

Act No. 241
Public Acts of 1989
Approved by the Governor
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**STATE OF MICHIGAN
85TH LEGISLATURE
REGULAR SESSION OF 1989**

Introduced by Senators Schwarz, Dingell, Sederburg, Kelly, Ehlers, Pollack, Gast and J. Hart

ENROLLED SENATE BILL No. 93

AN ACT to amend the title and sections 1, 6, 9, 13, 14, 17, 20, 21, 21a, and 24 of Act No. 319 of the Public Acts of 1975, entitled "An act to provide for the registration and regulation of off-road recreation vehicles; and to provide penalties," section 6 as amended by Act No. 99 of the Public Acts of 1989, section 9 as amended by Act No. 91 of the Public Acts of 1986, section 17 as amended by Act No. 166 of the Public Acts of 1985, section 20 as amended by Act No. 152 of the Public Acts of 1987, and section 21a as added by Act No. 399 of the Public Acts of 1980, being sections 257.1601, 257.1606, 257.1609, 257.1613, 257.1614, 257.1617, 257.1620, 257.1621, 257.1621a, and 257.1624 of the Michigan Compiled Laws; and to add sections 20a, 20b, 20c, 20d, 20e, 20f, 20g, 20h, 20i, and 25a.

The People of the State of Michigan enact:

Section 1. The title and sections 1, 6, 9, 13, 14, 17, 20, 21, 21a, and 24 of Act No. 319 of the Public Acts of 1975, section 6 as amended by Act No. 99 of the Public Acts of 1989, section 9 as amended by Act No. 91 of the Public Acts of 1986, section 17 as amended by Act No. 166 of the Public Acts of 1985, section 20 as amended by Act No. 152 of the Public Acts of 1987, and section 21a as added by Act No. 399 of the Public Acts of 1980, being sections 257.1601, 257.1606, 257.1609, 257.1613, 257.1614, 257.1617, 257.1620, 257.1621, 257.1621a, and 257.1624 of the Michigan Compiled Laws, are amended and sections 20a, 20b, 20c, 20d, 20e, 20f, 20g, 20h, 20i, and 25a are added to read as follows:

TITLE

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.

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) "Commission" means the commission of natural resources.

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

(d) "Decal" means a pressure sensitive adhesive backed label, of a size and color to be determined by the department of state, indicating the certificate of registration number awarded the ORV, that is valid until the expiration date shown on the label.

(e) "Department" means the department of state.

(f) "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.

(g) "Forest trail" means an existing 1-track path or way capable of travel by a 2-wheel or 3-wheel vehicle less than 40 inches in width.

(h) "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.

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

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

(k) "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 or 3-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.

(l) "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.

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

(n) "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.

(o) "VIN" means a vehicle identification number.

(p) "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. 6. (1) The owner of an ORV requiring registration by this state shall file an application for registration with the department on forms provided by the department. If an ORV is sold by a dealer, the application for registration 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 \$15.00. 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 shall enter the application upon its records and shall issue to the applicant a certificate of registration containing the registration number awarded to the vehicle, the name and address of the owner, and other information as the department considers necessary. The certificate of registration shall be pocket-size, shall accompany the vehicle, shall be legible, and shall be made available for inspection by a law enforcement officer. A dealer who fails to submit an application as required by this section is guilty of a misdemeanor punishable by imprisonment for not more than 90 days or a fine of not more than \$100.00, or both.

(2) A dealer who submits an application for registration as provided in subsection (1) may issue to the owner of the vehicle a 15-day temporary permit, on a form prescribed by the department, for the use of the vehicle while the certificate of registration is being processed.

(3) A dealer may issue a 15-day permit, on a form prescribed by the department, for the use of a vehicle purchased in this state and delivered to the purchaser for removal to a place outside of this state, if the purchaser certifies by his or her signature that the vehicle will be registered and primarily used and stored outside of this state, and will not be returned to this state by the purchaser for use or storage. A certificate of registration shall not be issued for a vehicle holding a permit under this subsection.

(4) A 15-day temporary permit issued under subsection (2) or (3) shall not be renewed or extended.

(5) A person shall not use or permit the use of a vehicle for which a 15-day temporary permit has been issued under this section unless the temporary permit is valid and carried or displayed on the vehicle while the vehicle is being used, as prescribed by rule promulgated by the department 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.

