

PART 811

OFF-ROAD RECREATION VEHICLES

324.81101.amended Definitions.

Sec. 81101. As used in this part:

(a) "Alcoholic liquor" means that term as defined in section 1d of the Michigan vehicle code, 1949 PA 300, MCL 257.1d.

(b) "ATV" means a vehicle with 3 or more wheels 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 1,000cc gasoline engine or an engine of comparable size using other fuels.

(c) "Code" means the Michigan vehicle code, 1949 PA 300, MCL 257.1 to 257.923.

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

(e) "Dealer" means a person engaged in the sale, lease, or rental of an ORV as a regular business or, for purposes of selling licenses under section 81116, any other person authorized by the department to sell licenses or permits, or both, under this act.

(f) "Designated", unless the context implies otherwise, means posted by the department, with appropriate signs, as open for ORV use.

(g) "Farm vehicle" means either of the following:

(i) An implement of husbandry as defined in section 21 of the Michigan vehicle code, 1949 PA 300, MCL 257.21.

(ii) A vehicle used in connection with a farm operation as defined in section 2 of the Michigan right to farm act, 1981 PA 93, MCL 286.472.

(h) "Forest road" means a hard surfaced road, gravel or dirt road, or other route capable of travel by a 2-wheel drive, 4-wheel conventional vehicle designed for road use. Forest road does not include a street, county road, or highway.

(i) "Forest trail" means a designated path or way that is not a route.

(j) "Highway" means a state trunk line highway or a segment of a state trunk line highway.

(k) "Highly restricted personal information" means an individual's photograph or image, social security number, digitized signature, and medical and disability information.

(l) "Late model ORV" means an ORV manufactured in the current model year or the 5 model years immediately preceding the current model year.

(m) "Law of another state" means a law or ordinance enacted by any of the following:

(i) Another state.

(ii) A local unit of government in another state.

(iii) Canada or a province or territory of Canada.

- (iv) A local unit of government in a province or territory of Canada.
- (n) "Local unit of government" means a county, township, or municipality.
- (o) "Maintained portion" means the roadway and any shoulder of a street, county road, or highway.
- (p) "Manufacturer" means a person, partnership, corporation, or association engaged in the production and manufacture of ORVs as a regular business.
- (q) "Municipality" means a city or village.
- (r) "Off-road vehicle account" means the off-road vehicle account of the Michigan conservation and recreation legacy fund established in section 2015.
- (s) "Operate" means to ride in or on, and be in actual physical control of, the operation of an ORV.
- (t) "Operator" means an individual who operates or is in actual physical control of the operation of an ORV.
- (u) "ORV" or, unless the context implies a different meaning, "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. A multitrack or multiwheel drive vehicle, a motorcycle or related 2-wheel vehicle, a vehicle with 3 or more wheels, an amphibious machine, a ground effect air cushion vehicle, or other means of transportation may be an ORV. An ATV is an ORV. 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 vehicle owned and operated by a utility company or an oil or gas company when performing maintenance on its facilities or on property over which it has an easement, a construction or logging vehicle used in performance of its common function, or a registered aircraft.
- (v) "ORV safety certificate" means an ORV safety certificate issued under section 81130 or, except as used in section 81130, a comparable safety certificate issued under the authority of another state or province of Canada.
- (w) "Owner" means any of the following:
 - (i) A vendee or lessee of an ORV that 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.
- (x) "Person with a disability" means an individual who has 1 or more of the following physical characteristics:
 - (i) Blindness.
 - (ii) Inability, during some time of the year, to ambulate more than 200 feet without having to stop and rest.
 - (iii) Loss of use of 1 or both legs or feet.
 - (iv) Inability to ambulate without the prolonged use of a wheelchair, walker, crutches, braces, or other device required to aid mobility.
 - (v) A lung disease from which the individual's expiratory volume for 1 second, when measured by spirometry, is less than 1 liter, or from which the individual's arterial oxygen tension is less than 60 mm/hg of room air at rest.

(vi) A cardiovascular disease that causes the individual to measure between 3 and 4 on the New York heart classification scale, or that results in a marked limitation of physical activity by causing fatigue, palpitation, dyspnea, or anginal pain.

(vii) Other diagnosed disease or disorder including, but not limited to, severe arthritis or a neurological or orthopedic impairment that creates a severe mobility limitation.

(y) "Personal information" means information that identifies an individual, including an individual's driver identification number, name, address not including zip code, and telephone number, but does not include information on ORV operation or equipment-related violations or civil infractions, operator or vehicle registration status, accidents, or other behaviorally related information.

(z) "Prior conviction" means a conviction for any of the following, whether under a law of this state, a local ordinance substantially corresponding to a law of this state, a law of the United States substantially corresponding to a law of this state, or a law of another state substantially corresponding to a law of this state:

(i) A violation or an attempted violation of section 81134(1), (3), (4), (5), (6), or (7), except that only 1 violation or attempted violation of section 81134(6), a local ordinance substantially corresponding to section 81134(6), a law of another state substantially corresponding to section 81134(6), or a law of the United States substantially corresponding to section 81134(6) may be used as a prior conviction other than for enhancement purposes as provided in section 81134(11)(b).

(ii) Negligent homicide, manslaughter, or murder resulting from the operation of an ORV, or an attempt to commit any of those crimes.

(iii) Former section 81135.

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

(bb) "Roadway" means the portion of a street, county road, or highway improved, designed, or ordinarily used for travel by vehicles registered under the code. Roadway does not include the shoulder.

(cc) "Route" means a forest road or other road that is designated for purposes of this part by the department.

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

(ee) "Shoulder" means that portion of a street, county road, or highway contiguous to the roadway and generally extending the contour of the roadway, not designed for vehicular travel but maintained for the temporary accommodation of disabled or stopped motor vehicles otherwise permitted on the roadway.

(ff) "Southern county" means Muskegon, Kent, Ionia, Clinton, Shiawassee, Genesee, Lapeer, or Macomb county, or a county lying south of the territory constituted by these counties.

(gg) "Street" means a city or village major street or city or village local street as described in section 9 of 1951 PA 51, MCL 247.659, or a segment thereof.

(hh) "Traffic lane" means a clearly marked lane on a roadway.

(ii) "Unmaintained portion" means the portion of a street, county road, or highway that is not the maintained portion.

(jj) "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.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995 ;-- Am. 1997, Act 102, Imd. Eff. Aug. 7, 1997 ;-- Am. 1998, Act 86, Imd. Eff. May 13, 1998 ;-- Am. 2003, Act 111, Eff. Oct. 1, 2003 ;-- Am. 2004, Act 587, Eff. Dec. 23, 2006 ;-- Am. 2009, Act 196, Imd. Eff. Dec. 28, 2009 ;-- Am. 2009, Act 200, Imd. Eff. Dec. 29, 2009 ;-- Am. 2012, Act 246, Imd. Eff. July 2, 2012 ;-- Am. 2013, Act 119, Imd. Eff. Sept. 25, 2013 ;-- Am. 2013, Act 249, Imd. Eff. Dec. 26, 2013 ;-- Am. 2014, Act 405, Eff. Mar. 31, 2015

Compiler's Notes: Enacting section 2 of Act 587 of 2004 provides: "Enacting section 2. This amendatory act does not take effect unless House Joint Resolution Z of the 92nd Legislature becomes a part of the state constitution of 1963 as provided in section 1 of article XII of the state constitution of 1963."

324.81102 Repealed. 2013, Act 119, Imd. Eff. Sept. 25, 2013.

Compiler's Notes: The repealed section pertained to vehicles exempt from licensure requirements.

324.81103 ORV; certificate of title generally.

Sec. 81103. (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 part.

(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 part.

(3) After April 1, 1991, the owner of an ORV that 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 part. If the ORV was previously titled under the code, it is not eligible for titling under this part.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995.

324.81104 Application for title to ORV under code.

Sec. 81104. The owner of an ORV that has been and is titled under this part 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 part shall at that time be surrendered to the department of state.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995.

324.81105 ORV; sale or assignment of ownership; purchase or acquisition; requirements.

Sec. 81105. After an ORV has been titled under this part, both of the following shall occur:

(a) The owner, except as provided in section 81104, 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 part or the code.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995.

324.81106 ORV exempt from §§ 257.1101 to 257.1133 and §§ 500.3101 to 500.3179.

Sec. 81106. An ORV is exempt from the motor vehicle accident claims act, Act No. 198 of the Public Acts of 1965, being sections 257.1101 to 257.1133 of the Michigan Compiled Laws, and from sections 3101 to 3179 of the insurance code of 1956, Act No. 218 of the Public Acts of 1956, being sections 500.3101 to 500.3179 of the Michigan Compiled Laws.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995.

324.81107 Manufacturer's certificate of origin.

Sec. 81107. (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 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 transfer of the ORV 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. 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.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995.

324.81108 Application for ORV certificate of title; form; contents; security agreement; perfection of security interest; priority.

Sec. 81108. (1) An application for an ORV certificate of title shall be on a form prescribed by the department of state. The application shall include a certification. The owner or purchaser shall sign the application or, if the application is filed electronically, provide information requested by the department of state to verify the owner's identity. The application shall contain, in addition to other information required by the department of state, the following information:

(a) The applicant's name and address.

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

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

(d) 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 that 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.

(3) Receipt by the secretary of state of a properly tendered application for an ORV certificate of title that indicates the existence of a security interest in the ORV is a condition of perfection of a security interest in the ORV and is equivalent to filing a financing statement under the uniform commercial code, 1962 PA 174, MCL 440.1101 to 440.11102, with respect to the ORV. When a security interest in an ORV is perfected, it has priority over the rights of a lien creditor as lien creditor is defined in section 9102 of the uniform commercial code, 1962 PA 174, MCL 440.9102.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995 ;-- Am. 2005, Act 39, Imd. Eff. June 7, 2005 ;-- Am. 2012, Act 28, Imd. Eff. Feb. 23, 2012

324.81109 Making application to department of state for issuance of ORV certificate of title.

Sec. 81109. (1) The purchaser or other transferee of an ORV subject to the titling provisions of this part 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 81110.

(5) Beginning January 1, 1992, a person who violates this section is responsible for a state civil infraction and may be ordered to pay a civil fine of not more than \$100.00.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995;--Am. 1996, Act 175, Imd. Eff. Apr. 18, 1996.

324.81110 Fee for processing application for ORV certificate of title.

Sec. 81110. (1) The department of state shall charge a fee of \$11.00 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 determines 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.

(5) The revenue collected from the fees imposed under this section shall be used to support the administrative costs of the secretary of state required by this section. Annual revenue collected in excess of these administrative costs shall be credited to the off-road vehicle account. Amounts appropriated for administrative costs but unexpended shall be credited to the off-road vehicle account.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995; -- Am. 2004, Act 587, Eff. Dec. 23, 2006

Compiler's Notes: Enacting section 2 of Act 587 of 2004 provides: "Enacting section 2. This amendatory act does not take effect unless House Joint Resolution Z of the 92nd Legislature becomes a part of the state constitution of 1963 as provided in section 1 of article XII of the state constitution of 1963."

324.81111 Refusal to issue ORV certificate of title; grounds; issuance and delivery; requiring certification of ownership.

