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HOUSE BILL 177

48TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2007

INTRODUCED BY

Dianne Miller Hamilton

AN ACT

RELATING TO MOTOR VEHICLES; EXEMPTING OFF-HIGHWAY MOTOR
VEHICLES FROM THE MANDATORY FINANCIAL RESPONSIBILITY ACT;
SETTING AN OFF-HIGHWAY MOTOR VEHICLE USER FEE FOR REGISTRATION
RENEWAL; IMPOSING OWNER RESPONSIBILITY; ESTABLISHING LIABILITY
LIMITS; MAKING AN APPROPRIATION.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 66-3-1001 NMSA 1978 (being Laws 1978,
Chapter 35, Section 197, as amended) is amended to read:

"66-3-1001. SHORT TITLE.--Sections 66-3-1001 through
[~~66-3-1016~~] 66-3-1020 NMSA 1978 may be cited as the "Off-
Highway Motor Vehicle Act"."

Section 2. Section 66-3-1001.1 NMSA 1978 (being Laws
2005, Chapter 325, Section 1) is amended to read:

"66-3-1001.1. DEFINITIONS.--As used in the Off-Highway
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1 Motor Vehicle Act:

2 A. "age-appropriate size-fit" means the physical
3 relationship between the size of the rider of an off-highway
4 motor vehicle and the size of that vehicle so that the rider,
5 based on the rider's age, riding experience and size, can
6 correctly and without encumbrance operate the controls of that
7 vehicle while maintaining appropriate body position, both
8 seated and standing;

9 [~~A.~~] B. "board" means the off-highway motor vehicle
10 safety board;

11 [~~B.~~] C. "division" means the motor vehicle
12 division;

13 [~~C.~~] D. "fund" means the trail safety fund;

14 E. "motor sport liability release" means a legally
15 binding assumption-of-risk document signed by a participant in
16 or attendee of a motor sport activity, event or facility, or if
17 the participant or attendee is under eighteen years of age,
18 signed by a parent or legal guardian of the participant or
19 attendee who also specifies the name and age of the under-
20 eighteen participant or attendee, that also indemnifies an
21 owner, operator, instructor or sponsor of the motor sport
22 activity, event or facility for liability attributable to the
23 participant or attendee;

24 [~~D.~~] F. "off-highway motor vehicle" means a motor
25 vehicle designed by the manufacturer for operation exclusively

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1 off the highway or road and includes:

2 (1) "all-terrain vehicle", which means a motor
3 vehicle fifty inches or less in width, having an unladen dry
4 weight of one thousand pounds or less, traveling on three or
5 more low-pressure tires and having a seat designed to be
6 straddled by the operator and that has handlebar-type steering
7 control;

8 (2) "off-highway motorcycle", which means a
9 motor vehicle traveling on not more than two tires and having a
10 seat designed to be straddled by the operator and that has
11 handlebar-type steering control; or

12 (3) "snowmobile", which means a motor vehicle
13 designed for travel on snow or ice and steered and supported in
14 whole or in part by skis, belts, cleats, runners or low-
15 pressure tires;

16 [~~E.~~] G. "staging area" means a parking lot,
17 trailhead or other location to or from which an off-highway
18 motor vehicle is transported so that it may be placed into
19 operation or removed from operation; [~~and~~]

20 [~~F.~~] H. "unpaved public roadway" means a dirt or
21 graveled street or road that is constructed, signed and
22 maintained for regular passenger-car use by the general public;
23 and

24 I. "validating sticker" means the sticker issued by
25 the division to signify that an off-highway motor vehicle has

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1 been registered in accordance with Chapter 66, Article 3 NMSA
2 1978."

3 Section 3. Section 66-3-1004 NMSA 1978 (being Laws 1978,
4 Chapter 35, Section 200, as amended) is amended to read:

5 "66-3-1004. REGISTRATION CERTIFICATE AND NONRESIDENT
6 PERMIT FEES--RENEWAL.--

7 A. The fees for initially registering an off-
8 highway motor vehicle or if a prior registration has lapsed
9 are:

10 (1) seventeen dollars (\$17.00) for each
11 off-highway motor vehicle; and

12 (2) an amount determined by rule of the
13 tourism department not to exceed thirty dollars (\$30.00) for an
14 off-highway user fee for each off-highway motor vehicle.

