

Act No. 71
Public Acts of 1990
Approved by the Governor
April 27, 1990
Filed with the Secretary of State
April 30, 1990

**STATE OF MICHIGAN
85TH LEGISLATURE
REGULAR SESSION OF 1990**

Introduced by Reps. Alley, Pridnia, Stupak, Hart, DeMars, Bartnik, Gnodtke, Ouwinga, Trim and Hickner

ENROLLED HOUSE BILL No. 4827

AN ACT to amend the title and sections 1, 2, 4, 5, 6, and 20 of Act No. 319 of the Public Acts of 1975, entitled as amended "An act to provide for the registration and regulation of off-road recreation vehicles; to prescribe the powers and duties of certain officers, agencies, and institutions; and to provide penalties," sections 1, 6, and 20 as amended by Act No. 241 of the Public Acts of 1989, being sections 257.1601, 257.1602, 257.1604, 257.1605, 257.1606, and 257.1620 of the Michigan Compiled Laws; to add sections 2a, 2b, 2c, 4a, 4b, 4c, 4d, 4e, 4f, 4g, 6a, 8a, and 16a; and to repeal certain parts of the act.

The People of the State of Michigan enact:

Section 1. The title and sections 1, 2, 4, 5, 6, and 20 of Act No. 319 of the Public Acts of 1975, sections 1, 6, and 20 as amended by Act No. 241 of the Public Acts of 1989, being sections 257.1601, 257.1602, 257.1604, 257.1605, 257.1606, and 257.1620 of the Michigan Compiled Laws, are amended and sections 2a, 2b, 2c, 4a, 4b, 4c, 4d, 4e, 4f, 4g, 6a, 8a, and 16a are added to read as follows:

TITLE

An act to provide for the titling, licensure, and regulation of off-road recreation vehicles; to create certain funds; to prescribe the powers and duties of certain officers, agencies, and institutions; and to provide penalties.

Sec. 1. As used in this act:

(a) "ATV" means a 3- or 4-wheeled vehicle designed for off-road use that 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 fuels.

(b) "Code" means the Michigan vehicle code, Act No. 300 of the Public Acts of 1949, being sections 257.1 to 257.923 of the Michigan Compiled Laws.

(c) "Commission" means the commission of natural resources.

(d) "Dealer" means a person engaged in the sale, lease, or rental of an ORV as a regular business.

(e) "Department" means the department of natural resources.

(f) "Designated" means posted open for ORV use with appropriate signs by the department.

(g) "Forest road" means a hard surfaced road, gravel or dirt road, fire lane, abandoned railroad right-of-way, logging road, or other way capable of travel by a 4-wheel vehicle, except an interstate, state, or county highway.

(h) "Forest trail" means a designated path or way capable of travel only by a vehicle less than 50 inches in width.

(i) "Highway" means the entire width between the boundary lines of a way publicly maintained when any part of the way is open to the use of the public for purposes of vehicular travel.

(j) "Manufacturer" means a person, partnership, corporation, or association engaged in the production and manufacture of ORVs as a regular business.

(k) "Operate" means to ride in or on, and be in actual physical control of, the operation of an ORV.

(l) "Operator" means a person who operates, or is in actual physical control of the operation of an ORV.

(m) "ORV" or "vehicle" 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. It includes, but is not limited to a multitrack or multiwheel drive vehicle, an ATV, a motorcycle or related 2-wheel, 3-wheel, or 4-wheel vehicle, an amphibious machine, a ground effect air cushion vehicle, or other means of transportation deriving motive power from a source other than muscle or wind. "ORV" or "vehicle" does not include a registered snowmobile, a farm vehicle being used for farming, a vehicle used for military, fire, emergency, or law enforcement purposes, a construction or logging vehicle used in performance of its common function, or a registered aircraft.

(n) "Owner" means any of the following:

(i) A vendee or lessee of an ORV which is the subject of an agreement for the conditional sale or lease of the ORV, with the right of purchase upon performance of the conditions stated in the agreement, and with an immediate right of possession vested in the conditional vendee or lessee.

(ii) A person renting an ORV, or having the exclusive use of an ORV, for more than 30 days.

(iii) A person who holds legal ownership of an ORV.

(o) "Person" means an individual, partnership, corporation, the state or any of its agencies or subdivisions, or a body of persons whether incorporated or not.

(p) "Public agency" means the department or a local unit of government.