Sec. 81111. (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 fails 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 part.

(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.

(3) If the secretary of state is not satisfied as to the ownership of an ORV which is not a late model ORV and whose value does not exceed \$1,500.00, the secretary of state shall require the applicant to certify that the applicant is the owner of the ORV and therefore entitled to make application for a certificate of title for the ORV.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995.

324.81112 Manufacturing requirements for ORV certificate of title; uniform method of numbering; contents; prohibited acts; penalties.

Sec. 81112. (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. 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 part. 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.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995.

324.81113 Loss, mutilation, or illegibility of ORV certificate; application for and issuance of duplicate; legend; indexes.

Sec. 81113. (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 81110, 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."

(3) 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.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995;--Am. 1997, Act 102, Imd. Eff. Aug. 7, 1997.

324.81114 Records available to the public; commercial lookup service; disposition of fees; computerized central file; purging records; providing records to nongovernmental person or entity; payment; admissibility in evidence.

Sec. 81114. (1) Records maintained under this part, other than those declared to be confidential by law or that are restricted by law from disclosure to the public, shall be available to the public under procedures prescribed in this part and in the freedom of information act, 1976 PA 442, MCL 15.231 to 15.246.

(2) The secretary of state may provide a commercial lookup service of ORV operation, title, and registration records maintained under this part. For each individual record looked up, the secretary of state shall charge a fee specified annually by the legislature, or if none, a market-based price established by the secretary of state. The secretary of state shall process a commercial lookup request only if the request is in a form or format prescribed by the secretary of state. Fees collected under this subsection on and after October 1, 2005 shall be credited to the transportation administration collection fund created in section 810b of the Michigan vehicle code, 1949 PA 300, MCL 257.810b, through October 1, 2015.

(3) The secretary of state shall create and maintain a computerized central file that includes the information contained on application forms received under this part and the name of each person who is convicted of an offense, who fails to comply with an order or judgment issued, or against whom an order is entered under this part. The computerized central file shall be interfaced with the law enforcement information network as provided in the C.J.I.S. policy council act, 1974 PA 163, MCL 28.211 to 28.215.

(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.

(5) The secretary of state shall not provide an entire computerized central or other file of records maintained under this part to a nongovernmental person or entity unless the purchaser pays the prescribed fee or price for each individual record contained within the computerized file.

(6) A certified copy of an order, record, or paper maintained under this part is admissible in evidence in the same manner as the original and is prima facie proof of the facts stated in the original.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995 ;-- Am. 1997, Act 102, Imd. Eff. Aug. 7, 1997 ;-- Am. 2005, Act 174, Imd. Eff. Oct. 12, 2005 ;-- Am. 2009, Act 100, Imd. Eff. Sept. 30, 2009 ;-- Am. 2011, Act 90, Imd. Eff. July 15, 2011

324.81114a Disclosure of personal information; uses.

Sec. 81114a. (1) Except as provided in this section and in section 81114c, personal information in a record maintained under this part shall not be disclosed, unless the person requesting the information furnishes proof of identity considered satisfactory to the secretary of state and certifies that the personal information requested will be used for a permissible purpose identified in this section or in section 81114c. Notwithstanding this section, highly restricted personal information shall be used and disclosed only as expressly permitted by law.

(2) Personal information in a record maintained under this act shall be disclosed by the secretary of state if required to carry out the purposes of a specified federal law. As used in this section, "specified federal law" means the automobile information disclosure act, Public Law 85-506, 15 U.S.C. 1231 to 1232 and 1233, the former motor vehicle information and cost savings act, Public Law 92-513, the former national traffic and motor vehicle safety act of 1966, Public Law 89-563, the anti-car theft act of 1992, Public Law 102-519, 106 Stat. 3384, the clean air act, chapter 360, 69 Stat. 322, 42 U.S.C. 7401 to 7431, 7470 to 7479, 7491 to 7492, 7501 to 7509a, 7511 to 7515, 7521 to 7525, 7541 to 7545, 7547 to 7550, 7552 to 7554, 7571 to 7574, 7581 to 7590, 7601 to 7612, 7614 to 7617, 7619 to 7622, 7624 to 7627, 7641 to 7642, 7651 to 7651o, 7661 to 7661f, and 7671 to 7671q, and all federal regulations promulgated to implement these federal laws.

(3) Personal information in a record maintained under this part may be disclosed as follows:

(a) For use by any government agency, including any court or law enforcement agency, in carrying out its functions, or any private person or entity acting on behalf of a government agency in carrying out its functions.

(b) For use in connection with matters of ORV and operator safety or ORV theft; ORV emissions; ORV product alterations, recalls, or advisories; performance monitoring of ORVs; ORV research activities, including survey research; and the removal of nonowner records from the original records of ORV manufacturers.

(c) For use in the normal course of business by a business or its agents, employees, or contractors to verify the accuracy of personal information submitted by an individual to the business or its agents, employees, or contractors, and if the information as submitted is not correct or is no longer correct, to obtain the correct information, but only for the purposes of preventing fraud, by pursuing legal remedies against, or recovering on a debt or security interest against, the individual.

(d) For use in connection with any civil, criminal, administrative, or arbitral proceeding in any court or government agency or before any self-regulatory body, including the service of process, investigation in anticipation of litigation, and the execution or enforcement of judgments and orders, or pursuant to an order of any court, administrative agency, or self-regulatory body.

(e) For use in legitimate research activities and in preparing statistical reports for commercial, scholarly, or academic purposes by a bona fide research organization, so long as the personal information is not published, redisclosed, or used to contact individuals.

(f) For use by any insurer, self-insurer, or insurance support organization, or its agents, employees, or contractors, in connection with claims investigation activities, antifraud activities, rating, or underwriting.

(g) For use in providing notice to the owner of an abandoned, towed, or impounded ORV.

(h) For use by any licensed private security guard agency or alarm system contractor licensed under the private security guard act of 1968, 1968 PA 330, MCL 338.1051 to 338.1085, or a private detective or private investigator licensed under the private detective license act of 1965, 1965 PA 285, MCL 338.821 to 338.851, for any purpose permitted under this section.

(i) For use by an ORV rental business, or its employees, agents, contractors, or service firms, for the purpose of making rental decisions.

(j) For use by a news medium in the preparation and dissemination of a report related in part or in whole to the operation of a motor vehicle or public safety. "News medium" includes a newspaper, a magazine or periodical published at regular intervals, a news service, a broadcast network, a television station, a radio station, a cablecaster, or an entity employed by any of the foregoing.

(k) For any use by an individual requesting information pertaining to himself or herself or requesting in writing that the secretary of state provide information pertaining to himself or herself to the individual's designee. A request for disclosure to a designee, however, may be submitted only by the individual.

History: Add. 1997, Act 102, Imd. Eff. Aug. 7, 1997.

324.81114b Resale or redisclosure of personal information; maintenance of records; duration; availability for inspection.

Sec. 81114b. (1) An authorized recipient of personal information under section 81114a may resell or redisclose the information for any use permitted under section 81114a.

(2) Any authorized recipient of personal information disclosed under section 81114a who resells or rediscloses personal information shall be required by the secretary of state to maintain for a period of not less than 5 years records as to the information obtained and the permitted use for which it was obtained, and to make such records available for inspection by the secretary of state, upon request.

History: Add. 1997, Act 102, Imd. Eff. Aug. 7, 1997.

324.81114c Furnishing list of information to federal, state, or local governmental agency; contract for sale of lists of records; surveys, marketing, and solicitations; insertion of safeguards in agreement or contract; resale or redisclosure of information; disclosure of list based on ORV operation or sanctions to nongovernmental agency.

Sec. 81114c. (1) Upon request, the secretary of state may furnish a list of information from the records of the department maintained under this part to a federal, state, or local governmental agency for use in carrying out the agency's functions, or to a private person or entity acting on behalf of a governmental agency for use in carrying out the agency's functions. Unless otherwise prohibited by law, the secretary of state may charge the requesting agency a preparation fee to cover the cost of preparing and furnishing a list provided under this subsection if the cost of preparation exceeds \$25.00, and use the revenues received from the service to defray necessary expenses. If the secretary of state sells a list of information under this subsection to a member of the state legislature, the secretary of state shall charge the same fee as the fee for the sale of information under subsection (2) unless the list of information is requested by the member of the legislature to carry out a legislative function. The secretary of state may require the requesting agency to furnish 1 or more blank computer tapes, cartridges, or other electronic media, and may require the agency to execute a written memorandum of agreement as a condition of obtaining a list of information under this subsection.

(2) The secretary of state may contract for the sale of lists of records maintained under this part in bulk, in addition to those lists distributed at cost or at no cost under this section, for purposes defined in section 81114a(3). The secretary of state shall require each purchaser of information in bulk to execute a written purchase contract. The secretary of state shall fix a market-based price for the sale of lists of bulk information, which may include personal information. The proceeds from each sale shall be used by the secretary of state to defray the costs of list preparation and for other necessary or related expenses.

(3) The secretary of state or any other state agency shall not sell or furnish any list of information under subsection (2) for the purpose of surveys, marketing, and solicitations. The secretary of state shall ensure that personal information disclosed in bulk will be used, rented, or sold solely for uses permitted under this part.

(4) The secretary of state may insert any safeguard the secretary considers reasonable or necessary, including a bond requirement, in a memorandum of agreement or purchase contract executed under this section, to ensure that the information furnished or sold is used only for a permissible use and that the rights of individuals and of the secretary of state are protected.

(5) An authorized recipient of personal information disclosed under this section who resells or rediscloses the information for any of the permissible purposes described in section 81114a(3) shall do both of the following:

(a) Make and keep for a period of not less than 5 years records identifying each person who received personal information from the authorized recipient and the permitted purpose for which it was obtained.

(b) Allow a representative of the secretary of state, upon request, to inspect and copy records identifying each person who received personal information from the authorized recipient and the permitted purpose for which it was obtained.

(6) The secretary of state shall not disclose a list based on ORV operation or sanctions to a nongovernmental agency, including an individual.

History: Add. 1997, Act 102, Imd. Eff. Aug. 7, 1997;--Am. 2000, Act 194, Eff. Jan. 1, 2001.

324.81115 Licensing of ORV required; exceptions; reciprocal agreement.

Sec. 81115. (1) Subject to subsection (2), a person shall not operate an ORV under any of the following conditions unless the ORV is licensed with the department or a dealer as provided under this part:

(a) Except as otherwise provided by law, on or over land, snow, ice, or other natural terrain.

(b) Except as otherwise provided in this part, on a forest trail or in a designated area.

(c) On a street, county road, or highway, except if the vehicle is registered under the code.

(2) An ORV is not required to be licensed under this part under any of the following circumstances:

(a) The ORV is used exclusively in a comprehensive program for training as required in section 81129.

(b) The ORV is operated solely on private property by the owner of the property, a family member of the owner, or an invited guest of the owner.

(c) The ORV is being operated on a free ORV-riding day. The department shall designate as free ORV-riding days each year a Saturday and the following Sunday that are also designated as free fishing days under section 43534. In addition, the department may designate 1 other day or 2 other consecutive days each year as free ORV-riding days. A person operating an unlicensed ORV during a free ORV-riding day has the same privileges and is subject to the same rules and regulations as a person operating an ORV licensed as required under subsection (1).