(6) The department shall issue to the applicant a registration decal. The assigned registration decal shall be permanently attached to the vehicle in the manner prescribed and in the location designated by the department of natural resources under rules promulgated by the commission pursuant to Act No. 306 of the Public Acts of 1969 before the vehicle may legally be operated in accordance with this act.

(7) If a check or draft in payment of the required fee is not paid on its first presentation, the department may suspend a certificate of registration if the fee remains unpaid after reasonable notice or demand. If the fee is still delinquent 15 days after the department gives notice to the person tendering the check or draft, a \$5.00 penalty shall be assessed and collected by the department in addition to the fee.

(8) If the owner of a vehicle that is permitted to be operated on a highway pursuant to 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, desires registration to permit use of that vehicle as an ORV, the owner of the vehicle shall make application and payment of the appropriate fee as detailed in subsection (1). Upon receipt of application and proper fee, the department shall enter the application upon its records and shall provide the owner with a certificate of registration imprinted with the ORV registration number awarded to the vehicle and a registration decal. The assigned registration decal shall be permanently attached to the vehicle in the manner prescribed under the rules promulgated by the commission pursuant to Act No. 306 of the Public Acts of 1969, as amended, before the vehicle may be legally operated off the highway in accordance with this act.

(9) The department of natural resources may issue a temporary seasonal registration to a resident or nonresident owner of an ORV not otherwise registered under subsection (1) or section 13 for use of the ORV only at a state park where the use is permitted for a fee of \$10.00. The registration decal shall be valid only in a state park, shall be affixed to the vehicle, shall be nontransferable, and shall expire on December 31 of the year issued.

Sec. 9. (1) The owner of an ORV shall notify the department within 15 days if the vehicle is destroyed, abandoned, or sold, or an interest in the vehicle is transferred, either wholly or in part, to another person; or if the owner's address no longer conforms to the address appearing on the certificate of registration. The notice shall consist of a surrender of the certificate of registration, on which appropriate information shall be noted in a place to be provided. When the surrender of the certificate is by reason of the vehicle being destroyed or abandoned, the department shall cancel the certificate, and enter that fact in its records. The number may then be reassigned.

(2) If the surrender is by reason of a change of address on the part of the owner, the new address shall be recorded by the department and the certificate of registration bearing that information shall be returned to the owner.

(3) The transferee of a vehicle registered under this act, within 15 days after acquiring the vehicle, shall apply to the department for transfer of the certificate of registration to that transferee giving name, address, and number of the vehicle, and the transferee shall pay to the department a transfer fee of \$3.00 and the applicable registration fee. The registration fee shall be \$10.00 if the transferred registration, at the time of application, would have expired in 1 year or less and \$5.00 if the transferred registration, at the time of application, would have expired in more than 1 year but less than 2 years. A registration fee shall not be imposed if the transferred registration would have expired in more than 2 years. Upon receipt of the application and the appropriate fees, the department shall transfer the certificate of registration issued for the vehicle to the new owner. The transferred certificate of registration shall expire on the third April 30 after the date of application. Unless the application is made and the fee paid within 15 days, the vehicle shall be considered to be without certificate of registration, and a person shall not operate the vehicle until a certificate is issued.

(4) If any certificate of registration is lost, mutilated, or illegible, the owner of the vehicle shall obtain a replacement certificate upon application and payment of a fee of \$3.00.

(5) If a registration decal is lost, mutilated, or illegible, the owner of the vehicle, upon furnishing satisfactory information to the department, shall be issued a replacement decal without fee.

Sec. 13. (1) An ORV, owned by a person who does not reside in this state, may be operated within the state not to exceed 20 days in any 1 year, if the vehicle is registered in some other jurisdiction and has attached to it the registration number issued by the other jurisdiction.

(2) The department of natural resources may issue special permits and stickers to out of state vehicles operated by a resident of a state or country where registration is not required, for a calendar year. The fee for this permit shall be \$10.00. Persons who may be authorized to issue special permits, except employees of the department of natural resources, shall add 50 cents to the basic fee as a service charge which they shall retain as compensation for each special permit issued.