(q) "Roadway" means that portion of a highway improved, designated, or ordinarily used for vehicular travel. If a highway includes 2 or more separate roadways, the term roadway refers to a roadway separately, but not to all roadways collectively.

(r) "Safety education fund" means the safety education fund created pursuant to section 6b.

(s) "Safety chief instructor" means a person who has been certified by a nationally recognized ATV and ORV organization to certify instructors and to do on-sight evaluations of instructors.

(t) "Trail improvement fund" means the ORV trail improvement fund created pursuant to section 6a.

(u) "Visual supervision" means 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.

Sec. 2. A vehicle registered under the code, or a vehicle registered under Act No. 303 of the Public Acts of 1967, as amended, being sections 281.1001 to 281.1199 of the Michigan Compiled Laws, is exempt from the licensure provisions of this act, unless the vehicle is operated as an ORV off highways, roadways, streets, and forest roads.

Sec. 2a. (1) After April 1, 1991, every ORV sold by a dealer to a retail purchaser shall be subject to the certificate of title provisions of this act.

(2) After April 1, 1991, a person who purchases or otherwise acquires an ORV shall make application for a certificate of title as provided in this act.

(3) After the effective date of this section, the owner of an ORV which has not been titled pursuant to subsection (1) or (2) or the code may apply for and, if otherwise eligible, receive a certificate of title issued under this act. If the ORV was previously titled under the code, it shall not be eligible for titling under this act.

Sec. 2b. The owner of an ORV which has been and is titled under this act may, if the ORV is otherwise eligible, apply for a title to the ORV under the code. If the owner applies for a title under the code, the title issued under this act shall at that time be surrendered to the department of state.

Sec. 2c. After an ORV has been titled under this act, both of the following shall occur:

(a) The owner, except as provided in section 2b, shall not sell or otherwise assign ownership in the ORV without delivering to the transferee a certificate of title showing assignment of the ORV in the transferee's name.

(b) A person shall not purchase or otherwise acquire an ORV without obtaining a certificate of title to it in the person's name pursuant to either this act or the code.

Sec. 4. (1) A person shall not sell or otherwise transfer an ORV to a dealer, to be used by the dealer for purposes of display and resale, without delivering to the dealer a manufacturer's certificate of origin executed in accordance with this section. A dealer shall not purchase or otherwise acquire a new ORV without obtaining a manufacturer's certificate of origin.

(2) A manufacturer's certificate of origin shall contain, in the form and together with other information required by the department of state, the following information:

- (a) A description of the ORV, including year, make, model or series, and vehicle identification number.
- (b) Certification of the date of the ORV's transfer to the dealer.
- (c) The dealer's name and address.
- (d) Certification that this transaction is the first transfer of the new ORV in ordinary commerce.
- (e) The transferor's signature and address.

(3) An assignment of a manufacturer's certificate of origin shall be printed on the reverse side of the certificate in a form to be prescribed by the department of state. The assignment shall include the name and address of the transferee, a certification that the ORV is new, and a warranty that the title at the time of delivery is subject only to the secured interests set forth in the assignment.

Sec. 4a. (1) An application for an ORV certificate of title shall be on a form prescribed by the department of state. The application shall be certified by the owner or purchaser and shall contain, in addition to other information required by the department of state, the following information:

- (a) The applicant's name and address.
- (b) The name and address of the previous owner.

(c) A statement of any security interest or other liens on the ORV, along with the name and address of any lienholder.

(d) If a lien is not outstanding, a statement of that fact.

(e) A description of the ORV, including the year, make, model or series, and vehicle identification number.

(2) An application for an ORV certificate of title which indicates the existence of a security interest in the ORV shall, if requested by the security interest holder, be accompanied by a copy of the security agreement, which may be unsigned. The department of state shall indicate on the copy the date and place of filing and shall return the copy to the person who filed the application. The filer shall forward the copy to the security interest holder identified in the application.

Sec. 4b. (1) The purchaser or other transferee of an ORV subject to the titling provisions of this act shall, except as provided in subsection (2), make application to the department of state for issuance of a certificate of title to the ORV. The application shall be filed within 15 days after the date of purchase or transfer.

(2) A dealer selling ORVs at retail, within 15 days after delivering an ORV to a retail purchaser, shall make application for issuance of an ORV certificate of title in the purchaser's name. The purchaser of the ORV shall sign the application and other papers necessary to enable the dealer to secure the title from the department of state. If the ORV was not previously titled, the application shall be accompanied by a manufacturer's certificate of origin.