15 B. Upon a change of ownership, the new owner shall
16 make application and pay registration fees of:

17 (1) seventeen dollars (\$17.00) in the same
18 manner as provided by rules of the division for original
19 registration; and

20 (2) an amount determined by rule of the
21 tourism department not to exceed thirty dollars (\$30.00) for an
22 off-highway user fee for each off-highway motor vehicle.

23 C. The fees for a nonresident permit of an
24 off-highway motor vehicle are either:

25 (1) seventeen dollars (\$17.00) for each

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1 off-highway motor vehicle that is not registered in another
2 state; and

3 (2) an amount determined by rule of the
4 tourism department not to exceed thirty dollars (\$30.00) for an
5 off-highway user fee for each off-highway motor vehicle that is
6 not ~~[currently in compliance with a similar off-highway user~~
7 ~~fee law or rule]~~ registered in another state; or

8 (3) seventeen dollars (\$17.00) for a
9 ninety-day permit to include both the off-highway motor vehicle
10 not otherwise registered and the off-highway user fee.

11 D. Except as provided in Paragraph (3) of
12 Subsection C of this section, each registration certificate and
13 nonresident permit shall be:

14 (1) good for two years after the month in
15 which the off-highway motor vehicle is registered or the permit
16 is issued; and

17 (2) renewed every two years.

18 E. The fees for renewing a currently registered
19 off-highway motor vehicle are:

20 (1) twelve dollars (\$12.00) for each off-
21 highway motor vehicle; and

22 (2) fifteen dollars (\$15.00) for an off-
23 highway user fee for each off-highway motor vehicle.

24 ~~[E.]~~ F. The off-highway user fee for each off-
25 highway motor vehicle shall be paid upon obtaining and renewing

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1 each registration certificate or nonresident permit.

2 [~~F.~~] G. Duplicate registration certificates and
3 nonresident permits shall be issued upon payment of a
4 seven-dollar-fifty-cent (\$7.50) fee.

5 [~~G.~~] H. A fee of one dollar (\$1.00) on registration
6 certificates and nonresident permits shall be collected for the
7 New Mexico clean and beautiful program.

8 [~~H.~~] I. The tourism department, in [~~conjunction~~]
9 conjunction with the division and the department of game and
10 fish, may establish and maintain sites to collect fees and
11 issue permits for residents and nonresidents."

12 Section 4. Section 66-3-1004.1 NMSA 1978 (being Laws
13 2005, Chapter 325, Section 4) is amended to read:

14 "66-3-1004.1. FEES--DISPOSITION.--

15 A. Except as provided in Subsection B of this
16 section, fees collected pursuant to Section 66-3-1004 NMSA 1978
17 shall be distributed as follows:

18 (1) of each seventeen dollars (\$17.00)
19 collected pursuant to Paragraph (1) of Subsection A, Paragraph
20 (1) of Subsection B or Paragraph (1) of Subsection C of Section
21 66-3-1004 NMSA 1978, five dollars (\$5.00) to the division, [~~and~~
22 ~~the~~] which money is appropriated to the division to defray the
23 cost of making and issuing registration certificates,
24 validating stickers and nonresident permits for off-highway
25 motor vehicles. The remaining twelve dollars (\$12.00) shall be

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1 deposited in the motor vehicle suspense fund for distribution
2 pursuant to Section 66-6-23 NMSA 1978;

3 (2) fees collected pursuant to Paragraph (2)
4 of Subsection A, Paragraph (2) of Subsection B or Paragraph (2)
5 of Subsection C of Section 66-3-1004 NMSA 1978 to the fund;

6 (3) fees collected pursuant to Subsection [F]
7 G of Section 66-3-1004 NMSA 1978 to the division, [~~and the~~
8 which money is appropriated to the division to defray the cost
9 of making and issuing duplicate registration certificates and
10 nonresident permits for off-highway motor vehicles;

11 (4) of each seventeen dollars (\$17.00)
12 collected pursuant to Paragraph (3) of Subsection C of Section
13 66-3-1004 NMSA 1978, five dollars (\$5.00) to the division, [~~and~~
14 ~~the~~] which money is appropriated to the division to defray the
15 costs of making and issuing nonresident permits. The remaining
16 twelve dollars (\$12.00) shall be deposited in the fund; [~~and~~]

