

**SUBSTITUTE FOR
SENATE BILL NO. 68**

A bill to amend 1994 PA 451, entitled
"Natural resources and environmental protection act,"
by amending sections 81101, 81129, and 81133 (MCL 324.81101,
324.81129, and 324.81133), as amended by 2013 PA 119.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 81101. As used in this part:

2 (a) "ATV" means a vehicle with 3 or more wheels that is
3 designed for off-road use, has low-pressure tires, has a seat
4 designed to be straddled by the rider, and is powered by a 50cc to
5 1,000cc gasoline engine or an engine of comparable size using other
6 fuels.

7 (b) "Code" means the Michigan vehicle code, 1949 PA 300, MCL
8 257.1 to 257.923.

9 (c) "County road" means a county primary road or county local

1 road as described in section 5 of 1951 PA 51, MCL 247.655, or a
2 segment thereof.

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

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

10 (f) "Farm vehicle" means either of the following:

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

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

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

20 (h) "Forest trail" means a designated path or way ~~capable of~~
21 ~~travel only by a vehicle less than 50 inches in width.~~ **THAT IS NOT A**
22 **ROUTE.**

23 (i) "Highway" means a state trunk line highway or a segment of
24 a state trunk line highway.

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

1 (k) "Late model ORV" means an ORV manufactured in the current
2 model year or the 5 model years immediately preceding the current
3 model year.

4 (l) "Local unit of government" means a county, township, or
5 municipality.

6 (m) "Maintained portion" means the roadway and any shoulder of
7 a street, county road, or highway.

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

11 (o) "Municipality" means a city or village.

12 (p) "Off-road vehicle account" means the off-road vehicle
13 account of the Michigan conservation and recreation legacy fund
14 established in section 2015.

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

17 (r) "Operator" means an individual who operates or is in
18 actual physical control of the operation of an ORV.

19 (s) "ORV" or, unless the context implies a different meaning,
20 "vehicle" means a motor-driven off-road recreation vehicle capable
21 of cross-country travel without benefit of a road or trail, on or
22 immediately over land, snow, ice, marsh, swampland, or other
23 natural terrain. A multitrack or multiwheel drive vehicle, a
24 motorcycle or related 2-wheel vehicle, a vehicle with 3 or more
25 wheels, an amphibious machine, a ground effect air cushion vehicle,
26 or other means of transportation may be an ORV. An ATV is an ORV.
27 ORV or vehicle does not include a registered snowmobile, a farm

1 vehicle being used for farming, a vehicle used for military, fire,
 2 emergency, or law enforcement purposes, a vehicle owned and
 3 operated by a utility company or an oil or gas company when
 4 performing maintenance on its facilities or on property over which
 5 it has an easement, a construction or logging vehicle used in
 6 performance of its common function, or a registered aircraft.

7 **(T) "ORV SAFETY CERTIFICATE" MEANS AN ORV SAFETY CERTIFICATE**
 8 **ISSUED UNDER SECTION 81130 OR, EXCEPT AS USED IN SECTION 81130, A**
 9 **COMPARABLE SAFETY CERTIFICATE ISSUED UNDER THE AUTHORITY OF ANOTHER**
 10 **STATE OR PROVINCE OF CANADA.**

11 **(U)** ~~(t)~~—"Owner" means any of the following:

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

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

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

20 **(V)** ~~(u)~~—"Person with a disability" means an individual who has
 21 1 or more of the following physical characteristics:

22 (i) Blindness.

23 (ii) Inability, during some time of the year, to ambulate more
 24 than 200 feet without having to stop and rest.

25 (iii) Loss of use of 1 or both legs or feet.

26 (iv) Inability to ambulate without the prolonged use of a
 27 wheelchair, walker, crutches, braces, or other device required to

1 aid mobility.

2 (v) A lung disease from which the individual's expiratory
3 volume for 1 second, when measured by spirometry, is less than 1
4 liter, or from which the individual's arterial oxygen tension is
5 less than 60 mm/hg of room air at rest.

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

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

13 (W) ~~(v)~~ "Personal information" means information that
14 identifies an individual, including an individual's driver
15 identification number, name, address not including zip code, and
16 telephone number, but does not include information on ORV operation
17 or equipment-related violations or civil infractions, operator or
18 vehicle registration status, accidents, or other ~~behaviorally-~~
19 ~~related~~ **BEHAVIORALLY RELATED** information.

