

STATE OF NEW YORK

1429

2017-2018 Regular Sessions

IN ASSEMBLY

January 12, 2017

Introduced by M. of A. JENNE -- read once and referred to the Committee on Transportation

AN ACT to amend the environmental conservation law, in relation to regulating the use of all terrain vehicles within the forest preserve, the Long Island central pine barrens and the Albany pine bush preserve, and providing penalties for violations of all terrain vehicle laws in such sensitive areas; to amend the vehicle and traffic law, in relation to the definition and use of all terrain vehicles; to amend the state finance law, in relation to establishing the all terrain vehicle trail development and maintenance fund and the ATV environmental restoration fund; and to amend the tax law and the state finance law, in relation to establishing tax credits for landowners who allow all terrain vehicle access

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. Subparagraph (v) of paragraph a of subdivision 2 of section
2 46-0111 of the environmental conservation law, as added by chapter 792
3 of the laws of 1988, is amended to read as follows:

4 (v) other recreational uses; provided, however, that, notwithstanding
5 any other provision of law to the contrary, the use of all terrain vehi-
6 cles by the general public within the Albany Pine Bush preserve is
7 prohibited.

8 § 2. Paragraph (d) of subdivision 2 of section 57-0121 of the environ-
9 mental conservation law, as added by chapter 262 of the laws of 1993, is
10 amended to read as follows:

11 (d) promote active and passive recreational and environmental educa-
12 tional uses that are consistent with the land use plan; provided, howev-
13 er, that, notwithstanding any other provision of law to the contrary,
14 the use of all terrain vehicles by the general public within the Central
15 Pine Barrens area is prohibited; and

EXPLANATION--Matter in italics (underscored) is new; matter in brackets
[-] is old law to be omitted.

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§ 3. Section 9-0303 of the environmental conservation law is amended by adding a new subdivision 8 to read as follows:

8. All terrain vehicles. a. For the purposes of this subdivision:

(i) "All terrain vehicle" or "ATV" means (1) any self-propelled vehicle which is manufactured for sale for operation primarily on off-highway trails or off-highway competitions and only incidentally operated on public highways providing that such vehicle does not exceed seventy inches in width, or one thousand five hundred pounds dry weight. Provided, however, this definition shall not include a "snowmobile" or other self-propelled vehicles manufactured for off-highway use exclusively designed for travel on snow or ice, steered by skis or runners and supported in whole or in part by one or more skis, belts or cleats which utilize an endless belt tread; or

(2) any self-propelled vehicle which is manufactured for sale for operation primarily on off-highway trails or off-highway competitions and only incidentally operated on public highways providing that such vehicle does not exceed seventy inches in width, or one thousand five hundred pounds dry weight, consists of a side-by-side passenger configuration and has safety features which include, but are not limited to, seat belts and roll-over bars. Provided, however, that this definition shall not include a "snowmobile" or other self-propelled vehicles manufactured for off-highway use exclusively designed for travel on snow or ice, steered by skis or runners and supported in whole or in part by one or more skis, belts or cleats which utilize an endless belt tread.

(ii) "Snowmobile" shall mean a motor vehicle designed for travel on snow or ice by means of a combination of tracks and a ski or skis.

(iii) "Travel corridor" shall mean natural and man-made undeveloped areas of land or water adjacent to and within sight of transportation routes such as interstate, state, county and town highways, boating and canoe routes, and hiking and horse trails.

(iv) "Environmentally sensitive lands" shall have the same meaning as in section 52-0101 of the environmental conservation law.

b. Notwithstanding any other provision of law to the contrary, the use of all terrain vehicles by the general public within the forest preserve is prohibited.

c. A qualified person with a disability to whom the department has issued a nontransferable temporary revocable permit providing motor vehicle access to certain state lands under the jurisdiction of the department may use an all terrain vehicle pursuant to the terms and conditions of such permit, subject to land management plans.

d. Employees of the department may use all terrain vehicles for appropriate administrative purposes where necessary and consistent with the provisions of the Adirondack park state land master plan or the Catskill park state land master plan. The department shall not delegate its authority pursuant to this paragraph.

e. All terrain vehicles may be used by appropriate officials where necessary for law enforcement.

f. All terrain vehicles may be used, by or under the supervision of appropriate officials, in cases of sudden, actual and ongoing emergencies that involve the protection or preservation of human life or intrinsic resource values, and that involve search and rescue operations, forest fires or large-scale contamination of water bodies.

g. All terrain vehicles may be used on trail connectors, including designated highways, or travel corridors in the Adirondack Park, including the roadbed and right-of-way for highways, the Remsen to Lake Placid railroad right-of-way, and those state lands immediately adjacent to and

visible from these facilities when in the determination of the governmental agency concerned it is impractical due to natural barriers or environmentally intrusive for all terrain vehicles to gain access to areas or trails adjacent to the highway and travel corridors; provided, however, that such operation shall not exceed five hundred yards, and is for the sole purpose of gaining access to and from the areas of operation; and provided that the aggregate of such trail connectors shall not exceed five miles in the Adirondack Park, as determined by the department, except that such five mile limit shall not apply to the Remsen to Lake Placid railroad right-of-way.

§ 4. Subdivision 1 of section 2281 of the vehicle and traffic law, as amended by chapter 319 of the laws of 1997, is amended to read as follows:

1. (a) "All terrain vehicle" or "ATV" means (i) any self-propelled vehicle which is manufactured for sale for operation primarily on off-highway trails or off-highway competitions and only incidentally operated on public highways providing that such vehicle does not exceed seventy inches in width, or one thousand five hundred pounds dry weight. Provided, however, this definition shall not include a "snowmobile" or other self-propelled vehicles manufactured for off-highway use exclusively designed for travel on snow or ice, steered by skis or runners and supported in whole or in part by one or more skis, belts or cleats which utilize an endless belt tread; or

(ii) any self-propelled vehicle which is manufactured for sale for operation primarily on off-highway trails or off-highway competitions and only incidentally operated on public highways providing that such vehicle does not exceed seventy inches in width, or one thousand five hundred pounds dry weight, consists of a side-by-side passenger configuration and has safety features which include, but are not limited to, seat belts and roll-over bars. Provided, however, that this definition shall not include a "snowmobile" or other self-propelled vehicles manufactured for off-highway use exclusively designed for travel on snow or ice, steered by skis or runners and supported in whole or in part by one or more skis, belts or cleats which utilize an endless belt tread.

