured in an ORV accident was taken would have to report to the State Police. In cooperation with the DNR, the State Police Department would have to collect and evaluate information concerning ORV accidents.

DNR Information. The DNR would be required to disseminate information to its field officers and to State and local law enforcement agencies on a uniform interpretation of the Act and each officer's responsibilities in enforcing the Act.

MCL 257.1617 et al.

#### BACKGROUND

According to the Science and Technology Division of the Legislative Service Bureau, ATV manufacturers and the Federal government signed a consent decree in March 1988 that required the manufacturers to stop selling new three-wheeled ATVs after that date, and provided the following:

- Manufacturers must mail a supplemental owner's manual and warning labels to all registered owners of three- and four-wheeled ATVs. The labels must include hazard information and warn against operating an ATV with a passenger, on paved surfaces, on public roads, and without a helmet and protective clothing.
- Manufacturers must make a major effort to provide training to all new purchasers of ATVs, and include incentives to

purchasers to participate in the training programs.

- All new machines must sport warning labels.
- Manufacturers must have undertaken an \$8 million to \$10 million advertising campaign promoting the safe use of ATVs.
- Manufacturers are devising, with the cooperation of the CPSC, voluntary standards for ATVs, including controls, displays, braking, and labeling standards, as well as standards for lateral stability of ATVs.

### **FISCAL IMPACT**

The bill would have an indeterminate impact on State and local units of government. Costs to the courts and local enforcement units would depend on the number of second and third time offenders and the number of violations, respectively. The registration fee increase would provide about \$1,000,000 in additional revenue to the State over the next three fiscal years. (The registration is for a three-year period. About 60% or \$600,000 of the increase should be received in FY 1990-90.) The cost to the Department of Education to provide ORV safety training would be about \$300,000, which should be financed from the registration fee revenue. It is estimated that 5,000 students would be affected. The cost per hour for motorcycle education is \$5. The cost for ATV training would be more because of the age differential and because more equipment would be required, thus 5,000 (students) times 8 (hours required) x \$7.50 (estimated cost per hour) = \$300,000.

### **ARGUMENTS**

#### **Supporting Argument**

ORV use can be a safe, legitimate, and economical form of individual and family-oriented outdoor recreation in Michigan, but not when it causes serious injuries and claims young lives. Although some groups have suggested that ATVs be banned altogether, the bill presents a sensible approach to the problem. Under the bill, no child under the age of 16 could operate a three-wheeled ATV; no child under 10 could operate a four-wheeled ATV; children aged 10 or 11 could operate a four-wheeled ATV only on a parent's land; and

children under 16 could operate an ORV, other than an ATV, only under direct adult supervision and with a safety certificate. These restrictions reflect the danger inherent in the operation of ATVs, particularly three-wheeled ATVs, and would ensure that young children were not allowed to handle a 600-pound vehicle that can travel 70 miles an hour. By the age of 16, however, most youths have acquired the strength and emotional stability to control an ATV.

The bill would be consistent with a CPSC task force report of September 1986 that found that children under 12 years of age typically are unable to operate any size ATV safely; that children under 16 are at greater risk of injury and death than adults when operating adult-size ATVs; and that 74% of three-wheeled ATV accidents involved tipping or overturning, compared to 59% for four-wheeled accidents.

#### **Supporting Argument**

The bill would increase the safety of ORV operators and passengers by requiring them to wear a crash helmet and protective eyewear, unless the vehicle were enclosed and the individuals wore seatbelts. According to a Department of State analysis of the bill, the CPSC estimates that 25% of those who have died from head injuries suffered in ATV accidents would have survived if a properly fitted safety helmet had been worn. Clearly, the use of this equipment would result in fewer and less severe head injuries.

#### **Supporting Argument**

The Consumer Product Safety Commission has reported that 30% of all fatal ATV accidents were associated with alcohol use. Although Michigan law currently prohibits a person from operating an ORV while under the influence of alcohol, a controlled substance, or a combination of the two, the bill would enact far more comprehensive language concerning the operation of an ORV while under the influence or while impaired, including provisions for chemical analysis, implied consent, the admissibility of test refusals, and the suspension of operating privileges. These provisions would parallel Michigan's strong drunk driving laws.

#### **Supporting Argument**

The bill would incorporate a number of



recommendations made by the Task Force on Recreational Vehicles as part of a 1987 report by the Governor's Conference on Traffic Safety. Among the recommendations were restructuring the accident reporting system, increasing the registration fee, imposing criminal liability on parents and ORV owners, requiring safety helmets, and requiring the Department of Natural Resources to provide other agencies with information to ensure uniform enforcement of the regulations.