17 (5) fees collected pursuant to Subsection [G]
18 H of Section 66-3-1004 NMSA 1978 to the tourism department for
19 the New Mexico clean and beautiful program; and

20 (6) of each twelve dollars (\$12.00) collected
21 pursuant to Paragraph (1) of Subsection E of Section 66-3-1004
22 NMSA 1978, five dollars (\$5.00) to the division, which money is
23 appropriated to the division to defray the costs of making and
24 issuing renewal validating stickers and registration
25 certificates for off-highway motor vehicles. The remaining

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1 seven dollars (\$7.00) shall be deposited in the motor vehicle
2 suspense fund for distribution pursuant to Section 66-6-23 NMSA
3 1978.

4 B. As provided in Subsection I of Section 66-3-1004
5 NMSA 1978, if fees are collected by the department of game and
6 fish pursuant to Paragraph (1) of Subsection A, Paragraph (1)
7 of Subsection B or Paragraphs (1) and (3) of Subsection C of
8 Section 66-3-1004 NMSA 1978, seven dollars (\$7.00) shall be
9 deposited in the game protection fund, five dollars (\$5.00)
10 shall be appropriated to the division, [~~and the~~] which money is
11 appropriated to the division to defray the cost of making and
12 issuing registration certificates, validating stickers and
13 nonresident permits for off-highway motor vehicles, and the
14 remaining five dollars (\$5.00) shall be deposited in the motor
15 vehicle suspense fund for distribution pursuant to Section
16 66-6-23 NMSA 1978."

17 Section 5. Section 66-3-1010.1 NMSA 1978 (being Laws
18 2005, Chapter 325, Section 9) is amended to read:

19 "66-3-1010.1. OFF-HIGHWAY MOTOR VEHICLE SAFETY TRAINING
20 ORGANIZATION--INSTRUCTOR--GUIDE--APPROVAL AND CERTIFICATION.--

21 A. An off-highway motor vehicle safety training
22 organization that offers and conducts an off-highway motor
23 vehicle safety training course, instructors and guides shall be
24 approved and certified by the board. Applicants for approval
25 and certification shall submit an application to the board for

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1 consideration and pay to the board an application or renewal
2 fee as set by a board rule.

3 B. The board may approve and certify an off-highway
4 motor vehicle safety training organization, instructor or guide
5 that meets the minimum criteria established by the board for an
6 off-highway motor vehicle safety training organization,
7 instructor or guide. Each approval and certification shall be
8 renewed annually.

9 C. An off-highway motor vehicle safety training
10 organization and its members, an instructor or a guide,
11 approved and certified by the board, is immune from suit for an
12 act or failure to act pursuant to the Off-Highway Motor Vehicle
13 Act."

14 Section 6. Section 66-3-1010.2 NMSA 1978 (being Laws
15 2005, Chapter 325, Section 10) is amended to read:

16 "66-3-1010.2. OFF-HIGHWAY MOTOR VEHICLE SAFETY PERMIT--
17 REQUIREMENTS--ISSUANCE.--A person under the age of eighteen who
18 desires to operate an all-terrain vehicle or off-highway
19 motorcycle shall be required to [~~successfully~~] complete
20 successfully an off-highway motor vehicle safety training
21 course for which the person shall have [~~parental~~] written
22 permission from a parent or legal guardian. The course shall
23 be conducted by an off-highway motor vehicle safety training
24 organization that is approved and certified by the board. Upon
25 successful completion of the course, the person shall receive

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1 an off-highway motor vehicle safety permit issued by the
2 organization."