(b) Notwithstanding the provisions of [~~paragraph (a)~~] subparagraphs (i) and (ii) of paragraph (a) of this subdivision, the [~~term~~] terms "all terrain vehicle" or "ATV" shall not include any vehicle used for agricultural purposes or for snowplowing, other than for hire, provided, however, that any such vehicle shall register as an "all terrain vehicle" or "ATV" pursuant to the provisions of this article if such vehicle is used or is intended to be used for any purpose other than agricultural purposes or for snowplowing and shall be regulated in accordance with provisions governing the operation of "all terrain vehicles" or "ATV's" while in such use.

§ 5. The environmental conservation law is amended by adding a new section 71-0717 to read as follows:

§ 71-0717. Additional all terrain vehicle enforcement on sensitive state lands.

1. In addition to the penalties set forth in subdivision one of section 71-0703 of this title, and sections 71-4001 and 71-4003 of this article, a police officer or peace officer may immediately impound any all terrain vehicle operated in violation of subdivision eight of section 9-0303, paragraph (d) of subdivision two of section 57-0121 or subparagraph (v) of paragraph a of subdivision two of section 46-0111 of this chapter. A surcharge of one hundred dollars shall be paid by the owner of such vehicle, and monies therefrom shall be deposited into a

1 separate, non-lapsing enforcement fund of the impounding law enforcement
2 agency, except as provided by subdivision two of this section.

3 2. Where the impounding officer is a peace officer employed by the
4 department, the environmental regulatory account of the environmental
5 conservation special revenue fund shall be credited with the monies
6 received from the surcharge required by subdivision one of this section.
7 Monies collected pursuant to this subdivision shall be made available to
8 the department for the purpose of enforcing laws applicable to the
9 forest preserve, Long Island Central Pine Barrens area and the Albany
10 Pine Bush preserve.

11 3. A qualified person with a disability to whom the department has
12 issued a nontransferable temporary revocable permit providing motor
13 vehicle access to certain state lands under the jurisdiction of the
14 department may use an all terrain vehicle pursuant to the terms and
15 conditions of such permit, subject to land management plans.

16 4. Employees of the department may use all terrain vehicles for appro-
17 priate administrative purposes where necessary and consistent with the
18 provisions of the Adirondack park state land master plan or the Catskill
19 park state land master plan. The department shall not delegate its
20 authority pursuant to this paragraph.

21 5. All terrain vehicles may be used by appropriate officials where
22 necessary for law enforcement.

23 6. All terrain vehicles may be used, by or under the supervision of
24 appropriate officials, in cases of sudden, actual and ongoing emergen-
25 cies that involve the protection or preservation of human life or
26 intrinsic resource values, and that involve search and rescue oper-
27 ations, forest fires or large-scale contamination of water bodies.

28 § 6. The state finance law is amended by adding a new section 92-gg to
29 read as follows:

30 § 92-gg. ATV trail development and maintenance fund. 1. There is here-
31 by established in the joint custody of the commissioner of motor vehi-
32 cles and the state comptroller a special fund to be known as the "all
33 terrain vehicle trail development and maintenance fund". The moneys in
34 such fund shall be available for payment of any and all costs and
35 expenditures incurred in performing any of the work required in develop-
36 ing and maintaining a system of all terrain vehicle trails pursuant to
37 section two thousand two hundred ninety-two of the vehicle and traffic
38 law, including costs and expenses incidental and appurtenant thereto.

39 2. Moneys in the all terrain vehicle trail development and maintenance
40 fund shall be kept separately from and shall not be commingled with any
41 other moneys in the joint or sole custody of the state comptroller or
42 the commissioner of motor vehicles.

43 3. The all terrain vehicle trail development and maintenance fund
44 shall consist of the revenues required to be deposited therein pursuant
45 to the provisions of section two thousand two hundred eighty-two of the
46 vehicle and traffic law and all other moneys credited or transferred
47 thereto from any other fund or source pursuant to law.

48 4. The moneys in such fund shall be appropriated by the legislature
49 and paid out pursuant to section two thousand two hundred ninety-two of
50 the vehicle and traffic law.

51 § 7. The state finance law is amended by adding a new section 92-hh to
52 read as follows:

53 § 92-hh. ATV environmental restoration fund. 1. There is hereby estab-
54 lished in the joint custody of the commissioner of motor vehicles and
55 the state comptroller a special fund to be known as the "ATV environ-
56 mental restoration fund". The moneys in such fund shall be available for

1 the payment of any and all costs and expenditures for the repair of any
2 environmental damage caused by all terrain vehicles, including costs and
3 expenses incidental and appurtenant thereto.

4 2. Moneys in the ATV environmental restoration fund shall be kept
5 separately from and shall not be commingled with any other moneys in the
6 joint or sole custody of the state comptroller or the commissioner of
7 motor vehicles.

8 3. The ATV environmental restoration fund shall consist of the reven-
9 ues required to be deposited therein pursuant to the provisions of
10 section two thousand two hundred ninety-four of the vehicle and traffic
11 law and all other moneys credited or transferred thereto from any other
12 fund or source pursuant to law.

13 § 8. The vehicle and traffic law is amended by adding a new section
14 2292 to read as follows:

15 § 2292. ATV trail development and maintenance. 1. Every county engag-
16 ing and assisting in the development and maintenance of a system of ATV
17 trails and a program with relation thereto within its boundaries in
18 order to encourage safety, tourism and utilization and, in the event a
19 county does not undertake such a program, or system of trails, any city,
20 town or village within such county which undertakes the same, shall be
21 entitled to receive, in accordance with rules and regulations to be
22 promulgated by the commissioner, state aid as hereinafter provided.

23 2. Notwithstanding any other provision of law to the contrary, the
24 commissioner shall establish a plan for the development and maintenance
25 of ATV trails and facilities in the various counties or where applica-
26 ble, cities, towns or villages of the state as may be appropriate and
27 shall take whatever action he or she deems necessary to foster and
28 promote the safe utilization of such trails and facilities; for these
29 purposes, he or she may draw upon the moneys deposited in the ATV trail
30 development and maintenance fund pursuant to section ninety-two-gg of
31 the state finance law for expenses, including personal services, as
32 approved by the comptroller and is hereby authorized to assign three
33 employees of his or her office to carry out such responsibilities and to
34 pay their salaries, benefits and expenses out of such fund.