20 (X) ~~(w)~~ "Public agency" means the department or a local or
21 federal unit of government.

22 (Y) ~~(x)~~ "Roadway" means the portion of a street, county road,
23 or highway improved, designed, or ordinarily used for travel by
24 vehicles registered under the code. Roadway does not include the
25 shoulder.

26 (Z) ~~(y)~~ "Route" means a forest road or other road that is
27 designated for purposes of this part by the department.

1 **(AA)** ~~(z)~~—"Safety chief instructor" means an individual who has
 2 been certified by a nationally recognized ORV organization to
 3 certify instructors and to do on-sight evaluations of instructors.

4 **(BB)** ~~(aa)~~—"Shoulder" means that portion of a street, county
 5 road, or highway contiguous to the roadway and generally extending
 6 the contour of the roadway, not designed for vehicular travel but
 7 maintained for the temporary accommodation of disabled or stopped
 8 motor vehicles otherwise permitted on the roadway.

9 **(CC)** ~~(bb)~~—"Southern county" means Muskegon, Kent, Ionia,
 10 Clinton, Shiawassee, Genesee, Lapeer, or Macomb county, or a county
 11 lying south of the territory constituted by these counties.

12 **(DD)** ~~(ee)~~—"Street" means a city or village major street or
 13 city or village local street as described in section 9 of 1951 PA
 14 51, MCL 247.659, or a segment thereof.

15 **(EE)** ~~(dd)~~—"Traffic lane" means a clearly marked lane on a
 16 roadway.

17 **(FF)** ~~(ee)~~—"Unmaintained portion" means the portion of a
 18 street, county road, or highway that is not the maintained portion.

19 **(GG)** ~~(ff)~~—"Visual supervision" means the direct observation of
 20 the operator with the unaided or normally corrected eye, where the
 21 observer is able to come to the immediate aid of the operator.

22 Sec. 81129. (1) Subject to subsections (2), (3), and (17), a
 23 parent or legal guardian of a child less than 16 years of age shall
 24 not permit the child to operate an ORV unless the child is under
 25 the direct visual supervision of an adult and the child has **AN ORV**
 26 **SAFETY CERTIFICATE** in his or her immediate possession. ~~an ORV~~
 27 ~~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.~~

(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 ~~a 4-wheeled ATV,~~ **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. ~~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.~~

(5) Subject to subsection (17), the owner or person in charge of ~~a 4-wheeled ATV~~ **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

1 knowingly permit the vehicle to be operated by a child less than 16
2 years of age.

3 (7) The owner or person in charge of an ORV shall not
4 knowingly permit the vehicle to be operated by ~~a person~~ **AN**
5 **INDIVIDUAL** who is incompetent to operate the vehicle because of
6 mental or physical disability.

7 (8) The department shall implement a comprehensive program for
8 the training of ORV operators and the preparation and dissemination
9 of ORV information and safety advice to the public. The program
10 shall provide for the training of youthful operators and for the
11 issuance of ORV safety certificates to those who successfully
12 complete the training and may include separate instruction for each
13 type of ORV.

14 (9) In implementing a program under subsection (8), the
15 department shall cooperate with private organizations and
16 associations, private and public corporations, the department of
17 education, the department of state, and local governmental units.
18 The department shall consult with ORV and environmental
19 organizations and associations in regard to the subject matter of a
20 training program and performance testing that leads to
21 certification of ORV operators.

22 (10) The department may designate a ~~person it considers~~
23 qualified **INDIVIDUAL** to provide course instruction and to award ORV
24 safety certificates.

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

27 (12) Subject to subsections (13), (14), and (17), a child who

1 is less than 16 years of age shall not operate an ORV unless the
2 child is under the direct visual supervision of an adult and the
3 child has **AN ORV SAFETY CERTIFICATE** in his or her immediate
4 possession. ~~an ORV safety certificate issued pursuant to this~~
5 ~~section or a comparable ORV safety certificate issued under the~~
6 ~~authority of another state or a province of Canada.~~

7 (13) Subject to subsection (17), a child who is less than 12
8 years of age shall not operate a ~~4-wheeled ATV,~~ **AN ATV WITH 4 OR**
9 **MORE WHEELS** unless the child is not less than 10 years of age and
10 is on private land owned by a parent or legal guardian of the
11 child. This subsection does not apply to the operation of an ATV
12 used in agricultural operations.