Sec. 14. (1) A person shall not operate an ORV that is not 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, upon a public highway, street, or right of way of a public highway or street, except as provided in section 18 or under the following conditions and circumstances:

(a) The operator of a vehicle may cross a public highway, other than a limited access highway, at right angles, for the purpose of getting from 1 area to another, if the operation can be done in safety. The operator shall bring the vehicle to a complete stop before proceeding across a public highway, and shall yield the right of way to oncoming traffic.

(b) A vehicle may be operated on a street or highway for a special event of limited duration, conducted according to a prearranged schedule, only under permit from the governmental unit having jurisdiction. A special event involving ORVs may be conducted on the frozen surface of public waters only under permit from the department of natural resources.

(2) In a court action in this state where competent evidence demonstrates that a vehicle that is permitted to operate on a highway pursuant to Act No. 300 of the Public Acts of 1949 is in a collision with an ORV on a roadway, the operator of the ORV involved in the collision shall be considered prima facie negligent.

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

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

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

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

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

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

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

(8) The department of education shall implement a comprehensive ORV information, safety education, and training program that shall include the preparation and dissemination of information and safety advice to the public and training of operators. The program shall provide for the training of youthful operators and for the issuance of ORV safety certificates to those who successfully complete the training provided under the program.

(9) In implementing a program that is established pursuant to this section, the department of education shall cooperate with private organizations and associations, private and public corporations, the department of natural resources, the department of state, and local governmental units. The department of education shall consult with ORV and environmental organizations and associations in regard to the subject matter of a training program and performance testing that leads to certification of ORV operators.

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

(11) The department of education 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, to implement subsections (8) to (10).

(12) Subject to subsections (13), (14), and (17), a child who is less than 16 years of age may operate an ORV if the child is under the direct visual supervision of an adult and the child has in his or her immediate possession an ORV safety certificate issued pursuant to this section or a comparable ORV safety certificate issued under the authority of another state or a province of Canada.

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

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

(15) When operating an ORV under subsection (12), a child shall present the ORV safety certificate to a peace officer upon demand.

(16) Notwithstanding any other provision of this section, an operator who is under 12 years of age shall not cross a highway or street. An operator who is not less than 12 years of age but less than 16 years of age may cross a highway or street or operate on the right-of-way or shoulder of designated access routes pursuant to section 18 if the operator has a valid ORV safety certificate in his or her immediate possession and meets any other requirements under this section for operation of the vehicle.

(17) The requirement of possession or presentation of an ORV safety certificate under this section shall not take effect until the expiration of 6 months following the date rules are promulgated as required under subsection (11).

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 muffler, in good working order and in constant operation. Noise emission under full throttle, at 50 feet at right angles from the vehicle path, shall not exceed 90 db(A) on a vehicle manufactured or assembled before January 1, 1973; 88 db(A) on a vehicle manufactured or assembled after December 31, 1972; 86 db(A) on a vehicle manufactured or assembled after January 1, 1975 as measured on a sound level meter which meets the requirements of ANSI S1.4 1971, using procedure and ancillary equipment therein described. A vehicle subject to this act, manufactured or assembled after February 1, 1976 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, except for the purpose of crossing the stream over a bridge, culvert, or similar structure or by operating the vehicle at the minimum speed required to maintain controlled forward movement of the vehicle and crossing in the most direct manner from and to an established trail so as to negate erosive damage to the bed and banks of the stream or river or as may otherwise be authorized by the director of the department of natural resources on state owned land; or to travel up or down stream in any river or stream unless of a water depth sufficient to permit flotation of the vehicle at all times.

(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.

Sec. 20a. (1) A person who is under the influence of intoxicating liquor or a controlled substance, as defined by section 7104 of the public health code, Act No. 368 of the Public Acts of 1978, being section 333.7104 of the Michigan Compiled Laws, or a combination of intoxicating liquor and a controlled substance shall not operate an ORV.

(2) A person whose blood contains 0.10% or more by weight of alcohol shall not operate an ORV.

(3) The owner or person in charge or in control of an ORV shall not authorize or knowingly permit the ORV to be operated by a person who is under the influence of intoxicating liquor or a controlled substance or a combination of intoxicating liquor and a controlled substance.