35 3. Every county or, where applicable, any city, town or village within
36 such county, shall be eligible for a grant for the development and main-
37 tenance of a system of ATV trails and a program with relation thereto
38 within its boundaries. Such grants shall be made by the commissioner and
39 may constitute up to one hundred percent of the cost of such program
40 including expenditures incurred for signs and markers of ATV trails. Any
41 county or, where applicable, any city, town or village within such coun-
42 ty, applying for such grant shall submit to the commissioner by April
43 first of each year an estimate of such expenditures for the current
44 fiscal year, in such form and containing such information as the commis-
45 sioner may require. No city, town or village may apply for such grant
46 where the county within which it is contained has submitted an applica-
47 tion for the same fiscal year. For the purpose of this section, "fiscal
48 year" shall mean the period from April first through March thirty-first.
49 The commissioner shall review all such applications and shall determine
50 the amount of state aid to be allocated to each county or, where appli-
51 cable, any city, town or village within such county in accordance with
52 the provisions of subdivision five of this section. Of the amount the
53 commissioner determines each county or, where applicable, any city, town
54 or village within such county is eligible to receive, seventy percent
55 shall be made available for distribution by June first and thirty

1 percent for distribution upon demonstration of completion, submitted by
2 December first, of the program.

3 4. Not more than ten percent of the ATV trail development and mainte-
4 nance fund pursuant to section ninety-two-gg of the state finance law,
5 as determined by the commissioner, shall be made available to the
6 commissioner and the commissioner of environmental conservation for ATV
7 trail development and maintenance on state owned lands.

8 5. The amount of state aid to be allocated to each county or, where
9 applicable, any city, town or village within such county, shall be drawn
10 upon the monies remaining in the ATV trail development and maintenance
11 fund pursuant to section ninety-two-gg of the state finance law after
12 withdrawal pursuant to subdivisions two and four of this section and
13 shall be determined by the commissioner as hereinafter provided. The
14 commissioner shall determine the percentage proportion which the author-
15 ized expenditures of each individual county or, where applicable, any
16 city, town or village within such county shall bear to the total author-
17 ized expenditures of all the counties, cities, towns or villages for ATV
18 trail development and maintenance pursuant to this section during the
19 fiscal year. Such percentage proportion shall then be applied against
20 the amount received in additional fees imposed by section two thousand
21 two hundred eighty-two of this article for registration of ATVs during
22 such fiscal year, to the extent only and not exceeding the balance of
23 such fund remaining after the payment of expenses as set forth in this
24 section. The amount thus determined shall constitute the maximum amount
25 of state aid to which each county or, where applicable, any city, town
26 or village within such county, shall be entitled. The commissioner shall
27 certify to the comptroller the amount thus determined for each county
28 or, where applicable, any city, town or village within such county, as
29 the amount of state aid to be apportioned to such county or, where
30 applicable, any city, town or village within such county.

31 § 9. The vehicle and traffic law is amended by adding a new section
32 2293 to read as follows:

33 § 2293. Fee for ATV trail development and maintenance. 1. A fee of
34 seventy-seven dollars is hereby imposed upon the owner of an ATV for the
35 ATV trail development and maintenance fund pursuant to section ninety-
36 two-gg of the state finance law to be paid to the commissioner upon the
37 registration thereof in addition to the registration fee required by
38 this article, the payment of which fee hereby imposed shall be a condi-
39 tion precedent to such individual resident, individual nonresident or
40 dealer registration.

41 2. Notwithstanding the fee as established in subdivision one of this
42 section, an individual registering an ATV who provides proof at the time
43 of registration, that such individual is a member of an organized New
44 York state ATV club, that is a member of the New York state off-highway
45 recreational vehicle association or is a member of an organized New York
46 state ATV club that is a trail maintenance entity and a member of the
47 New York state off-highway recreational vehicle association, shall pay
48 thirty dollars for each ATV for the ATV trail development and mainte-
49 nance fund pursuant to section ninety-two-gg of the state finance law in
50 addition to the registration required by this article. In the event that
51 an individual seeking ATV club membership is unable, for any reason, to
52 secure such club membership, he or she may contact the New York state
53 off-highway recreational vehicle association, who shall secure such
54 membership for such person.

55 § 10. The vehicle and traffic law is amended by adding a new section
56 2294 to read as follows:

1 § 2294. Disposition of penalties and fines. The commissioner shall
2 deposit all monies received from all penalties and fines collected
3 pursuant to this article and article forty-eight-c of this title or as a
4 result of a violation of subdivision eight of section 9-0303, paragraph
5 (d) of subdivision two of section 57-0121 or subparagraph (v) of para-
6 graph a of subdivision two of section 46-0111 of the environmental
7 conservation law to the credit of the ATV environmental restoration
8 fund.

9 § 11. Subdivision 1 of section 2403 of the vehicle and traffic law is
10 amended by adding a new paragraph (c) to read as follows:

11 (c) All terrain vehicles may be used on trail connectors, including
12 designated highways, or travel corridors in the Adirondack Park includ-
13 ing the roadbed and right-of-way for highways, the Remsen to Lake Placid
14 railroad right-of-way, and those state lands immediately adjacent to and
15 visible from these facilities when in the determination of the govern-
16 mental agency concerned it is impractical due to natural barriers or
17 environmentally intrusive for ATVs to gain access to areas or trails
18 adjacent to the highway and travel corridors; provided, however, that
19 highway operation shall not exceed five hundred yards and is for the
20 sole purpose of gaining access to and from the areas of operation; and
21 provided that the aggregate of such trail connectors shall not exceed
22 five miles in the Adirondack Park, as determined by the department of
23 environmental conservation, except that such five mile limit shall not
24 apply to the Remsen to Lake Placid railroad right-of-way.