(3) At the request of the applicant, the department of state shall process an application for an ORV certificate of title on an expedited basis.

(4) An application filed with the department of state pursuant to this section shall be accompanied by the fee or fees prescribed in section 4c.

Sec. 4c. (1) The department of state shall charge a fee of \$10.50 for processing an application for an ORV certificate of title or a duplicate ORV certificate of title. The department of state shall charge an additional fee of \$5.00 for processing an application on an expedited basis.

(2) If a check or draft in payment of a required fee is not paid on its first presentation, the fee is delinquent as of the date the check or draft was tendered. The person tendering the check or draft remains liable for the payment of each fee and any penalty.

(3) The department of state may suspend an ORV certificate of title if the department of state has determined that a fee prescribed in this section has not been paid and remains unpaid after reasonable notice or demand.

(4) If a fee is still delinquent 15 days after the department of state has given notice to a person who tendered the check or draft, a \$10.00 penalty shall be assessed and collected in addition to the fee.

Sec. 4d. (1) The department of state may refuse to issue an original or duplicate ORV certificate of title if any of the following occur:

(a) The applicant has failed to furnish all required information or reasonable additional information requested by the department of state.

(b) The required fee has not been paid.

(c) The applicant is not entitled to an ORV certificate of title under this act.

(d) The ORV is titled under the code.

(e) The application contains a false or fraudulent statement.

(f) The department of state has reasonable grounds to believe that the ORV was stolen or embezzled.

(2) If satisfied that the applicant is the owner of the ORV and is otherwise entitled to an ORV certificate of title, the department of state shall issue an ORV certificate of title in the applicant's name. The certificate shall be mailed or otherwise delivered to the owner of the ORV or to another person specified by the owner in a separate instrument, in a form prescribed by the department of state.

Sec. 4e. (1) An ORV certificate of title shall be manufactured in a manner to prohibit as nearly as possible the ability to reproduce, alter, counterfeit, forge, or duplicate the certificate without ready detection and shall contain on its face the information set forth in the application, including a notation of all secured interests in the ORV; the date on which the application was filed; and other information required by the department of state.

(2) The department of state shall prescribe a uniform method of numbering ORV certificates of title.

(3) An ORV certificate of title shall contain, upon its reverse side, a form for assignment and warranty of title by the owner with space for the notation of a security interest in the ORV, which at the time of a transfer shall be certified and signed. The reverse side of the ORV certificate of title may also contain other forms that the department of state considers necessary to facilitate the effective administration of this act. The certificate shall bear the coat of arms of this state.

(4) A person who intentionally reproduces, alters, counterfeits, forges, or duplicates an ORV certificate of title or who uses a reproduced, altered, counterfeited, forged, or duplicated ORV certificate of title is subject to the following penalties:

(a) If the intent of reproduction, alteration, counterfeiting, forging, duplication, or use was to commit or aid in the commission of an offense punishable by imprisonment for 1 or more years, the person committing the reproduction, alteration, counterfeiting, forging, duplication, or use is guilty of a misdemeanor, punishable by imprisonment for a period equal to that which could be imposed for the commission of the offense the person had the intent to aid or commit. The court may also assess a fine of not more than \$5,000.00 against the person.

(b) If the intent of the reproduction, alteration, counterfeiting, forging, duplication, or use was to commit or aid in the commission of an offense punishable by imprisonment for not more than 1 year, the person committing the reproduction, alteration, counterfeiting, forging, duplication, or use is guilty of a misdemeanor, punishable by imprisonment for not more than 1 year, or a fine of not more than \$1,000.00, or both.

Sec. 4f. (1) If an ORV certificate of title or duplicate certificate of title is lost or mutilated or becomes illegible, the person entitled to possession of the certificate, or the legal representative or successor in interest to the titleholder of record, may make application to the department of state for a duplicate ORV certificate of title. Upon receipt of the application, the fee prescribed in section 4c, and information satisfactory to the department of state to establish entitlement to the duplicate, the department of state may issue a duplicate ORV certificate of title to the applicant.

(2) Every duplicate ORV certificate of title shall contain the legend: "This is a duplicate certificate of title and may be subject to the rights of a person under the original certificate."

Sec. 4g. (1) The secretary of state shall maintain 1 or more indexes pertaining to ORV certificates of title. Upon receiving an application for an ORV certificate of title, the secretary of state may check the information in the application and accompanying documents against the indexes of titled, registered, stolen, and recovered ORVs and against other records maintained by the secretary of state.