(4) Except as otherwise provided in this section, a person who is convicted of a violation of subsection (1), (2), or (3) is guilty of a misdemeanor, punishable by imprisonment for not more than 90 days, or a fine of not less than \$100.00 or more than \$500.00, or both, together with costs of the prosecution. As part of the sentence for a violation of subsection (1) or (2), the court shall order the person convicted not to operate an ORV for a period of not less than 6 months or more than 2 years.

(5) On a second conviction under subsection (1) or (2) or a local ordinance substantially corresponding to subsection (1) or (2) within a period of 7 years, a person 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. As part of the sentence, the court shall order the person convicted not to operate an ORV for a period of not less than 1 year or more than 2 years.

(6) On a third or subsequent conviction within a period of 10 years under subsection (1) or (2), or a local ordinance substantially corresponding to subsection (1) or (2), a person is guilty of a felony. As part of the sentence, the court shall order the person convicted not to operate an ORV for a period of not less than 1 year or more than 2 years.

(7) As part of the sentence for a violation of subsection (1) or (2), or a local ordinance substantially corresponding to subsection (1) or (2), the court may order the person to perform service to the community, as designated by the court, without compensation, for a period not to exceed 12 days. The person shall reimburse the state or appropriate local unit of government for the cost of insurance incurred by the state or local unit of government as a result of the person's activities under this subsection.

(8) Before imposing sentence for a violation of subsection (1) or (2) or a local ordinance substantially corresponding to subsection (1) or (2), the court shall order the person to undergo screening and assessment by a person or agency designated by the office of substance abuse services, to determine whether the person is likely to benefit from rehabilitative services, including alcohol or drug education and alcohol or drug treatment programs. As part of the sentence, the court may order the person to participate in and successfully complete 1 or more appropriate rehabilitative programs. The person shall pay for the costs of the screening, assessment, and rehabilitative services.

(9) Before accepting a plea of guilty under this section, the court shall advise the accused of the statutory consequences possible as the result of a plea of guilty in respect to suspension of the person's right to operate an ORV and the penalty imposed for violation of this section.

Sec. 20b. (1) A person shall not operate an ORV if, due to the consumption of intoxicating liquor, a controlled substance, as defined by section 7104 of the public health code, Act No. 368 of the Public Acts of 1978, being section 333.7104 of the Michigan Compiled Laws, or a combination of intoxicating liquor and a controlled substance, the person has visibly impaired his or her ability to operate the ORV. If a person is charged with violating section 20a, a finding of guilty is permissible under this section.

(2) Except as otherwise provided in this section, a person convicted of a violation of this section is guilty of a misdemeanor, punishable by imprisonment for not more than 90 days, or a fine of not more than \$300.00, or both, together with costs of the prosecution. As part of the sentence, the court shall order the person convicted not to operate an ORV for a period of not less than 90 days or more than 1 year.

(3) A person who violates this section or a local ordinance substantially corresponding to this section and has 1 or more prior convictions under this section or section 20a, or a local ordinance substantially corresponding to this section or section 20a, 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. If the person convicted has only 1 prior conviction described in this subsection, as part of the sentence, the court shall order the person not to operate an ORV for a period of not less than 6 months or more than 18 months. If the person has 2 or more prior convictions described in this subsection, the court shall order the person not to operate an ORV for a period of not less than 1 year or more than 2 years.

(4) As part of the sentence for a violation of this section or a local ordinance substantially corresponding to this section, the court may order the person to perform service to the community, as designated by the court, without compensation, for a period not to exceed 12 days. The person shall reimburse the state or appropriate local unit of government for the cost of insurance incurred by the state or local unit of government as a result of the person's activities under this subsection.

(5) Before imposing sentence for a violation of this section or a local ordinance substantially corresponding to this section, the court shall order the person to undergo screening and assessment by a person or agency designated by the office of substance abuse services, to determine whether the person is likely to benefit from rehabilitative services, including alcohol or drug education and alcohol or drug treatment programs. As part of the sentence, the court may order the person to participate in and successfully complete 1 or more appropriate rehabilitative programs. The person shall pay for the costs of the screening, assessment, and rehabilitative services.

(6) Before accepting a plea of guilty under this section, the court shall advise the accused of the statutory consequences possible as a result of a plea of guilty in respect to suspension of the person's right to operate on ORV and the penalty imposed for violation of this section.