25 § 12. Section 2403 of the vehicle and traffic law is amended by adding
26 a new subdivision 5 to read as follows:

27 5. Trespass. The violation of subdivision one, two, three, or three-a
28 of this section shall be a misdemeanor and shall constitute a ground for
29 suspension or revocation of the ATV safety certificate of any person or
30 the certificate of registration of any ATV involved in such violation.
31 The commissioner may suspend or revoke the ATV safety certificate of the
32 person committing such violation or the certificate of registration of
33 the ATV involved in such violation in accordance with the provisions of
34 subdivision three of section five hundred ten of this chapter.

35 § 13. Subdivision 1 of section 2405 of the vehicle and traffic law, as
36 added by chapter 402 of the laws of 1986, is amended to read as follows:

37 1. Highways. (a) Except with respect to interstate highways or
38 controlled access highways, the department of transportation with
39 respect to state highways, maintained by the state and any other govern-
40 mental agency with respect to highways, including bridge and culvert
41 crossings, under its jurisdiction may designate and post any such public
42 highway or portion thereof as open for travel by ATVs when in the deter-
43 mination of the governmental agency concerned, it is otherwise impossi-
44 ble for ATVs to gain access to areas or trails adjacent to the highway.
45 Such designations by a state agency shall be by rule or regulation, and
46 such designations by any municipality other than a state agency shall be
47 by local law or ordinance.

48 (b) Any ATV operator utilizing a highway in accordance with paragraph
49 (a) of this subdivision shall be in possession of a valid driver's
50 license; provided, however, that the provisions of this paragraph shall
51 not apply to an operator utilizing a highway in accordance with para-
52 graph g of subdivision eight of section 9-0303 of the environmental
53 conservation law.

54 § 14. The vehicle and traffic law is amended by adding a new section
55 2414 to read as follows:

1 § 2414. Operating an ATV upon a street, highway, public trails, lands,
2 bodies of water, or private property of another while under the influ-
3 ence of alcohol or drugs. 1. Offenses; criminal penalties. (a) No person
4 shall operate an ATV upon a street, highway, public trails, lands,
5 bodies of water, or private property of another while his or her ability
6 to operate such ATV is impaired by the consumption of alcohol. A
7 violation of this subdivision shall be an offense and shall be punisha-
8 ble by a fine of not less than two hundred fifty dollars nor more than
9 three hundred fifty dollars, or by imprisonment in a penitentiary or
10 county jail for not more than fifteen days, or by both such fine and
11 imprisonment. A person who operates an ATV in violation of this subdivi-
12 sion after being convicted of a violation of any subdivision of this
13 section within the preceding five years shall be punished by a fine of
14 not less than five hundred dollars nor more than fifteen hundred
15 dollars, or by imprisonment of not more than thirty days in a penitenti-
16 ary or county jail or by both such fine and imprisonment.

17 (b) No such person shall operate an ATV upon a street, highway, public
18 trails, lands, bodies of water, or private property of another while he
19 or she has .08 of one per centum or more by weight of alcohol in his or
20 her blood, breath, urine, or saliva, as determined by the chemical test
21 made pursuant to the provisions of subdivision six of this section.

22 (c) No person shall operate an ATV upon a street, highway, public
23 trails, lands, bodies of water, or private property of another while he
24 or she is in an intoxicated condition.

25 (d) No person shall operate an ATV upon a street, highway, public
26 trails, lands, bodies of water, or private property of another while his
27 or her ability to operate such ATV is impaired by the use of a drug as
28 defined by section one hundred fourteen-a of this chapter.

29 (e) A violation of paragraph (b), (c), or (d) of this subdivision
30 shall be a misdemeanor and shall be punishable by imprisonment in a
31 penitentiary or county jail for not more than ninety days, or by a fine
32 of not less than three hundred fifty dollars nor more than five hundred
33 dollars, or by both such fine and imprisonment. A person who operates an
34 ATV in violation of paragraph (b), (c), or (d) of this subdivision after
35 having been convicted of a violation of paragraph (b), (c), or (d) of
36 this subdivision, or of operating an ATV while intoxicated or while
37 under the influence of drugs, within the preceding ten years, shall be
38 guilty of a misdemeanor and shall be punished by imprisonment for not
39 more than one year, or by a fine of not less than five hundred dollars
40 nor more than fifteen hundred dollars, or by both such fine and impri-
41 sonment. A person who operates an ATV in violation of paragraph (b),
42 (c), or (d) of this subdivision after having been twice convicted of a
43 violation of paragraph (b), (c), or (d) of this subdivision, or of oper-
44 ating an ATV while intoxicated or under the influence of drugs, within
45 the preceding ten years, shall be guilty of a class E felony and shall
46 be punished by a fine of not less than five hundred dollars nor more
47 than five thousand dollars or by a period of imprisonment as provided in
48 the penal law, or by both such fine and imprisonment.

49 2. Privilege to operate an ATV; suspensions. (a) The court shall
50 suspend a person's privilege to operate an ATV and may suspend an ATV
51 registration for:

52 (1) a period of six months where an operator is convicted of a
53 violation of paragraph (a) of subdivision one of this section;

54 (2) a period of twelve months where an operator is convicted of a
55 violation of paragraph (b), (c), or (d) of subdivision one of this
56 section;

1 (3) a period of twenty-four months where a person is convicted of a
2 violation of paragraph (b), (c), or (d) of subdivision one of this
3 section after having been convicted of a violation of paragraph (b),
4 (c), or (d) of subdivision one of this section or of operating an ATV
5 while intoxicated or under the influence of drugs within the preceding
6 ten years.

7 (b) The court shall report each conviction recorded pursuant to this
8 section to the commissioner on forms provided by the department. Such
9 reports shall include the length of any suspension imposed on the privi-
10 lege to operate an ATV and any suspension imposed against an ATV regis-
11 tration. The department shall maintain a record of all convictions and
12 suspensions in order to effectuate the provisions of this section.

13 3. Operation of an ATV while operating privileges have been suspended.

14 (a) No person shall operate an ATV upon a street, highway, public
15 trails, lands, bodies of water, or private property of another while
16 operating privileges have been suspended pursuant to this section. A
17 violation of the provisions of this paragraph shall be a violation and
18 shall be punishable by a fine of not less than three hundred fifty
19 dollars nor more than seven hundred fifty dollars or by imprisonment for
20 a period of not more than ninety days, or by both such fine and impri-
21 sonment.