(2) The secretary of state may provide a commercial look-up service of ORV title and registration records on a fee basis. The secretary of state shall not process a commercial look-up request unless it is in a form prescribed by the secretary of state.

(3) The secretary of state shall furnish information on a title without charge to authorized law enforcement and conservation officers when engaged in official duties.

(4) The secretary of state may purge a record of an ORV certificate of title and any record pertaining to it 7 years after the title was issued or the record was made or received.

Sec. 5. (1) Beginning April 1, 1991, except as otherwise provided, an ORV shall not be operated on, or over, land, snow, ice, marsh, swampland, or other natural terrain unless licensed by the owner with the department or a dealer as provided in this act. Except as otherwise provided in this act, a vehicle operating on a forest trail or in a designated area shall be licensed under the provisions of this act.

(2) Licensure is not required for an ORV which is operated exclusively in a special event of limited duration which is conducted according to a prearranged schedule under a permit from the governmental unit having jurisdiction. Licensure is not required for an ORV used exclusively in a safety and training program as required in section 17.

(3) Licensure is not required for an ORV that is registered on the effective date of the amendatory act that added this subsection until the expiration date of the registration.

Sec. 6. (1) The owner of an ORV requiring licensure under this act shall file an application for a license with the department or a dealer on forms provided by the department. If an ORV is sold by a dealer, the application for a license shall be submitted to the department by the dealer in the name of the owner. The application shall be signed by the owner of the vehicle, and shall be accompanied by a fee of \$7.00 beginning April 1, 1991, \$8.00 beginning April 1, 1993, and \$10.00 beginning April 1, 1995 and thereafter. A person shall not file an application for registration that contains false information. Upon receipt of the application in approved form and upon payment of the appropriate fee, the department or dealer shall issue to the applicant a license which shall be valid for the 12-month period for which it is issued. A license shall be issued for the 12-month period beginning April 1 and ending March 31 each year.

(2) Dealers may purchase from the department ORV licenses for resale to owners of vehicles requiring licensure under this act. The department shall refund to dealers the purchase price of any ORV licenses returned within 90 days after the end of the 12-month period for which they were valid. The dealer shall maintain and provide to the department records of ORV license sales on forms provided by the department.

(3) The license shall be permanently attached to the vehicle in the manner prescribed and in the location designated by the department before the vehicle may legally be operated in accordance with this act.

(4) If at the time of sale the purchaser certifies on a form provided by the department that the purchased vehicle otherwise requiring a license under this act will be used and stored outside of this state and will not be returned by the purchaser to this state for use, then a license will not be required.

Sec. 6a. (1) Beginning on the effective date of the amendatory act that added this section, the ORV trail improvement fund is created in the state treasury. The fund shall be administered by the department and shall be used for the signing, improvement, maintenance, and construction of ORV trails, for the leasing of land, for the acquisition of easements, permits, or other agreements for the use of land for ORV trails, and for the restoration of any of the natural resources of this state on public land that are damaged due to ORV use in conjunction with the plan required by section 16.

(2) Beginning April 1, 1990, \$6.00 of the revenue from each fee collected under section 6 shall be deposited in the fund. Beginning April 1, 1993, all of the revenue from each fee collected under section 6 shall be deposited in the fund.

(3) The department may accept gifts, grants, or bequests from any public or private source or from the federal, state, or a local unit of government for the purposes of the fund.

(4) All funds allocated under this act shall be for projects which are open to the public.

(5) Any money remaining in the ORV trail improvement fund at the end of a fiscal year shall be carried over in the fund to the next and succeeding fiscal years and shall only be used for the purposes stated in this section.

(6) No money in the ORV trail improvement fund may be expended prior to April 1, 1991.

Sec. 8a. Records of the department and the department of state made and kept pursuant to this act shall be public records, except as otherwise provided in this act.

Sec. 16a. When the department finds that rules are necessary to implement the regulatory provisions of this act or to clarify the intent of this act, the department shall promulgate rules pursuant to the administrative procedures act of 1969, Act No. 306 of the Public Acts of 1969, being sections 24.201 to 24.328 of the Michigan Compiled Laws.

Sec. 20. A person shall not operate an ORV:

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

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

(c) During the hours of 1/2 hour after sunset to 1/2 hour before sunrise without displaying a lighted headlight and lighted taillight.