(d) If and to the extent the department waives the requirement pursuant to a reciprocal agreement with another state.

(3) The department is authorized to enter a reciprocal agreement described in subsection (2)(d).

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995 ;-- Am. 2003, Act 111, Eff. Oct. 1, 2003 ;-- Am. 2008, Act 240, Imd. Eff. July 17, 2008 ;-- Am. 2013, Act 119, Imd. Eff. Sept. 25, 2013

324.81116 Application for license by owner or dealer of ORV; filing; form; application fee; false information prohibited; issuance of license; validity; permit fees; purchase and resale of ORV licenses; refunds; records; attachment of license to vehicle; license not required for vehicle used and stored outside state; lost or destroyed license.

Sec. 81116. (1) The owner of an ORV requiring licensure under this part 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 include a certification. The owner of the vehicle shall sign the application or, if the application is filed electronically, provide information requested by the department to verify the owner's identity. The application shall be accompanied by a fee as provided in subsection (2). A person shall not file an application for a license 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 is 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) The fee for a license is as follows:

(a) For a license valid for the 12-month period beginning April 1, 2013, \$16.25.

(b) For a license valid for a 12-month period beginning April 1, 2014, 2015, 2016, 2017, or 2018 and that does not authorize operation of the ORV on state ORV trails, \$26.25.

(c) For a license valid for a 12-month period beginning April 1, 2014, 2015, 2016, 2017, or 2018 and that authorizes operation of the ORV on state ORV trails, \$36.25.

(d) For a license valid for a 12-month period beginning April 1, 2019 or a subsequent April 1, no fee.

(3) Dealers may purchase from the department ORV licenses for resale to owners of vehicles requiring licensure under this part. 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. A dealer shall maintain and provide to the department records of ORV license sales on forms provided by the department. In addition to the sale of ORV licenses, a dealer engaged in the sale, lease, or rental of ORVs as a regular business may sell any other license or permit authorized by the department to be sold by other dealers under the statutes of this state.

(4) 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 part.

(5) 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 part 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 is not required.

(6) If a license acquired by the owner of an ORV is lost or destroyed, the department shall provide that person with a replacement license free of charge. The department may require a person requesting a replacement license to supply sufficient evidence of the loss or destruction of the original license.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995 ;-- Am. 1995, Act 99, Imd. Eff. June 22, 1995 ;-- Am. 2003, Act 111, Eff. Oct. 1, 2003 ;-- Am. 2006, Act 477, Imd. Eff. Dec. 21, 2006 ;-- Am. 2012, Act 28, Imd. Eff. Feb. 23, 2012 ;-- Am. 2013, Act 75, Imd. Eff. June 25, 2013

324.81117 Off-road vehicle account.

Sec. 81117. (1) Money in the off-road vehicle account shall be used only for the following:

- (a) Signage for and improvement, maintenance, and construction of ORV trails, routes, or areas.
- (b) The administration and enforcement of this part.
- (c) The leasing of land.
- (d) The acquisition of easements, permits, or other agreements for the use of land for ORV trails, routes, or areas.
- (e) 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 81123.
- (f) One dollar of the revenue from each fee collected under section 81116 shall be used for the purposes of sections 81129 and 81130.

(2) All revenue from each fee collected under section 81116 shall be deposited in the off-road vehicle account.

(3) All funds allocated under this part shall be for projects that are open to the public.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995; -- Am. 2003, Act 111, Eff. Oct. 1, 2003; -- Am. 2004, Act 587, Eff. Dec. 23, 2006

Compiler's Notes: Enacting section 2 of Act 587 of 2004 provides: "Enacting section 2. This amendatory act does not take effect unless House Joint Resolution Z of the 92nd Legislature becomes a part of the state constitution of 1963 as provided in section 1 of article XII of the state constitution of 1963."

324.81118 Repealed. 2004, Act 587, Eff. Dec. 23, 2006.

Compiler's Notes: The repealed section pertained to creation of safety education fund.

324.81119 Distribution of revenue in form of grants.

Sec. 81119. (1) Not less than 50% of the money in the off-road vehicle account shall be distributed each year in the form of grants for the purpose of planning, improving, constructing, signing, and maintaining ORV trails, areas, and routes and access to those trails, areas, and routes, the leasing of land, the acquisition of easements, permits, or other agreements for the use of land for ORV trails, areas, and routes, to public agencies and nonprofit incorporated clubs and organizations.

(2) An application by a public agency or a nonprofit incorporated club or organization shall include a plan for restoration of any of the natural resources of this state on public land that are damaged due to ORV use. The public agencies or nonprofit incorporated clubs or organizations shall indicate on their application that their use of grant money is consistent with, and meets the requirements of, the plan developed by the department pursuant to section 81123, and the trail, route, or area is available to the public. The department shall not approve a grant unless the application meets the requirements of the plan. The department shall make application forms available and consider grant requests on a yearly basis.

(3) A grant shall not be made for a trail, route, or area unless the trail, route, or area is available for ORV use and is approved by the department. A grant for the cost of leasing of land and the acquisition of easements, permits, or other agreements may equal 100% of incurred expense. Specifications shall be prescribed by the department.

(4) Not less than 31-1/4% of the money in the off-road vehicle account shall be used each year for enforcement of this part or the purchase of any necessary equipment used for enforcement of this part. Of the amount available for enforcement, the department shall make available 24% of the funds for distribution in the form of grants by the department to the county sheriffs' departments. The balance of the funds available shall be used by the department for the enforcement of this part or for the purchase of any necessary equipment used for the enforcement of this part. In making grants available for distribution under this subsection, the department shall consider the following factors:

(a) The number of miles of ORV trails, routes, or areas within the county.

(b) The number of sheriff's department employees available for enforcement of this part.

(c) The estimated number of ORVs within the county and that are brought into the county for ORV use.

(d) The estimated number of days that ORVs may be used within that county.

(e) Any other factors considered appropriate by the department. The department shall require a county sheriff receiving a grant under this subsection to maintain records and submit an annual report to verify expenditure of grant money received.

(5) Not less than 12-1/2% of the revenue in the off-road vehicle account shall be distributed each year in the form of grants to public agencies and nonprofit incorporated clubs and organizations for the restoration of damage that is caused by ORV use to natural resources on public land. A grant under this subsection may be in addition to a grant under subsection (1). An application for a grant under this subsection shall comply with subsection (2).

(6) Not more than 3-1/8% of the revenue in the off-road vehicle account in any year shall be used for administration of this part. The department may use revenue from the funds for personnel to operate the program under this part.

(7) The remaining 3-1/8% of the revenue in the off-road vehicle account may be used for the purposes described in subsections (1) and (4), except that 25 cents of each fee for a license sold by a dealer shall be retained by the dealer as a commission for services rendered. If the remainder of the money in the off-road vehicle account is used for the purposes described in subsection (4), it shall be allocated as provided in subsection (4).

(8) Grants under this section shall remain available until expended once a contract or commitment has been entered into under this section. A contract shall be for a period of not more than 2 years. A grant not expended within the contract period may be renewed by the department by entering into a new contract.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995; -- Am. 2004, Act 587, Eff. Dec. 23, 2006

Compiler's Notes: Enacting section 2 of Act 587 of 2004 provides: "Enacting section 2. This amendatory act does not take effect unless House Joint Resolution Z of the 92nd Legislature becomes a part of the state constitution of 1963 as provided in section 1 of article XII of the state constitution of 1963."

324.81120 Prohibited conduct; violations as felony; penalties.

Sec. 81120. (1) A person who makes a false representation or false certification to obtain personal information under this part, or who uses personal information for a purpose other than a permissible purpose identified in section 81114a or 81114c, is guilty of a felony.

(2) A person who is convicted of a second violation of this section is guilty of a felony punishable by imprisonment for not less than 2 years or more than 7 years, or by a fine of not less than \$1,500.00 or more than \$7,000.00, or both.

(3) A person who is convicted of a third or subsequent violation of this section is guilty of a felony punishable by imprisonment for not less than 5 years or more than 15 years, or by a fine of not less than \$5,000.00 or more than \$15,000.00, or both.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995;--Am. 1997, Act 102, Imd. Eff. Aug. 7, 1997.

324.81121 Renting, leasing, or furnishing ORV; maintaining safe operating condition; explanation of operation; liability insurance.

Sec. 81121. (1) A dealer shall maintain in safe operating condition an ORV rented, leased, or furnished by the dealer. The dealer, dealer's agents, or employees shall explain the operation of the vehicle being rented, leased, or furnished, and if the dealer, dealer's agent, or employee believes the person to whom the vehicle is to be rented, leased, or furnished is not competent to operate the vehicle with safety to that person or others, the dealer, dealer's agent, or employee shall refuse to rent, lease, or furnish the vehicle.

(2) A dealer renting, leasing, or furnishing a vehicle shall carry a policy of liability insurance subject to limits, exclusive of interest and costs, with respect to the vehicle, as follows: \$20,000.00 because of bodily injury to, or death of, 1 person in any 1 accident, and \$40,000.00 because of bodily injury to, or death of, 2 or more persons in any 1 accident, and \$10,000.00 because of injury to, or destruction of, property of others in any 1 accident, or alternatively, the dealer shall demand and be shown proof that the person renting, leasing, or being furnished a vehicle carries a liability policy of at least the type and coverage as specified above.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995.

324.81122 Prohibited operation of unregistered ORV; permit not required; operator as prima facie negligent.

Sec. 81122. (1) A person shall not operate an ORV that is not registered under the code upon a street, county road, or highway, except as provided in section 81131 or under the following conditions and circumstances:

(a) The operator of a vehicle may cross a street, county road, or 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 street, county road, or highway, and shall yield the right-of-way to oncoming traffic.

(b) A vehicle may be operated on a street, county road, or highway for a special event of limited duration and conducted according to a prearranged schedule only under permit from the governmental unit having jurisdiction. Subject to subsection (2), a special event involving ORVs may be conducted on the frozen surface of public waters only under permit from the department.

(c) A farmer, employee of a farmer, or family member of a farmer who is at least 16 years of age may operate an ORV on a street, county road, or highway while traveling to or from the farmer's residence or work location or field during the course of farming operations. An ORV shall not be operated pursuant to this subdivision during the period of 30 minutes before sunset to 30 minutes after sunrise or when visibility is substantially reduced due to weather conditions. The individual shall operate the ORV in the same manner and on the same portion of the street, county road, or highway as required under section 81131(9). The state transportation department and all of its employees are immune from tort liability for injury or damages sustained by any person arising in any way by reason of the operation or use of an ORV for the limited purposes allowed under this subdivision. An operator of an ORV under this subdivision shall have attached to the ORV a flag made of reflective material. The flag shall extend not less than 8 feet from the surface of the street, county road, or highway and not less than 4 feet above the top of the ORV. The flag shall be not less than 12 inches high by 18 inches long and not measure less than 100 square inches.

(2) The department shall not require a permit under this part merely for organized group recreational ORV riding on department lands, or for an ORV event on the frozen surface of public waters, if conducted in compliance with applicable statutes, rules, and orders. Within 90 days after the effective date of the amendatory act from the 2013-2014 legislative session that added this subsection, the department shall develop and establish, in consultation with representatives of the Michigan snowmobile and trails advisory committee and other interested parties, policy criteria for determining circumstances under which notice to the department or a permit is required for ORV events on department lands.