22 (b) A person who is in violation of the provisions of paragraph (a) of
23 this subdivision, and in addition is in violation of the provisions of
24 any paragraph of subdivision one of this section arising out of the same
25 incident, shall be guilty of a misdemeanor punishable by a fine of not
26 less than five hundred dollars nor more than five thousand dollars or by
27 a period of imprisonment for a period of not more than one year or by
28 both such fine and imprisonment.

29 4. Sentencing limitations. Notwithstanding any provision of the penal
30 law, no judge or magistrate shall impose a sentence of unconditional
31 discharge for a violation of paragraph (b), (c), or (d) of subdivision
32 one of this section nor shall he or she impose a sentence of conditional
33 discharge unless such conditional discharge is accompanied by a sentence
34 of a fine as provided in this section.

35 5. Arrest and testing. (a) Arrest. Notwithstanding the provisions of
36 section 140.10 of the criminal procedure law, a police officer may,
37 without a warrant, arrest a person, in case of a violation of any para-
38 graph of subdivision one of this section, if such violation is coupled
39 with an accident or collision in which such person is involved, which in
40 fact had been committed, though not in the police officer's presence,
41 when he or she has reasonable cause to believe that the violation was
42 committed by such person. For the purposes of this subdivision police
43 officer shall also include a peace officer authorized to enforce the
44 provisions of this chapter when the alleged violation constitutes a
45 crime.

46 (b) Breath test for operators of an ATV. Every person operating an ATV
47 upon a street, highway, public trails, lands, bodies of water, or
48 private property of another which has been involved in an accident or
49 which is operated in violation of any of the provisions of this chapter
50 which regulate the manner in which an ATV is to be properly operated
51 shall, at the request of a police officer, submit to a breath test to be
52 administered by the police officer. If such test indicates that such
53 operator has consumed alcohol, the police officer may request such oper-
54 ator to submit to a chemical test in the manner set forth in subdivision
55 six of this section.

1 6. Chemical tests. (a) Any person who operates an ATV upon a street,
2 highway, public trails, lands, bodies of water, or private property of
3 another shall be requested to consent to a chemical test of one or more
4 of the following: breath, blood, urine or saliva for the purpose of
5 determining the alcoholic or drug content of his or her blood, provided
6 that such test is administered at the direction of a police officer: (1)
7 having reasonable cause to believe such person to have been operating in
8 violation of this subdivision or paragraph (a), (b), (c), or (d) of
9 subdivision one of this section and within two hours after such person
10 has been placed under arrest for any such violation or (2) within two
11 hours after a breath test as provided in paragraph (b) of subdivision
12 five of this section indicates that alcohol has been consumed by such
13 person and in accordance with the rules and regulations established by
14 the police force of which the officer is a member.

15 (b) If such person having been placed under arrest or after a breath
16 test indicates the presence of alcohol in the person's system and having
17 thereafter been requested to submit to such chemical test and having
18 been informed that the person's privilege to operate an ATV shall be
19 immediately suspended for refusal to submit to such chemical test or any
20 portion thereof, whether or not the person is found guilty of the charge
21 for which such person is arrested, refuses to submit to such chemical
22 test or any portion thereof, unless a court order has been granted
23 pursuant to subdivision seven of this section, the test shall not be
24 given and a written report of such refusal shall be immediately made by
25 the police officer before whom such refusal was made. Such report may be
26 verified by having the report sworn to, or by affixing to such report a
27 form notice that false statements made therein are punishable as a class
28 A misdemeanor pursuant to section 210.45 of the penal law and such form
29 notice together with the subscription of the deponent shall constitute a
30 verification of the report. The report of the police officer shall set
31 forth reasonable grounds to believe such arrested person to have been
32 operating an ATV in violation of any paragraph of subdivision one of
33 this section, that such person had refused to submit to such chemical
34 test, and that no chemical test was administered pursuant to the
35 requirements of subdivision seven of this section. The report shall be
36 presented to the court upon the arraignment of the arrested person. The
37 privilege to operate an ATV shall, upon the basis of such written
38 report, be temporarily suspended by the court without notice pending the
39 determination of a hearing as provided herein. Copies of such report
40 must be transmitted by the court to the commissioner and such transmit-
41 tal may not be waived even with the consent of all the parties. Such
42 report shall be forwarded to the commissioner within forty-eight hours
43 of such arraignment. The court shall provide such person with a hearing
44 date schedule, a waiver form, and such other information as may be
45 required by the commissioner. If a hearing, as provided for in paragraph
46 (c) of this subdivision, is waived by such person, the commissioner of
47 motor vehicles shall immediately suspend the privilege to operate an
48 ATV, as of the date of receipt of such waiver in accordance with the
49 provisions of paragraph (d) of this subdivision.

50 (c) Any person whose privilege to operate an ATV has been suspended
51 pursuant to paragraph (b) of this subdivision is entitled to a hearing
52 in accordance with a hearing schedule to be promulgated by the commis-
53 sioner. If the department fails to provide for such hearing fifteen days
54 after the date of the arraignment of the arrested person, the privilege
55 to operate an ATV of such person shall be reinstated pending a hearing
56 pursuant to this section. The hearing shall be limited to the following

1 issues: (1) did the police officer have reasonable cause to believe that
2 such person had been operating an ATV in violation of any paragraph of
3 subdivision one of this section; (2) did the police officer make a
4 lawful arrest of such person; (3) was such person given sufficient warn-
5 ing, in clear and unequivocal language, prior to such refusal that such
6 refusal to submit to such chemical test or any portion thereof, would
7 result in the immediate suspension of such person's privilege to operate
8 an ATV whether or not such person is found guilty of the charge for
9 which the arrest was made; and (4) did such person refuse to submit to
10 such chemical test or any portion thereof. If, after such hearing, the
11 hearing officer, acting on behalf of the commissioner, finds on any one
12 of said issues in the negative, the hearing officer shall immediately
13 terminate any suspension arising from such refusal. If, after such hear-
14 ing, the hearing officer, acting on behalf of the commissioner finds all
15 of the issues in the affirmative, such officer shall immediately suspend
16 the privilege to operate an ATV in accordance with the provisions of
17 paragraph (d) of this subdivision. A person who has had the privilege to
18 operate an ATV suspended pursuant to this subdivision may appeal the
19 findings of the hearing officer in accordance with the provisions of
20 article three-A of this chapter. Any person may waive the right to a
21 hearing under this section. Failure by such person to appear for the
22 scheduled hearing shall constitute a waiver of such hearing, provided,
23 however, that such person may petition the commissioner for a new hear-
24 ing which shall be held as soon as practicable.