3 Section 7. Section 66-3-1010.3 NMSA 1978 (being Laws
4 2005, Chapter 325, Section 11) is amended to read:

5 "66-3-1010.3. OPERATION AND EQUIPMENT--SAFETY
6 REQUIREMENTS.--

7 A. A person shall not operate an off-highway motor
8 vehicle:

9 (1) in a careless, reckless or negligent
10 manner so as to endanger the person or property of another;

11 (2) while under the influence of intoxicating
12 liquor or drugs as provided by Section 66-8-102 NMSA 1978;

13 (3) while in pursuit of and with intent to
14 hunt or take a species of animal or bird protected by law
15 unless otherwise authorized by the state game commission;

16 (4) in excess of ten miles per hour within two
17 hundred feet of a business, animal shelter, horseback rider,
18 bicyclist, pedestrian or occupied dwelling, unless the person
19 operates the vehicle on a closed course or track;

20 (5) unless in possession of the person's
21 registration certificate or nonresident permit;

22 (6) unless the vehicle is equipped with a
23 spark arrester approved by the United States forest service;
24 provided that a snowmobile is exempt from this provision;

25 (7) when conditions such as darkness limit

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1 visibility to five hundred feet or less, unless the vehicle is
2 equipped with:

3 (a) one or more headlights of sufficient
4 candlepower to light objects at a distance of one hundred fifty
5 feet; and

6 (b) at least one taillight of sufficient
7 intensity to exhibit a red or amber light at a distance of two
8 hundred feet under normal atmospheric conditions; or

9 (8) that produces noise that exceeds
10 ninety-six decibels when measured using test procedures
11 established by the society of automotive engineers pursuant to
12 standard J1287.

13 B. A person under the age of eighteen shall not
14 operate an off-highway motor vehicle:

15 (1) or ride upon an off-highway motor vehicle
16 without wearing eye protection and a safety helmet that is
17 securely fastened in a normal manner as headgear and that meets
18 the standards established by the board;

19 (2) without an off-highway motor vehicle
20 safety permit; or

21 (3) while carrying a passenger.

22 C. A person under the age of eighteen but at least
23 ten years of age shall not operate an off-highway motor vehicle
24 unless the person is visually supervised at all times by a
25 parent, legal guardian or a person over the age of eighteen who

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1 has a valid driver's license. This subsection shall not apply
2 to a person who is at least:

3 (1) thirteen years of age and has a valid
4 motorcycle license and an off-highway motor vehicle safety
5 permit; or

6 (2) fifteen years of age and has a valid
7 driver's license, instructional permit or provisional license
8 and off-highway motor vehicle safety permit.

9 D. A person under the age of ten shall not operate
10 an [~~off-highway motor~~] all-terrain vehicle unless [~~(1)~~] the
11 [~~all-terrain~~] vehicle is an age-appropriate size-fit vehicle
12 established by rule of the board. [~~and~~

13 ~~(2)~~] E. A person under the age of ten shall not
14 operate an off-highway motor vehicle unless the person is
15 visually supervised at all times by a parent, legal guardian or
16 instructor of a safety training course certified by the board.

17 [~~E.~~] F. The requirements of Subsections C and [~~D~~] E
18 of this section do not apply to a person who is part of an
19 organized tour under the guidance or direction of a guide
20 certified by the board.

21 [~~F.~~] G. An off-highway motor vehicle may not be
22 sold or offered for sale if the vehicle produces noise that
23 exceeds ninety-six decibels when measured using test procedures
24 established by the society of automotive engineers pursuant to
25 standard J1287. This subsection shall not apply to an off-

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1 highway motor vehicle that is sold or offered for sale only for
2 organized competition.

3 H. The owner of an off-highway motor vehicle shall
4 not allow a person to operate the off-highway motor vehicle in
5 violation of the Off-Highway Motor Vehicle Act."

6 Section 8. Section 66-3-1012 NMSA 1978 (being Laws 1978,
7 Chapter 35, Section 208, as amended) is amended to read:

8 "66-3-1012. DRIVING OF OFF-HIGHWAY MOTOR VEHICLES
9 ADJACENT TO HIGHWAY.--

10 A. Off-highway motor vehicles issued a validating
11 sticker or nonresident permit may be driven adjacent to a
12 highway, yielding to all vehicles entering or exiting the
13 highway, in a manner so as not to interfere with traffic upon
14 the highway, only for the purpose of gaining access to or
15 returning from areas [~~designed for the operation of~~] where
16 off-highway motor vehicles may be legally operated by the
17 shortest possible route and when no other route is available or
18 when the area adjacent to a highway is being used as a staging
19 area. Such use must occur between the highway and fencing that
20 separates the highway from private or public lands.