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

(e) In a state game area or state park or recreation area, except on roads, trails, or areas designated for this purpose; on state owned lands under the control of the department of natural resources other than game areas, state parks, or recreational areas where the operation would be in violation of rules promulgated by the commission; in a forest nursery or planting area; on public lands posted or reasonably identifiable as an area of forest reproduction, and when growing stock may be damaged; in a dedicated natural area of the department of natural resources; or in any area in such a manner as to create an erosive condition, or to injure, damage, or destroy trees or growing crops.

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

(g) Unless the vehicle is equipped with a spark arrester type United States forest service approved muffler, in good working order and in constant operation. Exhaust noise emission shall not exceed 86 Db(A) or 82 Db(A) on a vehicle manufactured after January 1, 1986, when the vehicle is under full throttle, traveling in second gear, and measured 50 feet at right angles from the vehicle path with a sound level meter which meets the requirement of ANSI S1.4 1983, using procedure and ancillary equipment therein described; or 99 Db(A) or 94 Db(A) on a vehicle manufactured after January 1, 1986, or that level comparable to the current sound level as provided for by the environmental protection agency when tested according to the provisions of the current SAE J1287, June 86 test procedure for exhaust levels of stationary motorcycles, using sound level meters and ancillary equipment therein described. A vehicle subject to this act, manufactured or assembled after December 31, 1982 and used, sold, or offered for sale in this state shall conform to the noise emission levels established by the environmental protection agency under the noise control act of 1972, Public Law 92-574, 86 Stat. 1234, except in an officially authorized special event.

(h) Within 100 feet of a dwelling at a speed greater than the minimum required to maintain controlled forward movement of the vehicle, except on property owned or under the operator's control or on which the operator is an invited guest, or on a roadway, forest road, or forest trail pursuant to section 15, or on an ORV access route as authorized by local ordinance.

(i) In or upon the lands of another without the written consent of the owner, owner's agent or lessee, when required by the recreational trespass act, Act No. 323 of the Public Acts of 1976, as amended, being sections 317.171 to 317.181 of the Michigan Compiled Laws. The operator of the vehicle is liable for damage to private property, including, but not limited to, damage to trees, shrubs, growing crops, or injury to living creatures or damage caused through vehicle operation in a manner so as to create erosive or other ecological damage to private property. The owner of the private property may recover from the person responsible nominal damages of not less than the amount of damage or injury. Failure to post private property or fence or otherwise enclose in a manner to exclude intruders or of the private property owner or other authorized person to personally communicate against trespass shall not imply consent to ORV use.

(j) In an area on which public hunting is permitted during the season open to the taking of deer with firearms, from 7 a.m. to 11 a.m. and from 2 p.m. to 5 p.m., except during an emergency or for law enforcement purposes, to go to and from a permanent residence or a hunting camp otherwise inaccessible by a conventional wheeled vehicle; or except for the conduct of necessary work functions involving land and timber survey, communication and transmission line patrol, and timber harvest operations; or on property owned or under control of the operator or on which the operator is an invited guest. A vehicle registered under the Michigan vehicle code, Act No. 300 of the Public Acts of 1949, as amended, being sections 257.1 to 257.923 of the Michigan Compiled Laws, is exempt from this subdivision while operating on a public highway or public or private road capable of sustaining automobile traffic. A person holding a valid permit to hunt from a standing vehicle issued pursuant to section 14(1) of the wildlife conservation act, Act No. 256 of the Public Acts of 1988, being section 300.264 of the Michigan Compiled Laws, is exempt from this subdivision.

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

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

(m) Within 100 feet of a slide, ski, or skating area, unless the vehicle is being used for the purpose of servicing the area.

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

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

(p) To hunt, pursue, worry, kill, or attempt to hunt, pursue, worry, or kill a bird or animal, wild or domesticated.

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

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

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

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

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

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

Section 2. Sections 7, 8, 9, 10, 11, 13, and 15 of Act No. 319 of the Public Acts of 1975, being sections 257.1607, 257.1608, 257.1609, 257.1610, 257.1611, 257.1613, and 257.1615 of the Michigan Compiled Laws, are repealed.

Section 3. (1) Except for sections 1, 6a, and 20 of this amendatory act, this amendatory act shall take effect April 1, 1991.

(2) Sections 1, 6a, and 20 of this amendatory act shall take effect upon the date of enactment of this amendatory act.

This act is ordered to take immediate effect.

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Clerk of the House of Representatives.

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Secretary of the Senate.

Approved.....

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Governor.