25 (d) (1) Any privilege to operate an ATV which has been suspended
26 pursuant to paragraph (c) of this subdivision shall not be restored for
27 six months after such suspension. However, no such privilege shall be
28 restored for at least one year after such suspension in any case where
29 the person has had a prior suspension resulting from refusal to submit
30 to a chemical test pursuant to this subdivision, or has been convicted
31 of a violation of any paragraph of subdivision one of this section not
32 arising out of the same incident, within the five years immediately
33 preceding the date of such suspension.

34 (2) Any person whose privilege to operate an ATV is suspended pursuant
35 to the provisions of this subdivision shall also be liable for a civil
36 penalty in the amount of two hundred dollars except that if such suspen-
37 sion is a second or subsequent suspension pursuant to this subdivision
38 issued within a five year period, or such person has been convicted of a
39 violation of any paragraph of subdivision one of this section within the
40 past five years not arising out of the same incident, the civil penalty
41 shall be in the amount of five hundred dollars. The privilege to operate
42 an ATV shall not be restored to such person unless such penalty has been
43 paid. The first one hundred dollars of each penalty collected by the
44 department pursuant to the provisions of this subdivision shall be paid
45 to the commissioner for deposit to the general fund and the remainder of
46 all such penalties shall be paid to the commissioner for deposit in the
47 ATV environmental restoration fund established pursuant to section nine-
48 ty-two-hh of the state finance law.

49 (e) The commissioner shall promulgate such rules and regulations as
50 may be necessary to effectuate the provisions of this subdivision.

51 (f) Evidence of a refusal to submit to such chemical test shall be
52 admissible in any trial, proceeding or hearing based upon a violation of
53 the provisions of this section, but only upon a showing that the person
54 was given sufficient warning, in clear and unequivocal language, of the
55 effect of such refusal and that the person persisted in his or her
56 refusal.

1 (g) Upon the request of the person tested, the results of such test
2 shall be made available to him or her.

3 7. Compulsory chemical tests. (a) Notwithstanding the provisions of
4 subdivision six of this section, no person who operates an ATV upon a
5 street, highway, public trails, lands, bodies of water, or private prop-
6 erty of another may refuse to submit to a chemical test of one or more
7 of the following: breath, blood, urine or saliva, for the purpose of
8 determining the alcoholic and/or drug content of the blood when a court
9 order for such chemical test has been issued in accordance with the
10 provisions of this subdivision.

11 (b) Upon refusal by any person to submit to a chemical test or any
12 portion thereof as described in paragraph (a) of this subdivision, the
13 test shall not be given unless a police officer or a district attorney,
14 as defined in subdivision thirty-two of section 1.20 of the criminal
15 procedure law, requests and obtains a court order to compel a person to
16 submit to a chemical test to determine the alcoholic or drug content of
17 the person's blood upon a finding of reasonable cause to believe that:

18 (1) such person was the operator of an ATV and in the course of such
19 operation a person other than the operator was killed or suffered seri-
20 ous physical injury as defined in section 10.00 of the penal law; and

21 (2) (i) either such person operated the ATV in violation of any para-
22 graph of subdivision one of this section, or

23 (ii) a breath test administered by a police officer in accordance with
24 subdivision five of this section indicates that alcohol has been
25 consumed by such person; and

26 (3) such person has been placed under lawful arrest; and

27 (4) such person has refused to submit to a chemical test or any
28 portion thereof, requested in accordance with the provisions of subdivi-
29 sion six of this section or is unable to give consent to such a test.

30 (c) For the purpose of this subdivision "reasonable cause" shall be
31 determined by viewing the totality of circumstances surrounding the
32 incident which, when taken together, indicate that the operator was
33 operating an ATV in violation of any paragraph of subdivision one of
34 this section. Such circumstances may include, but are not limited to:
35 evidence that the operator was operating an ATV in violation of any
36 provision of this chapter which regulates the manner in which an ATV is
37 to be properly operated at the time of the incident; any visible indi-
38 cation of alcohol or drug consumption or impairment by the operator; any
39 other evidence surrounding the circumstances of the incident which indi-
40 cates that the operator has been operating an ATV while impaired by the
41 consumption of alcohol or drugs or was intoxicated at the time of the
42 incident.

43 (d) (1) An application for a court order to compel submission to a
44 chemical test or any portion thereof, may be made to any supreme court
45 justice, county court judge or district court judge in the judicial
46 district in which the incident occurred, or if the incident occurred in
47 the city of New York before any supreme court justice or judge of the
48 criminal court of the city of New York. Such application may be communi-
49 cated by telephone, radio or other means of electronic communication, or
50 in person.

51 (2) The applicant must provide identification by name and title and
52 must state the purpose of the communication. Upon being advised that an
53 application for a court order to compel submission to a chemical test is
54 being made, the court shall place under oath the applicant and any other
55 person providing information in support of the application as provided
56 in subparagraph three of this paragraph. After being sworn the applicant

1 must state that the person from whom the chemical test was requested was
2 the operator of an ATV and in the course of such operation a person,
3 other than the operator, has been killed or seriously injured and, based
4 upon the totality of circumstances, there is reasonable cause to believe
5 that such person was operating an ATV in violation of any paragraph of
6 subdivision one of this section and, after being placed under lawful
7 arrest such person refused to submit to a chemical test or any portion
8 thereof, in accordance with the provisions of this section or is unable
9 to give consent to such a test or any portion thereof. The applicant
10 must make specific allegations of fact to support such statement. Any
11 other person properly identified may present sworn allegations of fact
12 in support of the applicant's statement.