(3) In a court action in this state if competent evidence demonstrates that a vehicle that is permitted to operate on a highway pursuant to the code is in a collision on a roadway with an ORV that is not registered under the code, the operator of the ORV involved in the collision shall be considered prima facie negligent.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995 ;-- Am. 2013, Act 119, Imd. Eff. Sept. 25, 2013

324.81123 Comprehensive plan for management of ORV use of certain areas, routes, and trails; revision; approval; designation of ORV trails and areas for nonconflicting recreation trail use; designated scramble area; maps of trails.

Sec. 81123. (1) The department shall, by October 1, 1991, develop a comprehensive plan for the management of ORV use of areas, routes, and trails maintained by or under the jurisdiction of the department or a local unit of government pursuant to section 81131. The plan shall, as a minimum, set forth the following methods and timetable:

(a) The inventorying, by appropriate means, of all areas, forest roads, and forest trails used by or suitable for use by ORVs.

(b) The identification and evaluation of the suitability of areas, forest roads, and forest trails to sustain ORV use.

(c) The designation of areas, forest roads, and forest trails for ORV use, including use by persons with disabilities.

(d) The development of resource management plans to maintain areas, forest roads, or forest trails and to restore or reconstruct damaged areas, forest roads, or forest trails. The plans shall include consideration of the social, economic, and environmental impact of ORV use.

(e) Specifications for trails and areas.

(2) The plan developed under subsection (1) shall be revised every 2 years. The plan shall be submitted to the legislature for approval. The legislature shall approve the plan without amendment by concurrent resolution adopted by both standing committees of the house of representatives and senate that consider natural resources matters and both houses of the legislature by recorded vote. The department shall submit any subsequent revisions to the plan to the secretary of the senate and the clerk of the house of representatives at least 20 session days before the effective date of the revisions. If both standing committees of the house of representatives and senate that consider natural resources matters fail to reject the revisions within those 20 session days, the revisions shall be considered approved.

(3) The plan may designate where bicyclists, hikers, equestrians, and other nonconflicting recreation trail users may use ORV trails or areas.

(4) By May 7, 1992, the department shall designate an appropriate area in the northern Lower Peninsula and an appropriate area in southeast Michigan as a scramble area.

(5) Copies of maps of trails shall be prepared and made available by the department in sufficient quantities to accompany each ORV certificate of title issued by the secretary of state and to place in each county sheriff's office and each department of natural resources field office.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995;--Am. 1998, Act 86, Imd. Eff. May 13, 1998.

324.81124 Rules.

Sec. 81124. If the department finds that rules are necessary to implement the regulatory provisions of this part or to clarify the intent of this part, the department shall promulgate rules.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995.

324.81125 Repealed.; --Am. 2003, Act 111, Eff. Oct. 1, 2003

324.81126 Applicability of §§ 324.81123, 324.81125, and 324.81127 to Upper Peninsula; Upper Peninsula task force; creation; appointment of members; meetings; evaluation; report.

Sec. 81126. (1) Except as otherwise provided in sections 81119 and 81125, sections 81123, 81125, and 81127 do not apply to the Upper Peninsula of this state.

(2) Not later than January 1, 1998, the advisory committee created by the commission shall report its findings to the standing committees of the senate and house of representatives that consider legislation affecting this part including its recommendations on whether this act should be implemented on a statewide basis.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995.

324.81127 Comprehensive system; ORV use on forest roads and other state owned land; revisions; needs of hunters, senior citizens, and individuals with disabilities.

Sec. 81127. (1) Under the comprehensive system previously approved and implemented under former section 16d of 1975 PA 319, all forest roads shall be open to ORV use as provided in section 72118. All other state owned land under the jurisdiction of the department shall be closed to ORV use except the following:

- (a) Designated roads that are not forest roads.
- (b) Designated trails.
- (c) Designated areas.

(2) The commission shall approve any subsequent revisions to the system and shall establish an effective date for the revisions. The department shall submit the revisions approved by the commission to the secretary of the senate and the clerk of the house of representatives at least 20 session days before the effective date determined by the commission.

(3) In developing the system, the department shall consider the needs of hunters, senior citizens, and individuals with disabilities.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995;--Am. 1998, Act 86, Imd. Eff. May 13, 1998. ;-- Am. 2016, Act 288, Imd. Eff. Sept. 28, 2016

324.81128 Repealed. 2013, Act 119, Imd. Eff. Sept. 25, 2013.

Compiler's Notes: The repealed section pertained to citizens review board.

324.81129 Operation of ORV or ATV by child; requirements; ORV information and safety advice; training program and performance testing; course instruction; ORV safety certificates; rules; exceptions; report; additional requirements.

Sec. 81129. (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 an ORV safety certificate in his or her immediate possession.

(2) Subject to subsection (17), a parent or legal guardian of a child less than 12 years of age shall not permit the child to operate an ATV with 4 or more wheels 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 an ORV safety certificate in his or her immediate possession.

(5) Subject to subsection (17), the owner or person in charge of an ATV with 4 or more wheels 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 an individual who is incompetent to operate the vehicle because of mental or physical disability.

(8) The department shall implement a comprehensive program for the training of ORV operators and the preparation and dissemination of ORV information and safety advice to the public. 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 and may include separate instruction for each type of ORV.

(9) In implementing a program under subsection (8), the department shall cooperate with private organizations and associations, private and public corporations, the department of education, the department of state, and local governmental units. The department 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 may designate a qualified individual to provide course instruction and to award ORV safety certificates.

(11) The department may promulgate rules to implement subsections (8) to (10) and (17).

(12) Subject to subsections (13), (14), and (17), a child who is less than 16 years of age shall not operate an ORV unless the child is under the direct visual supervision of an adult and the child has an ORV safety certificate in his or her immediate possession.

(13) Subject to subsection (17), a child who is less than 12 years of age shall not operate an ATV with 4 or more wheels 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) Subject to subsection (17), when operating an ORV, a child who is less than 16 years of age shall present the ORV safety certificate to a peace officer upon demand.

(16) Notwithstanding any other provision of this section, an operator who is less than 12 years of age shall not cross a street, county road, or highway. An operator who is not less than 12 years of age but less than 16 years of age may cross a street, county road, or highway or operate an ORV pursuant to section 81131(9) if the operator has an 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 that a child possess an ORV safety certificate to operate an ORV, and the requirement that a child who is less than 12 years of age not operate an ATV with 4 or more wheels 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, do not apply if all of the following requirements are met:

(a) The child is participating in an organized ORV riding or racing event held on land not owned by this state.

(b) The child's parent or legal guardian has provided the event organizer with written permission for the child to participate in the event.

(c) The event organizer has not less than \$500,000.00 liability insurance coverage for the event.

(d) A physician or physician's assistant licensed or otherwise authorized under part 170 or 175 of the public health code, 1978 PA 368, MCL 333.17001 to 333.17084 and 333.17501 to 333.17556, or a paramedic or emergency medical technician licensed under part 209 of the public health code, 1978 PA 368, MCL 333.20901 to 333.20979, is present at the site of the event or available on call.

(e) The event is at all times under the direct visual supervision of adult staff of the event organizer and a staff member serves as a flagger to warn participants if another participant is injured or an ORV is inoperable in the ORV operating area.

(f) Fencing or another means of crowd control is used to keep spectators out of the ORV operating area.

(g) If the event is on a closed course, dust is controlled in the ORV operating area and the riding surface in the ORV operating area is otherwise properly prepared.

(h) Three-wheeled ATVs are not used by participants.

(i) Any ATVs used by participants are equipped with a side step bar or comparable safety equipment and with a tether kill switch, and the tether is used by all participants.

(j) Each participant in the event wears a crash helmet approved by the United States department of transportation, a protective long-sleeved shirt or jacket, long pants, boots, and protective gloves.

(k) Any other applicable requirements of this part or rules promulgated under this part are met.

(18) If a child less than 16 years of age participates and is injured in an organized ORV riding or racing event, the organizer of the event shall, within 30 days after the event, submit to the department a report on a form developed by the department. The report shall include all of the following information, as applicable:

(a) Whether any participant less than 16 years of age was killed or suffered an injury resulting in transportation to a hospital as a result of an ORV accident at the event.

(b) The age of the child.

(c) Whether the child had been issued an ORV safety certificate.

(d) The type of ORV operated.

(e) A description of the accident and injury.

(19) By December 31 of each year, the department shall submit to the legislature a report that summarizes reports received under subsection (18) during the preceding calendar year. In the report, the department may recommend amendments to this part to improve the safety of children less than 16 years of age participating in organized ORV riding or racing events.

(20) The requirements of this section are in addition to any applicable requirements of section 81131(13).

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995 ;-- Am. 2003, Act 111, Eff. Oct. 1, 2003 ;-- Am. 2008, Act 164, Imd. Eff. June 19, 2008 ;-- Am. 2008, Act 240, Imd. Eff. July 17, 2008 ;-- Am. 2013, Act 119, Imd. Eff. Sept. 25, 2013 ;-- Am. 2013, Act 249, Imd. Eff. Dec. 26, 2013

324.81130 ORV safety education course.

Sec. 81130. (1) A person who is under 16 years of age, before operating an ATV or ORV, shall complete an ORV safety education course approved by the department. This course may include a written examination and a driving test designed to test the competency of the applicant. Upon successful completion of this safety education course, a person shall receive an ORV safety certificate.

(2) A safety education course conducted by a college or university, an intermediate school district, a local school district, a law enforcement agency, or another governmental agency located in this state or by a department approved nonprofit service organization shall be conducted in compliance with this section. An agency or a school conducting a course under this subsection may apply to the department for a grant from the off-road vehicle account for costs associated with conducting a course.

(3) Except for a course conducted by a private business enterprise as provided by subsection (4), an applicant for a safety education course under this section shall pay not more than a \$25.00 course fee or in the case of a university or community college a fee not more than the cost of 1 credit hour of instruction. The course fees shall only be used for funding the administration and implementation of the course.

(4) An ATV or ORV, or both, safety education course required by this section and approved by the department may be conducted by a private business enterprise. A private business enterprise may charge a course fee not to exceed the cost of conducting the course.

(5) The director shall designate a person to be the state coordinator of the ATV and ORV safety education program. A person designated under this subsection shall have successfully completed ATV and ORV safety courses.

(6) The director shall designate a person who has successfully completed ATV and ORV safety courses to perform annual inspections of course sites.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995; -- Am. 2003, Act 111, Eff. Oct. 1, 2003; -- Am. 2004, Act 587, Eff. Dec. 23, 2006

Compiler's Notes: Enacting section 2 of Act 587 of 2004 provides: "Enacting section 2. This amendatory act does not take effect unless House Joint Resolution Z of the 92nd Legislature becomes a part of the state constitution of 1963 as provided in section 1 of article XII of the state constitution of 1963."