Sec. 20c. (1) In a criminal prosecution for violating section 20a or 20b or a local ordinance substantially corresponding to section 20a or 20b, or in a criminal prosecution for negligent homicide or manslaughter

resulting from the operation of an ORV while the operator is alleged to have been impaired by or under the influence of intoxicating liquor or a controlled substance or a combination of intoxicating liquor and a controlled substance, or to have had a blood alcohol content of 0.10% or more by weight of alcohol, 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 shall be admissible into evidence.

(2) If a chemical test of an operator's blood, urine, or breath is given, the results of the test shall be made available to the person charged with an offense enumerated in subsection (1) or the person's attorney upon written request to the prosecution, with a copy of the request filed with the court. The prosecution shall furnish the report at least 2 days before the day of the trial and the results shall be offered as evidence by the prosecution in a criminal proceeding. Failure to fully comply with the request shall bar the admission of the results into evidence by the prosecution.

(3) Except in a prosecution relating solely to a violation of section 20a(2), 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 shall give rise to the following presumptions:

(a) If there was at the time 0.07% or less by weight of alcohol in the operator's blood, it shall be presumed that the operator was not under the influence of intoxicating liquor.

(b) If there was at the time in excess of 0.07% but less than 0.10% by weight of alcohol in the operator's blood, it shall be presumed that the operator's ability to operate an ORV was impaired within the provisions of section 20b due to the consumption of intoxicating liquor.

(c) If there was at the time 0.10% or more by weight of alcohol in the operator's blood, it shall be presumed that the operator was under the influence of intoxicating liquor.

(4) A sample or specimen of urine or breath shall 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, may withdraw blood for the purpose of determining the alcoholic content of the blood under this act. Liability for a crime or civil damages predicated on the act of withdrawing blood and related procedures shall not attach to a qualified person who withdraws blood or assists in the withdrawal in accordance with this act unless the withdrawal is performed in a negligent manner.

(5) A person arrested for a crime enumerated in subsection (1) who takes a chemical test administered at the request of a peace officer, as provided in this act, shall be given a reasonable opportunity to have a person of his or her own choosing administer 1 of the chemical tests described in this section within a reasonable time after his or her detention, and the results of the test shall be admissible and shall be considered with other competent evidence in determining the defendant's innocence or guilt of a crime enumerated in subsection (1). If the person arrested is administered a chemical test by a person of his or her own choosing, the person arrested shall be responsible for obtaining a chemical analysis of the test sample. The person shall be informed that he or she has the right to demand that a person of his or her choosing administer 1 of the chemical tests described in this section, that the results of the test shall be admissible and shall be considered with other competent evidence in determining the innocence or guilt of the defendant, and that the person arrested shall be responsible for obtaining a chemical analysis of the test sample.

(6) A person arrested shall be advised that if the person refuses the request of a peace officer to take a test described in this section, a test shall not be given without a court order. The person arrested shall also be advised that the person's refusal of the request of a peace officer to take a test described in this section shall result in the suspension of the person's right to operate an ORV.

(7) This section shall not be construed as limiting the introduction of any other competent evidence bearing upon the question of whether or not the defendant was impaired by or under the influence of intoxicating liquor or a controlled substance, or a combination of intoxicating liquor and a controlled substance, or whether the person had a blood alcohol content of 0.10% or more by weight of alcohol.

(8) If a jury instruction regarding a defendant's refusal to submit to a chemical test under this section is requested by the prosecution or the defendant, the jury instruction shall be given as follows:

"Evidence was admitted in this case which, if believed by the jury, could prove that the defendant had exercised his or her right to refuse a chemical test. You are instructed that such a refusal is within the statutory rights of the defendant and is not evidence of the defendant's guilt. You are not to consider such a refusal in determining the guilt or innocence of the defendant."

(9) If after an accident the operator of an ORV involved in the accident is transported to a medical facility and a sample of the operator's blood is withdrawn at that time for the purpose of medical treatment, the results of a chemical analysis of that sample shall be admissible in a criminal prosecution for a crime described in subsection (1) to show the amount of alcohol or presence of a controlled substance, or both, in the person's blood at the time alleged, regardless of whether the person had been offered or had refused a chemical test. The

medical facility or person performing the chemical analysis shall disclose the results of the analysis to a prosecuting attorney who requests the results for use in a criminal prosecution as provided in this subsection. A medical facility or person disclosing information in compliance with this subsection shall not be civilly or criminally liable for making the disclosure.