13 (3) Upon being advised that an oral application for a court order to
14 compel a person to submit to a chemical test is being made, a judge or
15 justice shall place under oath the applicant and any other person
16 providing information in support of the application. Such oath or oaths
17 and all of the remaining communication must be recorded, either by means
18 of a voice recording device or verbatim stenographic or verbatim long-
19 hand notes. If a voice recording device is used or a stenographic record
20 made, the judge must have the record transcribed, certify to the accura-
21 cy of the transcription and file the original record and transcription
22 with the court within seventy-two hours of the issuance of the court
23 order. If the longhand notes are taken, the judge shall subscribe a copy
24 and file it with the court within twenty-four hours of the issuance of
25 the order.

26 (4) If the court is satisfied that the requirements for the issuance
27 of a court order pursuant to the provisions of paragraph (b) of this
28 subdivision have been met, it may grant the application and issue an
29 order requiring the accused to submit to a chemical test to determine
30 the alcoholic and/or drug content of his or her blood and ordering the
31 withdrawal of a blood sample in accordance with the provisions of subdi-
32 vision eight of this section. When a judge or justice determines to
33 issue an order to compel submission to a chemical test based on an oral
34 application, the applicant therefor shall prepare the order in accord-
35 ance with the instructions of the judge or justice. In all cases the
36 order shall include the name of the issuing judge or justice, the name
37 of the applicant, and the date and time it was issued. It must be signed
38 by the judge or justice if issued in person, or by the applicant if
39 issued orally.

40 (5) Any false statement by an applicant or any other person in support
41 of an application for a court order shall subject such person to the
42 offenses for perjury set forth in article two hundred ten of the penal
43 law.

44 (e) An order issued pursuant to the provisions of this subdivision
45 shall require that a chemical test to determine the alcoholic and/or
46 drug content of the operator's blood must be administered. The
47 provisions of paragraphs (a), (b) and (c) of subdivision eight of this
48 section shall be applicable to any chemical test administered pursuant
49 to this section.

50 (f) A defendant who has been compelled to submit to a chemical test
51 pursuant to the provisions of this subdivision may move for the
52 suppression of such evidence in accordance with article seven hundred
53 ten of the criminal procedure law on the grounds that the order was
54 obtained and the test administered in violation of the provisions of
55 this subdivision or any other applicable law.

1 8. Testing procedures. (a) At the request of a police officer, the
2 following persons may withdraw blood for the purpose of determining the
3 alcohol or drug content therein: (1) a physician, a registered profes-
4 sional nurse or a registered physician's assistant; or (2) under the
5 supervision and at the direction of a physician: a medical laboratory
6 technician or medical technologist as classified by civil service; a
7 phlebotomist; an advanced emergency medical technician as certified by
8 the department of health, or a medical laboratory technician or medical
9 technologist employed by a clinical laboratory approved under title five
10 of article five of the public health law. This limitation shall not
11 apply to the taking of a urine, saliva or breath specimen.

12 (b) No person entitled to withdraw blood pursuant to paragraph (a) of
13 this subdivision or hospital employing such person and no other employer
14 of such person shall be sued or held liable for any act done or omitted
15 in the course of withdrawing blood at the request of a police officer or
16 peace officer acting pursuant to his or her special duties pursuant to
17 this subdivision.

18 (c) Any person who may have a cause of action arising from the with-
19 drawal of blood as aforesaid, for which no personal liability exists
20 under paragraph (b) of this subdivision, may maintain such action
21 against the state if the person entitled to withdraw blood pursuant to
22 paragraph (a) of this subdivision acted at the request of a police offi-
23 cer or peace officer acting pursuant to his or her special duties,
24 employed by the state, or against the appropriate political subdivision
25 of the state if the person acted at the request of a police officer or
26 peace officer acting pursuant to his or her special duties, employed by
27 a political subdivision of the state. No action shall be maintained
28 pursuant to this paragraph unless notice of claim is duly filed or
29 served in compliance with law.

30 (d) Notwithstanding the foregoing provisions of this subdivision, an
31 action may be maintained by the state or a political subdivision thereof
32 against a person entitled to withdraw blood pursuant to paragraph (a) of
33 this subdivision or hospital employing such person for whose act or
34 omission the state or the political subdivision has been held liable
35 under this subdivision to recover damages, not exceeding the amount
36 awarded to the claimant, that may have been sustained by the state or
37 the political subdivision by reason of gross negligence on the part of
38 such person entitled to withdraw blood.

39 (e) The testimony of any person, other than a physician, entitled to
40 draw blood pursuant to paragraph (a) of this subdivision in respect to
41 any such withdrawal of blood made by him or her may be received in
42 evidence with the same weight, force and effect as if such withdrawal of
43 blood were made by a physician.

44 (f) The provisions of paragraphs (b), (c) and (d) of this subdivision
45 shall also apply with regard to any person employed by a hospital as
46 security personnel for any act done or omitted in the course of with-
47 drawing blood at the request of a police officer pursuant to a court
48 order in accordance with this subdivision.

49 (g) The person tested shall be permitted to choose a physician to
50 administer a chemical test in addition to the one administered at the
51 direction of the police officer.

52 9. Chemical test evidence. (a) Upon the trial of any such action or
53 proceeding arising out of actions alleged to have been committed by any
54 person arrested for a violation of any paragraph of subdivision one of
55 this section, the court shall admit evidence of the amount of alcohol or

1 drugs in the defendant's blood as shown by a test administered pursuant
2 to the provisions of subdivision six or seven of this section.

3 (b) The following effect shall be given to evidence of blood alcohol
4 content, as determined by such tests, of a person arrested for a
5 violation of any paragraph of subdivision one of this section and who
6 was operating an ATV:

7 (1) evidence that there was .05 of one per centum or less by weight of
8 alcohol in such person's blood shall be prima facie evidence that the
9 ability of such person to operate an ATV was not impaired by the
10 consumption of alcohol, and that such person was not in an intoxicated
11 condition.

12 (2) evidence that there was more than .05 of one per centum but less
13 than .07 of one per centum of weight in such person's blood shall be
14 prima facie evidence that such person was not in an intoxicated condi-
15 tion, but such evidence shall be relevant evidence but not be given
16 prima facie effect, in determining whether the ability of such person to
17 operate an ATV was impaired by the consumption of alcohol.

18 (3) evidence that there was .07 of one per centum or more but less
19 than .08 of one per centum by weight of alcohol in such person's blood
20 shall be prima facie evidence that such person was not in an intoxicated
21 condition, but such evidence shall be given prima facie effect in deter-
22 mining whether the ability of such person to operate an ATV was impaired
23 by the consumption of alcohol.