324.81131 Ordinance allowing disabled person to operate ORV; notice of public hearing; closure of county road to operation of ORVs; operation of ORVs on highway; operation of ORV with flow of traffic; maintaining county road or street or highway not required; immunity from tort liability; "gross negligence" defined; operator of ORV as prima facie negligent; violation as municipal civil infraction; deposit of fines; violation as state civil infraction.

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

(2) Subject to subsection (4), a county board of commissioners may adopt an ordinance authorizing the operation of ORVs on 1 or more county roads located within the county. Not less than 45 days before a public hearing on the ordinance, the county clerk shall send notice of the public hearing, by certified mail, to the county road commission, to the legislative body of each township and municipality located within the county, to the state transportation department if the road intersects a highway, and, if state forestland is located within the county, to the department. If the county is a southern county, before adopting an ordinance under this subsection, the county board of commissioners shall consult with the board of county road commissioners.

(3) Subject to subsection (4), the legislative body of a township or municipality may adopt an ordinance authorizing the operation of ORVs on 1 or more county roads located within the township or municipality, respectively. Not less than 28 days before a public hearing on the ordinance, the clerk of the township or municipality shall send notice of the public hearing, by certified mail, to the county road commission, to the county board of commissioners, to the legislative body of every other township and municipality located within the county, to the state transportation department if the road intersects a highway, and, if state forestland is located within the township or municipality, to the department. If the township or municipality is located in a southern county, before

adopting an ordinance under this subsection, the legislative body of the township or municipality shall consult with the board of county road commissioners. This subsection does not apply to a township or municipality until 1 year after the effective date of the amendatory act that first authorized the county in which that township or municipality is located to adopt an ordinance under subsection (2).

(4) The board of county road commissioners may close a county road to the operation of ORVs otherwise authorized pursuant to subsection (2) or (3). A county road commission shall not under this subsection close more than 30% of the linear miles of county roads located within the county to the operation of ORVs otherwise authorized pursuant to subsection (2) or (3). The legislative body of a township or municipality may adopt an ordinance to close a county road located in the township or municipality to the operation of ORVs otherwise authorized pursuant to subsection (2). The legislative body of a village may adopt an ordinance to close a county road located in the village to the operation of ORVs otherwise authorized by the township pursuant to subsection (3). A county road may be closed to the operation of ORVs under this subsection only to protect the environment or if the operation of ORVs poses a particular and demonstrable threat to public safety.

(5) The legislative body of a municipality may adopt an ordinance authorizing the operation of ORVs on 1 or more streets within the municipality.

(6) The legislative body of a local unit of government may request the state transportation department to authorize the local unit of government to adopt an ordinance authorizing the operation of ORVs on a highway, other than an interstate highway, located within the local unit of government. The request shall describe how the authorization would meet the requirements of subsection (7). The state transportation department shall solicit comment on the request from the department, ORV clubs, and local units of government where the highway is located. The state transportation department shall consider comments received on the request before making a decision on the request. The state transportation department shall grant the request in whole or in part or deny the request not more than 60 days after the request is received. If the state transportation department grants a request in whole or in part under this subsection, the local unit of government that submitted the request may adopt an ordinance authorizing the operation of ORVs on the highway that was the subject of the request. A county may submit a request for authorization under this subsection on behalf of 1 or more local units of government located within that county if requested by those local units of government. Before January 1, 2015, the state transportation department may authorize the operation of ORVs on a highway as provided in this subsection and subsection (7) on the department's initiative and without having received a request from a local unit of government.

(7) The state transportation department shall authorize operation of an ORV under subsection (6) only on a highway that is not an interstate highway and that meets 1 or more of the following requirements:

(a) Serves as a connector between ORV areas, routes, or trails designated by the department or an ORV user group.

(b) Provides access to tourist attractions, food service establishments, fuel, motels, or other services.

(c) Serves as a connector between 2 segments of the same county road that run along discontinuous town lines and on which ORV use is authorized pursuant to subsection (2) or (3).

(d) Includes a bridge or culvert that allows an ORV to cross a river, stream, wetland, or gully that is not crossed by a street or county road on which ORVs are authorized to operate under subsection (2), (3), or (5).

(8) The state transportation department may close a highway to the operation of ORVs otherwise authorized pursuant to subsection (6) after written notice to the clerk of each local unit of government where the highway is located and the senate and house committees with primary responsibility for natural resources, recreation, and transportation. The notice shall be in writing and sent by first-class United States mail or personally delivered not less than 30 days before the adoption of the rule or order closing the highway. The notice shall set forth specific reasons for the closure.

(9) Subject to subsection (4), if a local unit of government adopts an ordinance pursuant to subsection (2), (3), or (5), a person may operate an ORV with the flow of traffic on the far right of the maintained portion of the street or county road covered by the ordinance. If the operation of ORVs on a highway is authorized pursuant to subsection (6), a person may operate an ORV with the flow of traffic as follows:

(a) On the right shoulder of the highway.

(b) If there is not a right shoulder or the right shoulder is not of adequate width, on the right unmaintained portion of the highway.

(c) On the far right of the right traffic lane of the highway, if necessary to cross a bridge or culvert and if the operator brings the ORV to a complete stop before entering and yields the right-of-way to an approaching vehicle on that traffic lane.

(10) A person shall not operate an ORV as authorized pursuant to subsection (2), (3), (5), or (6) at a speed greater than 25 miles per hour or a lower posted ORV speed limit or in a manner that interferes with traffic on the street, county road, or highway.

(11) Unless the person possesses a license as defined in section 25 of the Michigan vehicle code, 1949 PA 300, MCL 257.25, a person shall not operate an ORV as authorized pursuant to subsection (2), (3), (5), or (6) if the ORV is registered as a motor vehicle under chapter II of the Michigan vehicle code, 1949 PA 300, MCL 257.201 to 257.259, and either is more than 65 inches wide or has 3 wheels. ORVs operated as authorized pursuant to subsection (2), (3), (5), or (6) shall travel single file, except that an ORV may travel abreast of another ORV when it is overtaking and passing, or being overtaken and passed by, another ORV.

(12) A person shall not operate an ORV as authorized pursuant to this section without displaying a lighted headlight and lighted taillight.

(13) A person under 18 years of age shall not operate an ORV as authorized pursuant to this section unless the person is in possession of a valid driver license or under the direct supervision of a parent or guardian and the person has in his or her immediate possession an ORV safety certificate issued pursuant to this part or a comparable ORV safety certificate issued under the authority of another state or a province of Canada. A person under 12 years of age shall not operate an ORV as authorized pursuant to this section. The requirements of this subsection are in addition to any applicable requirements of section 81129.

(14) A township that has authorized the operation of ORVs on a county road under subsection (3) does not have a duty to maintain the maintained portion or unmaintained portion of the county road in a condition reasonably safe and convenient for the operation of ORVs. This state does not have a duty to maintain a highway in reasonable repair so that it is reasonably safe and convenient for the operation of ORVs except ORVs registered and operated as motor vehicles as provided in the code. A board of county road commissioners, a county board of commissioners, or a municipality does not have a duty to maintain the maintained portion or unmaintained portion of a county road or street under its jurisdiction in a condition reasonably safe and convenient for the operation of ORVs, except the following ORVs:

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

(b) ORVs operated as authorized pursuant to subsection (1).

(15) Subject to section 5 of 1964 PA 170, MCL 691.1405, this state, a board of county road commissioners, a county board of commissioners, and a local unit of government are immune from tort liability for injuries or damages sustained by any person arising in any way out of the operation or use, on the maintained portion or unmaintained portion of a highway, road, or street, of an ORV that is not registered under the code or that is registered under the code but is operated as authorized pursuant to subsection (2), (3), (5), or (6). The immunity provided by this subsection does not apply to actions of an employee of this state, an employee of a board of county road

commissioners, an employee of a county board of commissioners, or an employee of a local unit of government that constitute gross negligence. As used in this subsection, "gross negligence" means conduct so reckless as to demonstrate a substantial lack of concern for whether an injury results.

(16) In a court action in this state, if competent evidence demonstrates that a vehicle that is permitted to operate on a road, street, or highway pursuant to the code was in a collision on a roadway with an ORV that is not registered under the code, the operator of the ORV shall be considered prima facie negligent.

(17) A violation of an ordinance described in this section is a municipal civil infraction. The ordinance may provide for a fine of not more than \$500.00 for a violation of the ordinance. In addition, the court shall order the defendant to pay the cost of repairing any damage to the environment, a street, county road, or highway, or public property as a result of the violation.

(18) The treasurer of the local unit of government shall deposit fines collected by that local unit of government under section 8379 of the revised judicature act of 1961, 1961 PA 236, MCL 600.8379, and subsection (17) and damages collected under subsection (17) into a fund to be designated as the "ORV fund". The legislative body of the local unit of government shall appropriate revenue in the ORV fund as follows:

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

(b) Fifty percent to the board of county road commissioners or, in the case of a city or village, to the department responsible for street maintenance in the city or village. However, if a fine was collected for a violation of an ordinance adopted under subsection (6), 50% of the fine revenue shall be appropriated to the state transportation department. Revenue appropriated under this subdivision shall be used for repairing damage to streets, county roads, or highways and the environment that may have been caused by ORVs and for posting signs indicating ORV speed limits or indicating whether streets, county roads, or highways are open or closed to the operation of ORVs under this section.

(19) A person who violates a rule promulgated or order issued under subsection (6) is responsible for a state civil infraction and may be ordered to pay a civil fine of not more than \$500.00. In addition, the court shall order the defendant to pay the cost of repairing any damage to the environment, a highway, or public property as a result of the violation.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995 ;-- Am. 2008, Act 240, Imd. Eff. July 17, 2008 ;-- Am. 2009, Act 175, Imd. Eff. Dec. 15, 2009 ;-- Am. 2011, Act 107, Imd. Eff. July 19, 2011 ;-- Am. 2013, Act 117, Imd. Eff. Sept. 25, 2013 ;-- Am. 2013, Act 118, Imd. Eff. Sept. 25, 2013

324.81132 Rules; ordinance enacted under authority of rule; enforcement.

Sec. 81132. (1) The department may promulgate rules governing the operation and conduct of ORVs, vehicle speed limits, use of vehicles by day and hour, and the establishment and designation of areas within which vehicles may be used in a manner compatible with, and that will best protect, the public safety and general welfare on the frozen surface of public waters, and that will preserve the submerged marshlands adjacent to the borders of the Great Lakes, lake St. Clair, and the navigable inland waters of the state.

(2) The department, on its own initiative or upon receipt of a certified resolution of the governing body of a local unit of government may initiate investigations into the need for special rules governing the operation of vehicles on the frozen surface of public waters and the submerged marshlands adjacent to the borders of the Great Lakes, lake St. Clair, and the navigable inland waters of the state. If controls for that activity are considered necessary, or when the amendment or rescission of an existing rule is required, a rule shall be prepared. Notice of a public hearing shall be made not less than 10 days prior to the hearing, in a newspaper of general circulation in the area within which the rules are to be imposed, amended, or rescinded.

(3) The proposed rule shall then be submitted to the governing body of the political subdivision in which the affected frozen waters or marshes lie. Within 30 calendar days, the governing body shall inform the department that it approves or disapproves of the proposed rule. If the governing body disapproves the proposed rule, further action

shall not be taken. If the governing body approves the proposed rule, a local ordinance may be enacted which shall be identical to the rule, and which ordinance shall not be effective until the rule is in effect in accordance with law. The department shall then promulgate the rule.