21 B. When snow conditions permit, an off-highway
22 motor vehicle may be operated on the right-hand side of a
23 highway, parallel, but not closer than ten feet, to the inside
24 of the plow bank."

25 Section 9. Section 66-3-1013 NMSA 1978 (being Laws 1975,
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1 Chapter 240, Section 13, as amended) is amended to read:

2 "66-3-1013. LIABILITY--LOCAL REGISTRATION PROHIBITED.--

3 A. A landowner shall not be held liable for damages
4 arising out of off-highway motor vehicle-related accidents or
5 injuries occurring on the landowner's lands in which the
6 landowner is not directly involved unless the entry on the
7 lands is subject to payment of a fee.

8 B. It is unlawful to operate an off-highway motor
9 vehicle on private lands or roads except with the express
10 permission of the landowner or leaseholder of the lands.

11 C. The owner or operator of an off-highway motor
12 vehicle shall not be held liable for damages arising from an
13 injury to or death of an operator or passenger of an off-
14 highway motor vehicle unless the owner or operator has
15 committed an act or has failed to act, either of which:

16 (1) constitutes conscious or reckless
17 disregard for the safety of an operator or passenger and the
18 injury was the proximate cause of that act or failure to act;
19 or

20 (2) intentionally injures the operator or
21 passenger.

22 D. A person who owns, leases, operates, promotes or
23 sponsors an off-highway motor vehicle closed-course sports
24 facility, recreation area, sports training facility, sports
25 event or tour is not liable for an injury to or the death of an

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1 attendee of or participant at these sites or events except in
2 the case of gross negligence or intentional injury, if the
3 participant or attendee completed a motor sport liability
4 release specific to the site or event where and the time period
5 when the injury or death occurred.

6 E. Nothing in the Off-Highway Motor Vehicle Act
7 shall be construed to prevent or limit the liability of a
8 person who owns, leases, operates, promotes or sponsors a site
9 or event listed in Subsection D of this section or who owns,
10 leases or operates an off-highway motor vehicle for the injury
11 or death of another person if the owner, lessee, operator,
12 promoter or sponsor:

13 (1) provided the off-highway motor vehicle and
14 related equipment to the other person and knew or should have
15 known that the vehicle or equipment was defective or inadequate
16 for its intended purpose and the defect or inadequacy was the
17 proximate cause of the injury or death;

18 (2) committed an act or failed to act, either
19 of which constitutes conscious or reckless disregard for the
20 safety of the other person and that was the proximate cause of
21 the injury or death; or

22 (3) intentionally caused the injury to or
23 death of the other person."

24 Section 10. Section 66-5-207 NMSA 1978 (being Laws 1983,
25 Chapter 318, Section 8, as amended) is amended to read:

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1 "66-5-207. EXEMPT MOTOR VEHICLES.--The following motor
2 vehicles are exempt from the Mandatory Financial Responsibility
3 Act:

4 A. a motor vehicle owned by the United States
5 government, any state or any political subdivision of a state;

6 B. an implement of husbandry or special mobile
7 equipment that is only incidentally operated on a highway;

8 C. a motor vehicle operated upon a highway only for
9 the purpose of crossing [~~such~~] the highway from one property to
10 another;

11 D. a commercial motor vehicle registered or
12 proportionally registered in this and any other jurisdiction,
13 provided [~~such~~] the motor vehicle is covered by a motor vehicle
14 insurance policy or equivalent coverage or other form of
15 financial responsibility in compliance with the laws of any
16 other jurisdiction in which it is registered;

17 E. a motor vehicle approved as self-insured by the
18 superintendent of insurance pursuant to Section 66-5-207.1 NMSA
19 1978; [~~and~~]

20 F. [~~any~~] a motor vehicle when the owner has
21 submitted to the department a signed statement, in the form
22 prescribed by the department, declaring that the vehicle will
23 not be operated on the highways of New Mexico and explaining
24 the reasons [~~therefor~~]; and

25 G. an off-highway motor vehicle owned and operated

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1 pursuant to the provisions of the Off-Highway Motor Vehicle
2 Act."

3 Section 11. EFFECTIVE DATE.--The effective date of the
4 provisions of this act is July 1, 2007.

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