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

15 (15) Subject to subsection (17), when operating an ORV, a
16 child who is less than 16 years of age shall present the ORV safety
17 certificate to a peace officer upon demand.

18 (16) Notwithstanding any other provision of this section, an
19 operator who is less than 12 years of age shall not cross a street,
20 county road, or highway. An operator who is not less than 12 years
21 of age but less than 16 years of age may cross a street, county
22 road, or highway or operate an ORV pursuant to section 81131(9) if
23 the operator has ~~a valid~~ **AN** ORV safety certificate in his or her
24 immediate possession and meets any other requirements under this
25 section for operation of the vehicle.

26 (17) The requirement that a child possess an ORV safety
27 certificate to operate an ORV, and the requirement that a child who

1 is less than 12 years of age not operate a ~~4 wheeled ATV~~ **AN ATV**
2 **WITH 4 OR MORE WHEELS** unless the child is not less than 10 years of
3 age and is on private land owned by a parent or legal guardian of
4 the child, do not apply if all of the following requirements are
5 met:

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

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

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

13 (d) A physician or physician's assistant licensed or otherwise
14 authorized under part 170 or 175 of the public health code, 1978 PA
15 368, MCL 333.17001 to 333.17084 and 333.17501 to 333.17556, or a
16 paramedic or emergency medical technician licensed under part 209
17 of the public health code, 1978 PA 368, MCL 333.20901 to 333.20979,
18 is present at the site of the event or available on call.

19 (e) The event is at all times under the direct visual
20 supervision of adult staff of the event organizer and a staff
21 member serves as a flagger to warn ~~ORV riders~~ **PARTICIPANTS** if
22 another ~~ORV rider~~ **PARTICIPANT** is injured or an ORV is inoperable in
23 the ORV operating area.

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

26 (g) If the event is on a closed course, dust is controlled in
27 the ORV operating area and the riding surface in the ORV operating

1 area is otherwise properly prepared.

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

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

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

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

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

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

21 (b) The age of the child.

22 (c) Whether the child had been issued an ORV safety
23 certificate. ~~under this part or a comparable ORV safety certificate~~
24 ~~issued under the authority of another state or a province of~~
25 ~~Canada.~~

26 (d) The type of ORV operated.

27 (e) A description of the accident and injury.

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

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

9 Sec. 81133. (1) An individual shall not operate an ORV:

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

13 (b) Unless the individual and any passenger in or on the
14 vehicle is wearing on his or her head a crash helmet and protective
15 eyewear approved by the United States department of transportation.
16 This subdivision does not apply to either of the following:

17 (i) The operator of or a passenger in a vehicle that is
18 equipped with a roof that meets or exceeds standards for a crash
19 helmet if the operator and each passenger is wearing a properly
20 adjusted and fastened safety belt.

21 (ii) The operator of or a passenger in an ORV that is operated
22 on a state licensed game bird hunting preserve at a speed of not
23 greater than 10 miles per hour.

24 (c) During the hours of 1/2 hour after sunset to 1/2 hour
25 before sunrise without displaying a lighted headlight and lighted
26 taillight. The requirements of this subdivision are in addition to
27 any applicable requirements of section 81131(12).

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

10 (e) In a state game area or state park or recreation area,
11 except on roads, trails, or areas designated for this purpose; on
12 other state-owned lands under the control of the department where
13 the operation would be in violation of rules promulgated by the
14 department; in a forest nursery or planting area; on public lands
15 posted or reasonably identifiable as an area of forest
16 reproduction, and when growing stock may be damaged; in a dedicated
17 natural area of the department; or in any area in such a manner as
18 to create an erosive condition, or to injure, damage, or destroy
19 trees or growing crops. However, the department may permit an owner
20 and guests of the owner to use an ORV within the boundaries of a
21 state forest in order to access the owner's property.