(4) When an ordinance is enacted under the authority of a rule, and that rule is subsequently suspended by the legislature, or amended or rescinded by the department, the ordinance shall also be suspended, amended, or repealed.

(5) A local law enforcement officer may enforce an ordinance enacted pursuant to this section, and a state law enforcement officer shall enforce a rule promulgated under this section.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995.

324.81133 Operation of ORV; prohibited acts; crash helmet and protective eyewear required; exception; assumption of risk. Sec. 81133. (1) An individual shall not operate an ORV:

Sec. 81133. (1) An individual 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) During the hours of 1/2 hour after sunset to 1/2 hour before sunrise without displaying a lighted headlight and lighted taillight. The requirements of this subdivision are in addition to any applicable requirements of section 81131(12).

(c) Unless the vehicle is equipped with a braking system that may be operated by hand or foot, capable of producing deceleration at 14 feet per second on level ground at a speed of 20 miles per hour; a brake light, brighter than the taillight, visible from behind the vehicle when the brake is activated, if 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.

(d) In a state game area or state park or recreation area, except on roads, trails, or areas designated for this purpose, notwithstanding section 72118; on other state-owned lands under the control of the department where the operation would be in violation of rules promulgated by the department; 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; or in any area in such a manner as to create an erosive condition, or to injure, damage, or destroy trees or growing crops. However, the department may permit an owner and guests of the owner to use an ORV within the boundaries of a state forest in order to access the owner's property.

(e) On the frozen surface of public waters within 100 feet of an individual 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.

(f) 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 that 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 United States 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 part, manufactured or assembled after December 31, 1972 and used, sold, or offered for sale in this state, shall conform to the noise emission levels established by the United States Environmental Protection Agency under the noise control act of 1972, 42 USC 4901 to 4918.

(g) Within 100 feet of a dwelling at a speed greater than the minimum required to maintain controlled forward movement of the vehicle, except under any of the following circumstances:

(i) On property owned by or under the operator's control or on which the operator is an invited guest.

(ii) On a forest road or forest trail if the forest road or forest trail is maintained by or under the jurisdiction of the department.

(iii) On a street, county road, or highway on which ORV use is authorized pursuant to section 81131(2), (3), (5), or (6).

(h) In or upon the lands of another without the written consent of the owner, the owner's agent, or a lessee, when required by part 731. The operator of the vehicle is liable for damage to private property caused by operation of the vehicle, including, but not limited to, damage to trees, shrubs, or growing crops, injury to other living creatures, or erosive or other ecological damage. The owner of the private property may recover from the individual 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 does not imply consent to ORV use.

(i) In an area on which public hunting is permitted during the regular November firearm deer season, from 7 a.m. to 11 a.m. and from 2 p.m. to 5 p.m., except as follows:

(i) During an emergency.

(ii) For law enforcement purposes.

(iii) To go to and from a permanent residence or a hunting camp otherwise inaccessible by a conventional wheeled vehicle.

(iv) To remove legally harvested deer, bear, or elk from public land. An individual shall operate an ORV under this subparagraph at a speed not exceeding 5 miles per hour, using the most direct route that complies with subdivision (n).

(v) To conduct necessary work functions involving land and timber survey, communication and transmission line patrol, or timber harvest operations.

(vi) On property owned or under control of the operator or on which the operator is an invited guest.

(vii) While operating a vehicle registered under the code on a private road capable of sustaining automobile traffic or a street, county road, or highway.

(viii) If the individual holds a valid permit to hunt from a standing vehicle issued under part 401 or is a person with a disability using an ORV to access public lands for purposes of hunting or fishing through use of a designated trail or forest road. An individual holding a valid permit to hunt from a standing vehicle issued under part 401, or a person with a disability using an ORV to access public lands for purposes of hunting or fishing, may display a flag, the color of which the department shall determine, to identify himself or herself as a person with a disability or an individual holding a permit to hunt from a standing vehicle under part 401.

(j) Except as otherwise provided in section 40111, 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.

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

(l) Within 100 feet of a slide, ski, or skating area, unless the vehicle is being used for the purpose of servicing the area or is being operated pursuant to section 81131(2), (3), (5), or (6).

(m) On an operating or nonabandoned railroad or railroad right-of-way, or public utility 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, and except if the right-of-way is designated as provided for in section 81127.

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

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

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

(q) On public land, in a manner contrary to operating regulations.

(r) 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.

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

(t) On adjacent private land, in an area zoned residential, within 300 feet of a dwelling at a speed greater than the minimum required to maintain controlled forward movement of the vehicle except under any of the following circumstances:

(i) On a forest road or forest trail if the forest road or forest trail is maintained by or under the jurisdiction of the department.

(ii) On a street, county road, or highway on which ORV use is authorized under section 81131(2), (3), (5), or (6).

(u) On a forest trail if the ORV is greater than 50 inches in width.

(2) An individual who is operating or is a passenger on an ORV shall wear a crash helmet and protective eyewear that are approved by the United States Department of Transportation. This subsection does not apply to any of the following:

(a) An individual who owns the property on which the ORV is operating, is a family member of the owner and resides at that property, or is an invited guest of an individual who owns the property. An exception under this subdivision does not apply to any of the following:

(i) An individual less than 16 years of age.

(ii) An individual 16 or 17 years of age, unless the individual has consent from his or her parent or guardian to ride without a crash helmet.

(iii) An individual participating in an organized ORV riding or racing event if an individual who owns the property receives consideration for use of the property for operating ORVs.

(b) An individual wearing a properly adjusted and fastened safety belt if the ORV is equipped with a roof that meets or exceeds United States Department of Transportation standards for a crash helmet.

(c) An ORV operated on a state-licensed game bird hunting preserve at a speed of not greater than 10 miles per hour.

(3) Each person who participates in the sport of ORV riding accepts the risks associated with that sport insofar as the dangers are inherent. Those risks include, but are not limited to, injuries to persons or property that can result from variations in terrain; defects in traffic lanes; surface or subsurface snow or ice conditions; bare spots; rocks, trees, and other forms of natural growth or debris; and collisions with fill material, decks, bridges, signs, fences, trail maintenance equipment, or other ORVs. Those risks do not include injuries to persons or property that result from the use of an ORV by another person in a careless or negligent manner likely to endanger person or property. When an ORV is operated in the vicinity of a railroad right-of-way, each person who participates in the sport of ORV riding additionally assumes risks including, but not limited to, entanglement with railroad tracks, switches, and ties and collisions with trains and train-related equipment and facilities.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995 ;-- Am. 1998, Act 86, Imd. Eff. May 13, 1998 ;-- Am. 2008, Act 240, Imd. Eff. July 17, 2008 ;-- Am. 2008, Act 365, Imd. Eff. Dec. 23, 2008 ;-- Am. 2012, Act 246, Imd. Eff. July 2, 2012 ;-- Am. 2012, Act 340, Imd. Eff. Oct. 16, 2012 ;-- Am. 2013, Act 119, Imd. Eff. Sept. 25, 2013 ;-- Am. 2013, Act 249, Imd. Eff. Dec. 26, 2013 ;-- Am. 2014, Act 147, Imd. Eff. June 4, 2014;-- Am. 2016, Act 288, Imd. Eff. Sept. 28, 2016

324.81134.amended Operation of or authorizing operation of ORV while under influence of alcoholic liquor or controlled substance prohibited; visible impairment; violation; penalty; "serious impairment of a body function" defined; person less than 21 years of age; person less than 16 years of age occupying ORV; penalties; costs; screening, assessment, and rehabilitative services; duty of court before accepting guilty plea; record.

Sec. 81134. (1) A person shall not operate an ORV if any of the following apply:

(a) The person is under the influence of alcoholic liquor or a controlled substance, as defined by section 7104 of the public health code, 1978 PA 368, MCL 333.7104, or a combination of intoxicating liquor and a controlled substance.

(b) The person has an alcohol content of 0.08 grams or more per 100 milliliters of blood, per 210 liters of breath, or per 67 milliliters of urine.

(c) The person has in his or her body any amount of a controlled substance listed in schedule 1 under section 7212 of the public health code, 1978 PA 368, MCL 333.7212, or a rule promulgated under that section, or of a controlled substance described in section 7214(a)(iv) of the public health code, 1978 PA 368, MCL 333.7214.

(2) 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 if any of the following apply:

(a) The person is under the influence of alcoholic liquor or a controlled substance or a combination of alcoholic liquor and a controlled substance.

(b) The person has an alcohol content of 0.08 grams or more per 100 milliliters of blood, per 210 liters of breath, or per 67 milliliters of urine.

(c) The person's ability to operate an ORV is visibly impaired due to the consumption of an alcoholic liquor, a controlled substance, or a combination of an alcoholic liquor and a controlled substance.

(3) A person shall not operate an ORV if, due to the consumption of alcoholic liquor, a controlled substance, as defined by section 7104 of the public health code, 1978 PA 368, MCL 333.7104, or a combination of alcoholic liquor and a controlled substance, the person's ability to operate an ORV is visibly impaired. If a person is charged with violating subsection (1), a finding of guilty is permissible under this subsection.

(4) A person who operates an ORV in violation of subsection (1) or (3) and by the operation of that ORV causes the death of another person is guilty of a felony punishable by imprisonment for not more than 15 years or a fine of not less than \$2,500.00 or more than \$10,000.00, or both.

(5) A person who operates an ORV within this state in violation of subsection (1) or (3) and by the operation of that ORV causes a serious impairment of a body function of another person is guilty of a felony punishable by imprisonment for not more than 5 years or a fine of not less than \$1,000.00 or more than \$5,000.00, or both. As used in this subsection, "serious impairment of a body function" means that term as defined in section 58c of the Michigan vehicle code, 1949 PA 300, MCL 257.58c.

(6) A person who is less than 21 years of age, whether licensed or not, shall not operate an ORV if the person has any bodily alcohol content. As used in this subsection, "any bodily alcohol content" means either of the following:

(a) An alcohol content of 0.02 grams or more but less than 0.08 grams per 100 milliliters of blood, per 210 liters of breath, or per 67 milliliters of urine, or, beginning October 1, 2018, an alcohol content of 0.02 grams or more but less than 0.10 grams per 100 milliliters of blood, per 210 liters of breath, or per 67 milliliters of urine.

(b) Any presence of alcohol within a person's body resulting from the consumption of alcoholic liquor, other than consumption of alcoholic liquor as a part of a generally recognized religious service or ceremony.

(7) A person shall not operate an ORV in violation of subsection (1), (3), (4), (5), or (6) while another person who is less than 16 years of age is occupying the ORV.

(8) If a person is convicted of violating subsection (1)(a) or (b), all of the following apply:

(a) Except as otherwise provided in subdivisions (b) and (c), the person is guilty of a misdemeanor punishable by 1 or more of the following:

(i) Community service for not more than 360 hours.

(ii) Imprisonment for not more than 93 days.

(iii) A fine of not less than \$100.00 or more than \$500.00.