24 (c) Evidence of a refusal to submit to a chemical test or any portion
25 thereof shall be admissible in any trial or hearing provided the request
26 to submit to such a test was made in accordance with the provisions of
27 subdivision six of this section.

28 10. Limitations. (a) An ATV operator may be convicted of a violation
29 of paragraph (a), (b), (c), or (d) of subdivision one of this section,
30 notwithstanding that the charge laid before the court alleged a
31 violation of paragraph (b), (c), or (d) of subdivision one of this
32 section, and regardless of whether or not such conviction is based on a
33 plea of guilty.

34 (b) In any case wherein the charge laid before the court alleges a
35 violation of paragraph (b), (c), or (d) of subdivision one of this
36 section, any plea of guilty thereafter entered in satisfaction of such
37 charge must include at least a plea of guilty to the violation of the
38 provisions of one of the paragraphs of such subdivision one and no other
39 disposition by plea of guilty to any other charge in satisfaction of
40 such charge shall be authorized; provided, however, if the district
41 attorney upon reviewing the available evidence determines that the
42 charge of a violation of subdivision one of this section is not
43 warranted, he or she may consent, and the court may allow a disposition
44 by plea of guilty to another charge in satisfaction of such charge.

45 11. Suspension pending prosecution. (a) Without notice, pending any
46 prosecution, the court may suspend the right to operate an ATV where the
47 ATV operator has been charged with vehicular assault in the second
48 degree or vehicular manslaughter in the second degree as defined,
49 respectively, in sections 120.03 and 125.12 of the penal law.

50 (b) A suspension under this subdivision shall occur no later than
51 twenty days after the ATV operator's first appearance before the court
52 on the charges or at the conclusion of all proceedings required for the
53 arraignment, whichever comes first. In order for the court to impose
54 such suspension it must find that the accusatory instrument conforms to
55 the requirements of section 100.40 of the criminal procedure law and
56 there exists reasonable cause to believe that the accused operated an

1 ATV in violation of section 120.03 or 125.12 of the penal law. At such
2 time the operator shall be entitled to an opportunity to make a state-
3 ment regarding the enumerated issues and to present evidence tending to
4 rebut the court's findings. Where such suspension is imposed upon such
5 pending charge and the operator has requested a hearing pursuant to
6 article one hundred eighty of the criminal procedure law, the court
7 shall conduct such hearing. If upon completion of the hearing, the court
8 fails to find that there is reasonable cause to believe that the opera-
9 tor committed a felony under section 120.03 or 125.12 of the penal law
10 the court shall promptly direct restoration of such operating privileges
11 to the operator unless such operating privileges are suspended or
12 revoked pursuant to any other provision of this chapter.

13 12. ATV safety course. Upon the conviction of any subdivision of this
14 section, the court shall, in addition to any other penalties invoked
15 under this section, require the convicted person, as a condition of the
16 sentence, to complete an ATV safety course approved by the commissioner
17 and show proof of successful completion of such course to the court or
18 its designee.

19 § 15. Section 606 of the tax law is amended by adding a new subsection
20 (n-2) to read as follows:

21 (n-2) Credit for certain landowners who allow all terrain vehicle
22 access. (1) An individual taxpayer who meets the eligibility standards
23 in paragraph two of this subsection shall be allowed a credit against
24 the taxes imposed by this article in the amount specified in paragraph
25 three of this subsection.

26 (2) To be eligible for the credit, the taxpayer (or taxpayers filing
27 joint returns) on the personal income tax return must allow all terrain
28 vehicle access in the form of a state-funded all terrain vehicle trail
29 or portion thereof on property owned by the taxpayer that either
30 receives an agricultural assessment under section three hundred five or
31 three hundred six of the agriculture and markets law or is eligible
32 forest land under section four hundred eighty-a of the real property tax
33 law.

34 (3) A taxpayer shall be allowed a credit equal to ten cents per linear
35 foot of state-funded all terrain vehicle trail on eligible property
36 pursuant to paragraph two of this subsection.

37 § 16. Paragraph (d) of subdivision 6 of section 92-s of the state
38 finance law, as amended by section 13 of part E of chapter 61 of the
39 laws of 2000, is amended to read as follows:

40 (d) Moneys from the open space account shall be available, pursuant to
41 appropriation, for any open space land conservation project, bio-diver-
42 sity stewardship and research pursuant to chapter five hundred fifty-
43 four of the laws of nineteen hundred ninety-three, for the purposes of
44 agricultural and farmland protection activities as authorized by article
45 twenty-five-AAA of the agriculture and markets law, for support of the
46 landowner all terrain vehicle access tax credit pursuant to subsection
47 (n-2) of section six hundred six of the tax law, non-point source abate-
48 ment and control projects pursuant to section 17-1409 of the environ-
49 mental conservation law and section eleven-b of the soil and water
50 conservation districts law, for Long Island Central Pine Barrens area
51 planning or Long Island south shore estuary reserve planning pursuant to
52 title thirteen of article fifty-four of the environmental conservation
53 law, and for operation and management of the Albany Pine Bush preserve
54 commission pursuant to subdivision two of section 54-0303 of the envi-
55 ronmental conservation law.

1 § 17. Nothing in this act shall be deemed to limit the authority of
2 any county, city, town or village to adopt or amend any local law or
3 ordinance which imposes stricter restrictions and conditions on the
4 operation of all terrain vehicles than are provided or authorized by
5 this act, so long as such local law or ordinance is consistent with the
6 authority to protect the order, conduct, health, safety and general
7 welfare of persons or property. Nothing in this act shall be deemed to
8 alter or invalidate any local law or ordinance in effect on the effec-
9 tive date of this act.

10 § 18. This act shall take effect on the thirtieth day after it shall
11 have become a law; provided, however that sections fifteen and sixteen
12 of this act shall take effect on the first of January next succeeding
13 the date on which it shall have become a law and shall apply to taxable
14 years beginning on or after such date; provided, however, that the
15 department of taxation and finance is authorized and directed to promul-
16 gate rules and regulations necessary for the timely implementation of
17 sections fifteen and sixteen of this act on or before such effective
18 date.