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

1 (g) Unless the vehicle is equipped with a spark arrester type
2 United States forest service approved muffler, in good working
3 order and in constant operation. Exhaust noise emission shall not
4 exceed 86 Db(A) or 82 Db(A) on a vehicle manufactured after January
5 1, 1986, when the vehicle is under full throttle, traveling in
6 second gear, and measured 50 feet at right angles from the vehicle
7 path with a sound level meter that meets the requirement of ANSI
8 S1.4 1983, using procedure and ancillary equipment therein
9 described; or 99 Db(A) or 94 Db(A) on a vehicle manufactured after
10 January 1, 1986, or that level comparable to the current sound
11 level as provided for by the United States environmental protection
12 agency when tested according to the provisions of the current SAE
13 J1287, June 86 test procedure for exhaust levels of stationary
14 motorcycles, using sound level meters and ancillary equipment
15 therein described. A vehicle subject to this part, manufactured or
16 assembled after December 31, 1972 and used, sold, or offered for
17 sale in this state, shall conform to the noise emission levels
18 established by the United States environmental protection agency
19 under the noise control act of 1972, 42 USC 4901 to 4918.

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

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

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

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

3 (i) In or upon the lands of another without the written
4 consent of the owner, the owner's agent, or a lessee, when required
5 by part 731. The operator of the vehicle is liable for damage to
6 private property caused by operation of the vehicle, including, but
7 not limited to, damage to trees, shrubs, or growing crops, injury
8 to other living creatures, or erosive or other ecological damage.
9 The owner of the private property may recover from the individual
10 responsible nominal damages of not less than the amount of damage
11 or injury. Failure to post private property or fence or otherwise
12 enclose in a manner to exclude intruders or of the private property
13 owner or other authorized person to personally communicate against
14 trespass does not imply consent to ORV use.

15 (j) In an area on which public hunting is permitted during the
16 regular November firearm deer season, from 7 a.m. to 11 a.m. and
17 from 2 p.m. to 5 p.m., except during an emergency or for law
18 enforcement purposes, to go to and from a permanent residence or a
19 hunting camp otherwise inaccessible by a conventional wheeled
20 vehicle, or to remove from public land a deer, elk, or bear that
21 has been taken under a valid license; except to conduct necessary
22 work functions involving land and timber survey, communication and
23 transmission line patrol, or timber harvest operations; or except
24 on property owned or under control of the operator or on which the
25 operator is an invited guest. A hunter removing game under this
26 subdivision may leave the designated trail or forest road only to
27 retrieve the game and shall not exceed 5 miles per hour. A vehicle

1 registered under the code is exempt from this subdivision while
2 operating on a private road capable of sustaining automobile
3 traffic or a street, county road, or highway. A person holding a
4 valid permit to hunt from a standing vehicle issued under part 401,
5 or a person with a disability using an ORV to access public lands
6 for purposes of hunting or fishing through use of a designated
7 trail or forest road, is exempt from this subdivision. An
8 individual holding a valid permit to hunt from a standing vehicle
9 issued under part 401, or a person with a disability using an ORV
10 to access public lands for purposes of hunting or fishing, may
11 display a flag, the color of which the department shall determine,
12 to identify himself or herself as a person with a disability or an
13 individual holding a permit to hunt from a standing vehicle under
14 part 401.

15 (k) Except as otherwise provided in section 40111(3) or (4),
16 while transporting on the vehicle a bow unless unstrung or encased,
17 or a firearm unless unloaded and securely encased, or equipped with
18 and made inoperative by a manufactured keylocked trigger housing
19 mechanism.

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

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

25 (n) On an operating or nonabandoned railroad or railroad
26 right-of-way, or public utility right-of-way, other than for the
27 purpose of crossing at a clearly established site intended for

1 vehicular traffic, except railroad, public utility, or law
2 enforcement personnel while in performance of their duties, and
3 except if the right-of-way is designated as provided for in section
4 81127.

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

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

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

11 (r) On public land, in a manner contrary to operating
12 regulations.

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

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

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

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

25 (u) On adjacent private land, in an area zoned residential,
26 within 300 feet of a dwelling at a speed greater than the minimum
27 required to maintain controlled forward movement of the vehicle

1 except under any of the following circumstances:

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

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

7 **(V) ON A FOREST TRAIL IF THE ORV IS GREATER THAN 50 INCHES IN**
8 **WIDTH.**

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