(b) If the violation occurs within 7 years of a prior conviction, the person shall be sentenced to pay a fine of not less than \$200.00 or more than \$1,000.00 and to 1 or more of the following:

(i) Imprisonment for not less than 5 days or more than 1 year. Not less than 48 hours of the term of imprisonment imposed under this subparagraph shall be served consecutively.

(ii) Community service for not less than 30 days or more than 90 days.

(c) If the violation occurs after 2 or more prior convictions, regardless of the number of years that have elapsed since any prior conviction, the person is guilty of a felony and shall be sentenced to pay a fine of not less than \$500.00 or more than \$5,000.00 and to either of the following:

(i) Imprisonment under the jurisdiction of the department of corrections for not less than 1 year or more than 5 years.

(ii) Probation with imprisonment in the county jail for not less than 30 days or more than 1 year and community service for not less than 60 days or more than 180 days. Not less than 48 hours of the imprisonment imposed under this subparagraph shall be served consecutively.

(d) A term of imprisonment imposed under subdivision (b) or (c) shall not be suspended.

(9) A person who is convicted of violating subsection (2) is guilty of a misdemeanor punishable by imprisonment for not more than 93 days or a fine of not less than \$100.00 or more than \$500.00, or both.

(10) If a person is convicted of violating subsection (3), all of the following apply:

(a) Except as otherwise provided in subdivisions (b) and (c), the person is guilty of a misdemeanor punishable by 1 or more of the following:

(i) Community service for not more than 45 days.

(ii) Imprisonment for not more than 93 days.

(iii) A fine of not more than \$300.00.

(b) If the violation occurs within 7 years of 1 prior conviction, the person shall be sentenced to both a fine of not less than \$200.00 or more than \$1,000.00, and either of the following:

(i) Community service for not less than 10 days or more than 90 days, and may be sentenced to imprisonment for not more than 1 year.

(ii) Imprisonment for not more than 1 year, and may be sentenced to community service for not more than 90 days.

(c) If the violation occurs after 2 or more prior convictions regardless of the number of years that have elapsed since any prior conviction, the person shall be sentenced to both a fine of not less than \$200.00 or more than \$1,000.00, and either of the following:

(i) Community service for a period of not less than 10 days or more than 90 days, and may be sentenced to imprisonment for not more than 1 year.

(ii) Imprisonment for not more than 1 year, and may be sentenced to community service for not more than 90 days.

(11) If a person is convicted of violating subsection (6), all of the following apply:

(a) Except as otherwise provided in subdivision (b), the person is guilty of a misdemeanor punishable by 1 or both of the following:

(i) Community service for not more than 360 hours.

(ii) A fine of not more than \$250.00.

(b) If the violation occurs within 7 years of 1 or more prior convictions, the person may be sentenced to 1 or more of the following:

(i) Community service for not more than 60 days.

(ii) A fine of not more than \$500.00.

(iii) Imprisonment for not more than 93 days.

(12) A person who violates subsection (7) is guilty of a crime as follows:

(a) A person who operates an ORV in violation of subsection (1), (3), (4), or (5) while another person who is less than 16 years of age is occupying the ORV is guilty of a crime as follows:

(i) Except as provided in subdivision (b), a person who violates this subdivision is guilty of a misdemeanor and shall be sentenced to pay a fine of not less than \$200.00 or more than \$1,000.00 and to 1 or more of the following:

(A) Imprisonment for not less than 5 days or more than 1 year. Not less than 48 hours of this imprisonment shall be served consecutively. This term of imprisonment shall not be suspended.

(B) Community service for not less than 30 days or more than 90 days.

(ii) If the violation occurs within 7 years of a prior conviction or after 2 or more prior convictions, regardless of the number of years that have elapsed since any prior conviction, a person who violates this subdivision is guilty of a felony and shall be sentenced to pay a fine of not less than \$500.00 or more than \$5,000.00 and to either of the following:

(A) Imprisonment under the jurisdiction of the department of corrections for not less than 1 year or more than 5 years.

(B) Probation with imprisonment in the county jail for not less than 30 days or more than 1 year and community service for not less than 60 days or more than 180 days. Not less than 48 hours of this imprisonment shall be served consecutively. This term of imprisonment shall not be suspended.

(b) A person who operates an ORV in violation of subsection (6) while another person who is less than 16 years of age is occupying the ORV is guilty of a misdemeanor punishable as follows:

(i) Except as provided in subparagraph (ii), a person who violates this subdivision may be sentenced to 1 or more of the following:

(A) Community service for not more than 60 days.

(B) A fine of not more than \$500.00.

(C) Imprisonment for not more than 93 days.

(ii) If the violation occurs within 7 years of a prior conviction or after 2 or more prior convictions, regardless of the number of years that have elapsed since any prior conviction, a person who violates this subdivision shall be sentenced to pay a fine of not less than \$200.00 or more than \$1,000.00 and to 1 or more of the following:

(A) Imprisonment for not less than 5 days or more than 1 year. Not less than 48 hours of this imprisonment shall be served consecutively. This term of imprisonment shall not be suspended.

(B) Community service for not less than 30 days or more than 90 days.

(13) For a conviction under subsection (4) or (5), the court shall order, without an expiration date, that the person not operate an ORV.

(14) As part of the sentence for a violation of subsection (1) or a local ordinance substantially corresponding to subsection (1), the court shall do the following:

(a) If the court finds that the person has no prior convictions within 7 years, the court shall order that the person not operate an ORV for a period of not less than 6 months or more than 2 years.

(b) If the court finds that the person has 1 or more prior convictions within 7 years, the court shall order that the person not operate an ORV for a period of not less than 1 year or more than 2 years.

(c) If the court finds that the person has 2 or more prior convictions within a period of 10 years, the court shall order that the person not operate an ORV for a period of not less than 1 year or more than 2 years.

(15) As part of the sentence for a violation of subsection (3) or a local ordinance substantially corresponding to subsection (3), the court shall do the following:

(a) If the court finds that the person has no prior convictions within 7 years, the court shall order that the person not operate an ORV for a period of not less than 90 days or more than 1 year.

(b) If the court finds that the person has 1 or more prior convictions within 7 years, the court shall order that the person not operate an ORV for a period of not less than 6 months or more than 18 months.

(c) If the court finds that the person has 2 or more prior convictions within a period of 10 years, the court shall order that the person not operate an ORV for a period of not less than 1 year or more than 2 years.

(16) In addition to imposing the sanctions prescribed under this section, the court may order the person to pay the costs of the prosecution under the code of criminal procedure, 1927 PA 175, MCL 760.1 to 777.69.

(17) A person sentenced to perform community service under this section shall not receive compensation and shall reimburse the state or appropriate local unit of government for the cost of supervision incurred by the state or local unit of government as a result of the person's activities in that service.

(18) Before imposing sentence for a violation of subsection (1), (3), (6), or (7) or a local ordinance substantially corresponding to subsection (1), (3), or (6), 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.

(19) 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.

(20) Each municipal judge and each clerk of a court of record shall keep a full record of every case in which a person is charged with a violation of this section. The municipal judge or clerk of the court of record shall prepare and immediately forward to the secretary of state an abstract of the court of record for each case charging a violation of this section.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995 ;-- Am. 1996, Act 175, Imd. Eff. Apr. 18, 1996 ;-- Am. 1998, Act 355, Eff. Oct. 1, 1999 ;-- Am. 1999, Act 22, Eff. Oct. 1, 2000 ;-- Am. 2001, Act 12, Eff. July 1, 2001 ;-- Am. 2014, Act 405, Eff. Mar. 31, 2015

324.81136.amended Chemical analysis of operator's blood, urine, or breath; admissibility; request for results of test; taking sample of urine or breath; withdrawing blood; liability; administration of tests by person of arrested person's own choosing; refusal to take test; other evidence; jury instruction; admissibility of blood withdrawn after accident; sample of decedent's blood.

Sec. 81136. (1) In a criminal prosecution for violating section 81134 or a local ordinance substantially corresponding to section 81134(1), (3), or (6) or in a criminal prosecution for negligent homicide, manslaughter, or murder resulting from the operation of an ORV while the operator is alleged to have been impaired by or under the influence of alcoholic liquor or a controlled substance or a combination of alcoholic liquor and a controlled substance, or to have had a blood alcohol content of 0.08 grams or more per 100 milliliters of blood, per 210 liters of breath, or per 67 milliliters of urine, or to have had in his or her body any amount of a controlled substance listed in schedule 1 under section 7212 of the public health code, 1978 PA 368, MCL 333.7212, or a rule promulgated under that section, or of a controlled substance described in section 7214(a)(iv) of the public health code, 1978 PA 368, MCL 333.7214, the amount of alcohol or controlled substance in the operator's blood at the time alleged as shown by chemical analysis of the operator's blood, urine, or breath is 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) 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 part. 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 part unless the withdrawal is performed in a negligent manner.

(4) 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 part 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.

(5) 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.

(6) 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 alcoholic liquor or a controlled substance, or a combination of alcoholic liquor and a controlled substance, or whether the person had a blood alcohol content of 0.08 grams or more per 100 milliliters of blood, per 210 liters of breath, or per 67 milliliters of urine or had in his or her body any amount of a controlled substance listed in schedule 1 under section 7212 of the public health code, 1978 PA 368, MCL 333.7212, or a rule promulgated under that section, or of a controlled substance described in section 7214(a)(iv) of the public health code, 1978 PA 368, MCL 333.7214.

(7) 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."

(8) 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.

(9) 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.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995 ;-- Am. 1996, Act 175, Imd. Eff. Apr. 18, 1996 ;-- Am. 2014, Act 405, Eff. Mar. 31, 2015

******* 324.81137 THIS SECTION IS AMENDED EFFECTIVE MARCH 31, 2015: See 324.81137.amended *******

324.81137 Implied consent to chemical tests of blood, breath, or urine; exception.

Sec. 81137. (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 81134(1) or (2) or 81135 or a local ordinance substantially corresponding to section 81134(1) or (2) or 81135.

(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.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995.

******* 324.81137.amended THIS AMENDED SECTION IS EFFECTIVE MARCH 31, 2015 *******

324.81137.amended Implied consent to chemical tests of blood, breath, or urine; exception.

Sec. 81137. (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 81134(1), (3), (4), (5), (6), or (7) or a local ordinance substantially corresponding to section 81134(1), (3), or (6).

(b) The person is arrested for negligent homicide, manslaughter, or murder resulting from the operation of an ORV, and the peace officer has reasonable grounds to believe that the person was operating the ORV in violation of section 81134.

(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.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995 ;-- Am. 2014, Act 405, Eff. Mar. 31, 2015

324.81138 Chemical tests; advising of right to refuse; court order; report.

Sec. 81138. (1) A person who is requested pursuant to section 81137(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 81137(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 81137(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.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995.

324.81139 Administrative hearing; notice.

Sec. 81139. (1) Upon receipt of a report made pursuant to section 81138, 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 81140.

(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.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995.

324.81140.amended Suspension of right to operate ORV; appointment of hearing officer; notice; powers of hearing officer; scope and conduct of hearing; final decision or order; petition; review; order; record of proceedings.

Sec. 81140. (1) If a person who refuses to submit to a chemical test under section 81138 does not request an administrative hearing within 14 days after the date of notice under section 81139, the secretary of state shall suspend the person's right to operate an ORV for a period of 1 year, or for a second or subsequent refusal within a period of 7 years, for 2 years.