(10) If after an accident the operator of an ORV involved in the accident is deceased, a sample of the decedent's blood shall be withdrawn in a manner directed by the medical examiner for the purpose of determining blood alcohol content or presence of a controlled substance, or both. The medical examiner shall give the results of the chemical analysis to the law enforcement agency investigating the accident, and that agency shall forward the results to the department of state police.

Sec. 20d. (1) Except as provided in subsection (2), a person who operates an ORV is 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 presence of a controlled substance or both in his or her blood, and may be requested by a peace officer to submit to chemical tests of his or her blood, breath, or urine for the purpose of determining the amount of alcohol or presence of a controlled substance or both in his or her blood if:

(a) The person is arrested for a violation of section 20a(1) or (2) or 20b or a local ordinance substantially corresponding to section 20a(1) or (2) or 20b.

(b) The person is arrested for negligent homicide or manslaughter resulting from the operation of an ORV and the peace officer has reasonable grounds to believe that the person was operating the ORV while impaired by or under the influence of intoxicating liquor, a controlled substance, or a combination of intoxicating liquor and a controlled substance.

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

Sec. 20e. (1) A person who is requested pursuant to section 20d(1) to take a chemical test shall be advised of the right to refuse to submit to chemical tests; and if the person refuses the request of a peace officer to submit to chemical tests, a test shall not be given without a court order.

(2) If a person refuses the request of a peace officer under section 20d(1) to submit to a chemical test, a written report shall be forwarded to the secretary of state by the peace officer. The report shall state that the officer had reasonable grounds to believe that the person committed a violation described in section 20d(1) and that the person refused to submit to a chemical test upon the request of the peace officer and was advised of the consequences of the refusal. The form of the report shall be prescribed and furnished by the secretary of state.

Sec. 20f. (1) Upon receipt of a report made pursuant to section 20e, the secretary of state shall immediately notify the person in a writing, mailed to the person's last known address, that the report has been received and that within 14 days after the date of the notice the person may request an administrative hearing as provided in section 20g.

(2) The notice shall specifically state that failure to request a hearing within 14 days shall result in the suspension of the person's right to operate an ORV and that the person is not required to retain counsel for the hearing, although counsel will be permitted to represent the person at the hearing.

Sec. 20g. (1) If a person who refuses to submit to a chemical test pursuant to section 20e does not request an administrative hearing within 14 days after the date of notice pursuant to section 20f, the secretary of state shall suspend the person's right to operate an ORV for a period of 6 months, or for a second or subsequent refusal within a period of 7 years, for 1 year.

(2) If an administrative hearing is requested, the secretary of state shall appoint a hearing officer to conduct the hearing. Not less than 10 days' notice of the hearing shall be provided by mail to the person submitting the request, to the peace officer who filed the report under section 20e, and, if a prosecuting attorney requests receipt of the notice, to the prosecuting attorney of the county where the arrest was made. The hearing officer may administer oaths and issue subpoenas for the attendance of necessary witnesses, and may grant a reasonable request for an adjournment. The hearing shall cover only the following issues:

(a) Whether the peace officer had reasonable grounds to believe that the person committed a crime described in section 20d(1).

(b) Whether the person was placed under arrest for a crime described in section 20d(1).

(c) Whether the person reasonably refused to submit to a chemical test upon request of the officer.

(d) Whether the person was advised of his or her rights under section 20c.

(3) An administrative hearing conducted under this section is not a contested case for the purposes of chapter 4 of the administrative procedures act of 1969, Act No. 306 of the Public Acts of 1969, being sections 24.271 to

24.287 of the Michigan Compiled Laws. The hearing shall be conducted in an impartial manner. A final decision or order of a hearing officer shall be made in writing or stated in the record and shall include findings of fact based exclusively on the evidence presented and matters officially noticed and shall specify any sanction to be imposed against the person involved. A copy of the final decision or order shall be delivered or mailed immediately to the person and the peace officer.