### **Opposing Argument**

The bill is unnecessary. The Specialty Vehicle Institute of America (SVIA) reports that, on a nationwide basis, ATV injuries are declining sharply and have been doing so for several years. According to the SVIA, based on figures of the Consumer Product Safety Commission, the number of annual ATV injuries peaked in 1986, declined by 10% in 1987 and an additional 17% in 1988, and will have declined by more than 60% by 1992; and the injury rate (number of injuries per number of ATVs in use) peaked in 1985 and declined by 42% by the end of 1988. Safety efforts by the industry are paying off, and will pay off even more under the agreement between ATV manufacturers and the Federal government. To carry out that agreement, the SVIA reports, ATV distributors have begun implementing a \$100 million nationwide program that includes an extensive media campaign using television and magazine advertising to expand public awareness of the potential dangers of operating an ATV and the need to use appropriate caution; free hands-on training for ATV purchasers and their family members, training at a reasonable fee for other interested persons, and an incentive payment for purchasers and family members who complete the training course; and other efforts to get the safety message to past and future ATV purchasers, including warning labels on vehicles, safety videos in dealer showrooms, and a toll-free hotline to answer consumer inquiries about ATV safety and training availability. These measures should be given a fair chance to work before the State imposes more stringent regulations on ATV use.

### **Opposing Argument**

Because Michigan does not have a formal process for compiling ATV accident statistics, evidence to support stricter State regulation does not exist. (Although the law requires that

police reports concerning ORV accidents be sent to the State Police, many if not most ORV accidents occur on private land and the police are not involved.) Without such data, it is not possible to determine whether a problem in fact exists, what the nature of the alleged problem is, or what impact the current law is having. Consumer Product Safety Commission estimates are based on injury reports received from a small sampling of hospital emergency rooms around the country, and are used to project an estimate of ATV injuries nationwide. It is not reasonable to assign a portion of this projection to this State, however, because Michigan, unlike some 35 other states, has a comprehensive ORV law that restricts the use of ORVs by persons under 16. Due to the lack of a reporting system, it is not known how many operators of any age, let alone under 16, are injured on ATVs, whether the accidents are happening predominately on public land or on private property, or what percentage of the injured young operators were already violating current law by operating without a safety certificate or adult supervision. If, in fact, operators under 16 are injured while violating the existing law, changing the law will not solve the problem.

### **Opposing Argument**

The bill would go too far. While most people would agree that three-wheeled ATVs represent serious potential danger, and should not be operated by young children, the other proposed age restrictions amount to an unjustifiable intrusion into the parent-child relationship, and could be considered an abrogation of parental rights to control a child's actions. For some purposes, the bill would treat public and private land equally, while current law allows a parent to let a child under the minimum age operate an ORV on land owned or controlled by the parent. Some have suggested that enforcing the age and use restrictions on private land could constitute an unconstitutional taking of property without due process or just compensation.

### **Opposing Argument**

Since the Act's definition of "ORV" includes motorcycles, the bill's age restrictions would affect juveniles' participation in amateur events sanctioned by State or national motorcyclist organizations, such as the motocross (a race of two-wheeled motorcycles held on private land

over natural terrain). The bill could impede the involvement of all juveniles under 16 by requiring direct adult supervision. It is difficult to see how an adult could continuously observe a vehicle that was negotiating natural terrain or even a track.

#### **Opposing Argument**

The key to promoting operator safety is education, not increased age limits. The additional revenue that the bill would generate by raising fees should be earmarked for education: although the bill would require all juvenile operators to have a safety certificate, it would not provide a direct mechanism for funding education and training programs. In addition, the welfare of operators could be protected by earmarking fee revenue for the development and maintenance of safe trails, which also would enhance the attractiveness of the sport to Michigan residents and out-of-state tourists.

**Response:** Registration fees already are allocated to the DNR for trails and instruction, after the payment of the Secretary of State's administrative expenses. Further, the DNR reports that it now trains no more than 5,000 people yearly, although there are probably some 200,000 vehicles in use in Michigan.

#### **Opposing Argument**

While some crash helmets might reduce injuries and save lives, it is not clear that a sufficient number of high-quality helmets are available in children's sizes. That availability should be ascertained before the use of helmets is mandated.

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**A8990\S93EA**

This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.