(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 81138, 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 81137(1).

(b) Whether the person was placed under arrest for a crime described in section 81137(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 81136.

(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, 1969 PA 306, MCL 24.271 to 24.287. 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 1 year, or for a second or subsequent refusal within a period of 7 years, for 2 years. 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. If after the hearing the person who requested the hearing prevails, the peace officer who filed the report under section 81138 may, with the consent of the prosecuting attorney, file a petition in the circuit court of the county in which the arrest was made to review the determination of the hearing officer as provided in section 81140b. The scope of the court's review shall be limited to the issues provided in section 106 of the administrative procedures act of 1969, 1969 PA 306, MCL 24.306.

(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, 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 under subsection (2). The record shall be prepared and transcribed in accordance with section 86 of the administrative procedures act of 1969, 1969 PA 306, MCL 24.286. 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.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995 ;-- Am. 2014, Act 405, Eff. Mar. 31, 2015

324.81140a Suspension or revocation of operator's or chauffeur's license; operation of ORV prohibited; violation as misdemeanor; penalty.

Sec. 81140a. (1) If the operator's or chauffeur's license of a person who is a resident of this state is suspended or revoked by the secretary of state under the Michigan vehicle code, 1949 PA 300, MCL 257.1 to 257.923, or if the driver license of a person who is a nonresident is suspended or revoked under the law of the state in which he or she resides, that person shall not operate an ORV under this part for the same period.

(2) A person who violates this section is guilty of a misdemeanor punishable as follows:

(a) For a first conviction, imprisonment for not more than 93 days or a fine of not more than \$500.00, or both.

(b) For a second or subsequent conviction, imprisonment for not more than 180 days or a fine of not more than \$1,000.00, or both.

History: Add. 1999, Act 43, Eff. Oct. 1, 2000.

324.81140b.added Final determination of secretary of state; petition for review in circuit court; filing; order setting cause for hearing; service on secretary of state; review of the record.

Sec. 81140b. (1) A person who is aggrieved by a final determination of the secretary of state under this part may petition for a review of the determination in the circuit court in the county where the person was arrested. The petition shall be filed within 63 days after the determination is made except that, for good cause shown, the court may allow the petition to be filed within 182 days after the determination is made. As provided in section 81140, a peace officer who is aggrieved by a determination of a hearing officer in favor of a person who requested a hearing under section 81140 may, with the consent of the prosecuting attorney, petition for review of the determination in the circuit court in the county where the arrest was made. The petition shall be filed within 63 days after the determination is made except that, for good cause shown, the court may allow the petition to be filed within 182 days after the determination is made.

(2) Except as otherwise provided in this section, the circuit court shall enter an order setting the cause for hearing for a day certain that is not more than 63 days after the date of the order. The order, a copy of the petition that includes the person's full name, current address, birth date, and driver license number, and all supporting affidavits shall be served on the secretary of state's office in Lansing not less than 20 days before the date set for the hearing. If the person is seeking a review of the record prepared under section 81140, the service upon the secretary of state shall be made not less than 50 days before the date set for the hearing.

(3) The court may take testimony and examine all the facts and circumstances incident to the order that the person not operate an ORV in this state. The court may affirm, modify, or set aside the order. The order of the court shall be duly entered, and the petitioner shall file a certified copy of the order with the secretary of state's office in Lansing within 7 days after entry of the order.

(4) Except as otherwise provided in this section, in reviewing a determination under section 81140, the court shall confine its consideration to a review of the record prepared under section 81140 to determine whether the hearing officer properly determined the issues enumerated in section 81140.

(5) In reviewing a determination resulting in issuance of an order under section 81134, the court shall confine its consideration to a review of the record prepared under section 81140. The court shall set aside the determination of the secretary of state only if substantial rights of the petitioner have been prejudiced because the determination is any of the following:

- (a) In violation of the constitution of the United States, the state constitution of 1963, or a statute.
- (b) In excess of the secretary of state's statutory authority or jurisdiction.
- (c) Made upon unlawful procedure resulting in material prejudice to the petitioner.
- (d) Not supported by competent, material, and substantial evidence on the whole record.
- (e) Arbitrary, capricious, or clearly an abuse or unwarranted exercise of discretion.
- (f) Affected by other substantial and material error of law.

History: Add. 2014, Act 405, Eff. Mar. 31, 2015

324.81141.amended Preliminary chemical breath analysis; arrest; admissibility of results; requirements; civil infraction; fine.

Sec. 81141. (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 alcoholic 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 81136(1) or in an administrative hearing held under section 81140, 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 remains subject to the requirements of sections 81136, 81137, 81138, 81139, and 81140 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 is responsible for a state civil infraction and may be ordered to pay a civil fine of not more than \$500.00.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995 ;-- Am. 1996, Act 175, Imd. Eff. Apr. 18, 1996 ;-- Am. 2014, Act 405, Eff. Mar. 31, 2015

324.81142 Operation of ORV after right suspended as misdemeanor; penalty.

Sec. 81142. A person whose right to operate an ORV has been suspended pursuant to this part 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.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995.

324.81143 Accident resulting in injury, death, or property damage; notice; report; report by medical facility; collection and evaluation of information; duties of operator.

Sec. 81143. (1) The operator of a vehicle involved in an accident resulting in injuries to, or the 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.

(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, shall collect and evaluate information concerning accidents involving ORVs.

(4) The operator of a vehicle involved in an accident upon public or private property resulting in injury to or the 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.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995.

324.81144.amended Arrest without warrant of alleged operator of ORV.

Sec. 81144. 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 alcoholic liquor, a controlled substance as defined in section 7104 of the public health code, 1978 PA 368, MCL 333.7104, or a combination of alcoholic 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 alcoholic liquor, a controlled substance, or a combination of alcoholic liquor and a controlled substance, the peace officer may arrest the alleged operator of the ORV without a warrant.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995 ;-- Am. 2014, Act 405, Eff. Mar. 31, 2015

324.81145 Violations; appearance tickets; prima facie evidence of operation by owner.

Sec. 81145. (1) Law enforcement officers may issue appearance tickets for violations of this part, pursuant to sections 9a to 9g of chapter 4 of Act No. 175 of the Public Acts of 1927, being sections 764.9a to 764.9g of the Michigan Compiled Laws.

(2) In a proceeding for a violation of this part involving prohibited operation or conduct, the registration number or numbered decal or vehicle identification number displayed on an ORV shall constitute prima facie evidence that the owner of the vehicle was the person operating the vehicle at the time of the offense; unless the owner identifies the operator to law enforcement officials, the vehicle was reported as stolen at the time of the violation, or that the vehicle was stolen or not in use at the time of the violation.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995.

324.81146 Failure or refusal to obey signal or request to stop; misdemeanor.

Sec. 81146. (1) An operator of an ORV, who is given by hand, voice, emergency light, or siren a visual or audible signal by a law enforcement officer acting in the lawful performance of his or her duty, directing the operator to bring the vehicle to a stop, and who willfully fails to obey the signal by increasing speed, extinguishing lights, or otherwise attempting to flee or elude the officer, is guilty of a misdemeanor. The officer giving the signal shall be in uniform, and the officer's vehicle shall be easily identifiable as an official law enforcement vehicle.

(2) The operator of a vehicle on the private premises of another, when visibly hailed by the owner or the owner's authorized agent, shall bring the vehicle to an immediate stop and provide personal identification. Refusal to obey such a request to stop or subsequent escape or attempt to escape is a misdemeanor.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995.

324.81147 Violation of part as misdemeanor or civil violation; penalties; restoration; impoundment; disposition of seized ORV or personal property.

Sec. 81147. (1) Except as otherwise provided in this part, a person who violates this part is guilty of a misdemeanor punishable by imprisonment for not more than 90 days or a fine of not less than \$50.00 or more than \$1,000.00, or both, for each violation.

(2) A person who violates section 81133(1)(d) by operating an ORV in such a manner as to create an erosive condition or who violates section 81133(1)(h) or (n) is guilty of a misdemeanor punishable by imprisonment for not more than 90 days or a fine of not less than \$250.00 or more than \$1,000.00, or both, for each violation.

(3) A person who violates section 81105, 81107, 81115, 81116, 81121, 81130, 81133(1)(b), (c), (e), (f), (g), (i), (k), or (l), or 81133(2) is responsible for a state civil infraction and may be ordered to pay a civil fine of not more than \$500.00.

(4) A person shall not remove, deface, or destroy a sign or marker placed by the department indicating the boundaries of an ORV trail or area or that marks a route.

(5) In addition to the penalties otherwise provided under this part, a court of competent jurisdiction may order a person to restore, as nearly as possible, any land, water, stream bank, streambed, or other natural or geographic formation damaged by the violation of this part to the condition it was in before the violation occurred.

(6) The department or any other peace officer may impound the ORV of a person who commits a violation of this part that is punishable as a misdemeanor or who causes damage to the particular area in which the ORV was used in the commission of the violation.

(7) Upon conviction of a person for violation described in subsection (6), a court of competent jurisdiction may order the ORV and any personal property on the ORV seized as a result of the violation returned to the owner or, upon recommendation of the local prosecuting attorney, turned over to the department. An ORV or any other property turned over to the department under this subsection shall be disposed of in the manner provided for condemnation of property in part 16. The proceeds realized by the department under this subsection shall first be used to restore areas damaged by ORV use, and any balance shall be deposited in the off-road vehicle account.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995 ;-- Am. 1996, Act 175, Imd. Eff. Apr. 18, 1996 ;-- Am. 2004, Act 587, Eff. Dec. 23, 2006 ;-- Am. 2008, Act 240, Imd. Eff. July 17, 2008 ;-- Am. 2013, Act 119, Imd. Eff. Sept. 25, 2013 ;-- Am. 2014, Act 147, Imd. Eff. June 4, 2014
Compiler's Notes: Enacting section 2 of Act 587 of 2004 provides: "Enacting section 2. This amendatory act does not take effect unless House Joint Resolution Z of the 92nd Legislature becomes a part of the state constitution of 1963 as provided in section 1 of article XII of the state constitution of 1963."

324.81148 Condemnation of ORV unauthorized where trespass is result of emergency.

Sec. 81148. A person shall not have an ORV condemned pursuant to section 81147 if the trespass is the result of an emergency situation.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995.

324.81149 Survey to determine total unrefunded gasoline sales tax money; report; recommendations; budget requests.

Sec. 81149. The department shall conduct a survey to determine the total unrefunded gasoline sales tax money it estimates to have been collected from the sale of gasoline relating to the nonhighway use of ORVs, and shall submit a report to the legislature along with a recommendation as to the method by which the unrefunded gasoline sales tax money estimated to have been collected shall be appropriated to benefit ORV users. The first survey shall be submitted to the legislature prior to January 31, 1977 and every third year thereafter. The department shall include in its budget requests information detailing survey programs.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995.

324.81150 Uniform interpretation.

Sec. 81150. The department shall disseminate information to its field officers and to state and local law enforcement agencies on a uniform interpretation of this part and each officer's duties and responsibilities in enforcing this part.

History: Add. 1995, Act 58, Imd. Eff. May 24, 1995.