(4) After the administrative hearing, if the person is found to have unreasonably refused to submit to a chemical test, the secretary of state shall suspend the person's right to operate an ORV for a period of 6 months, or for a second or subsequent refusal within a period of 7 years, for 1 year. Within 60 days after the final decision or order is issued by the hearing officer, the person may file a petition in the circuit court of the county in which the arrest was made to review the suspension. The scope of the court's review shall be limited to the issues provided in section 106 of Act No. 306 of the Public Acts of 1969, being section 24.306 of the Michigan Compiled Laws.

(5) The circuit court shall enter an order setting the cause for hearing for a date certain that is not more than 60 days after the date of the order. The order, together with a copy of the petition, which shall include the person's full name, current address, birth date, and driver's license number, and all supporting affidavits, shall be served on the secretary of state's office in Lansing not less than 50 days before the date set for the hearing. The department shall cause a record to be made of the proceedings held pursuant to subsection (2). The record shall be prepared and transcribed in accordance with section 86 of Act No. 306 of the Public Acts of 1969, being section 24.286 of the Michigan Compiled Laws. Upon notification of the filing of a petition for judicial review, the department shall transmit to the court in which the petition was filed, not less than 10 days before the matter is set for review, the original or a certified copy of the official record of the proceedings.

Sec. 20h. (1) A peace officer who has 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, may require the person to submit to a preliminary chemical breath analysis.

(2) A peace officer may arrest a person based in whole or in part upon the results of a preliminary chemical breath analysis.

(3) The results of a preliminary chemical breath analysis shall be admissible in a criminal prosecution for a crime enumerated in section 20c(1) or in an administrative hearing held under section 20g, solely to assist the court or hearing officer in determining a challenge to the validity of an arrest. This subsection does not limit the introduction of other competent evidence offered to establish the validity of an arrest.

(4) A person who submits to a preliminary chemical breath analysis shall remain subject to the requirements of sections 20c, 20d, 20e, 20f, and 20g for the purposes of chemical tests described in those sections.

(5) A person who refuses to submit to a preliminary chemical breath analysis upon a lawful request by a peace officer shall be responsible for a civil infraction. A civil infraction under this subsection shall be processed in the same manner as a civil infraction under 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.

Sec. 20i. A person whose right to operate an ORV has been suspended pursuant to this act and who operates an ORV is guilty of a misdemeanor punishable by imprisonment for not more than 90 days or a fine of not more than \$1,000.00, or both.

Sec. 21. (1) The operator of a vehicle involved in an accident resulting in injuries to, or death of, a person, or resulting in property damage in an estimated amount of \$100.00 or more, shall immediately, by the quickest available means of communication, notify a state police officer, or the sheriff's office of the county in which the accident occurred. The police agency receiving the notice shall complete a report of the accident on forms prescribed by the director of the department of state police and forward the report to the department of state police and the department of natural resources.

(2) A medical facility to which a person injured in an accident involving an ORV is transported shall report the accident to the department of state police.

(3) The department of state police, in cooperation with the department of natural resources, shall collect and evaluate information concerning accidents involving ORV's.

(4) The operator of a vehicle involved in an accident upon public or private property resulting in injury to or death of a person shall immediately stop at the scene of an accident and shall render to any person injured in the accident reasonable assistance in securing medical aid or transportation.

Sec. 21a. If a peace officer has reasonable cause to believe that a person was, at the time of an accident, the operator of an ORV involved in the accident and was operating the ORV while under the influence of an intoxicating liquor, a controlled substance as defined in section 7104 of the public health code, Act No. 368 of

the Public Acts of 1978, as amended, being section 333.7104 of the Michigan Compiled Laws, or a combination of intoxicating liquor and a controlled substance, or was operating the ORV while his or her ability to operate an ORV was impaired due to the consumption of intoxicating liquor, a controlled substance, or a combination of intoxicating liquor and a controlled substance, the peace officer may arrest the alleged operator of the ORV without a warrant.

Sec. 24. Except as otherwise provided in this act, a person who violates a provision of this act is guilty of a misdemeanor punishable by imprisonment for not more than 90 days or a fine of not more than \$500.00, or both, for each violation of the act.

Sec. 25a. The department of natural resources shall disseminate information to its field officers and to state and local law enforcement agencies on a uniform interpretation of this act and each officer's duties and responsibilities in enforcing this act.

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Secretary of the Senate.

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Clerk of the House of Representatives.

Approved.....

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Governor.