STATE OF NEW YORK

1429--A

2017-2018 Regular Sessions

IN ASSEMBLY

January 12, 2017

Introduced by M. of A. JENNE -- read once and referred to the Committee on Transportation -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

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 46-0111 of the environmental conservation law, as added by chapter 792 of the laws of 1988, is amended to read as follows:

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

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

(d) promote active and passive recreational and environmental educational uses that are consistent with the land use plan; provided, however, that, notwithstanding any other provision of law to the contrary, the use of all terrain vehicles by the general public within the Central Pine Barrens area is prohibited; and

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

LBD02533-02-7
§ 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, 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; 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 govern-
mental 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 opera-
tion; and provided that the aggregate of such trail connectors shall not
exceed five miles in the Adirondack Park, as determined by the depart-
ment, except that such five mile limit shall not apply to the Remsen to
Lake Placid railroad right-of-way, and such five mile limit shall
increase to ten miles five years after the effective date of this subdi-
vision.
§ 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 oper-
ated 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 exclu-
sively 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 config-
uration 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 manu-
factured 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 agricul-
tural purposes or for snowplowing, other than for hire, provided,
however, that any such vehicle shall register as an "all terrain vehi-
cle" 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 agricul-
tural 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
paragraph (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
separate, non-lapsing enforcement fund of the impounding law enforcement
agency, except as provided by subdivision two of this section.
2. Where the impounding officer is a peace officer employed by the
department, the environmental regulatory account of the environmental
conservation special revenue fund shall be credited with the monies
received from the surcharge required by subdivision one of this section.
Monies collected pursuant to this subdivision shall be made available to
the department for the purpose of enforcing laws applicable to the
forest preserve, Long Island Central Pine Barrens area and the Albany
Pine Bush preserve.
3. 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.
4. Employees of the department may use all terrain vehicles for appro-
priate 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.
5. All terrain vehicles may be used by appropriate officials where
necessary for law enforcement.
6. All terrain vehicles may be used, by or under the supervision of
appropriate officials, in cases of sudden, actual and ongoing emergen-
cies that involve the protection or preservation of human life or
intrinsic resource values, and that involve search and rescue oper-
ations, forest fires or large-scale contamination of water bodies.
§ 6. The state finance law is amended by adding a new section 92-gg to
read as follows:
§ 92-gg. ATV trail development and maintenance fund. 1. There is here-
by established in the joint custody of the commissioner of motor vehi-
cles and the state comptroller a special fund to be known as the "all
terrain vehicle trail development and maintenance fund". The moneys in
such fund shall be available for payment of any and all costs and
expenditures incurred in performing any of the work required in develop-
ing and maintaining a system of all terrain vehicle trails pursuant to
section two thousand two hundred ninety-two of the vehicle and traffic
law, including costs and expenses incidental and appurtenant thereto.
2. Moneys in the all terrain vehicle trail development and maintenance
fund shall be kept separately from and shall not be commingled with any
other moneys in the joint or sole custody of the state comptroller or
the commissioner of motor vehicles.
3. The all terrain vehicle trail development and maintenance fund
shall consist of the revenues required to be deposited therein pursuant
to the provisions of section two thousand two hundred eighty-two of the
vehicle and traffic law and all other moneys credited or transferred
thereto from any other fund or source pursuant to law.
4. The moneys in such fund shall be appropriated by the legislature
and paid out pursuant to section two thousand two hundred ninety-two of
the vehicle and traffic law.
§ 7. The state finance law is amended by adding a new section 92-hh to
read as follows:
§ 92-hh. ATV environmental restoration fund. 1. There is hereby estab-
lished in the joint custody of the commissioner of motor vehicles and
the state comptroller a special fund to be known as the "ATV environ-
mental restoration fund". The moneys in such fund shall be available for
the payment of any and all costs and expenditures for the repair of any
environmental damage caused by all terrain vehicles, including costs and
expenses incidental and appurtenant thereto.

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

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

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

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

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

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

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

5. The amount of state aid to be allocated to each county or, where applicable, any city, town or village within such county, shall be drawn upon the monies remaining in the ATV trail development and maintenance fund pursuant to section ninety-two-gg of the state finance law after withdrawal pursuant to subdivisions two and four of this section and shall be determined by the commissioner as hereinafter provided. The commissioner shall determine the percentage proportion which the authorized expenditures of each individual county or, where applicable, any city, town or village within such county shall bear to the total authorized expenditures of all the counties, cities, towns or villages for ATV trail development and maintenance pursuant to this section during the fiscal year. Such percentage proportion shall then be applied against the amount received in additional fees imposed by section two thousand two hundred eighty-two of this article for registration of ATVs during such fiscal year, to the extent only and not exceeding the balance of such fund remaining after the payment of expenses as set forth in this section. The amount thus determined shall constitute the maximum amount of state aid to which each county or, where applicable, any city, town or village within such county, shall be entitled. The commissioner shall certify to the comptroller the amount thus determined for each county or, where applicable, any city, town or village within such county, as the amount of state aid to be apportioned to such county or, where applicable, any city, town or village within such county.

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

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

2. Notwithstanding the fee as established in subdivision one of this section, an individual registering an ATV who provides proof at the time of registration, that such individual is a member of an organized New York state ATV club, that is a member of the New York state off-highway recreational vehicle association or is a member of an organized New York state ATV club that is a trail maintenance entity and a member of the New York state off-highway recreational vehicle association, shall pay thirty dollars for each ATV for the ATV trail development and maintenance fund pursuant to section ninety-two-gg of the state finance law in addition to the registration fee required by this article. In the event that an individual seeking ATV club membership is unable, for any reason, to secure such club membership, he or she may contact the New York state off-highway recreational vehicle association, who shall secure such membership for such person.
§ 10. The vehicle and traffic law is amended by adding a new section 2294 to read as follows:

§ 2294. Disposition of penalties and fines. The commissioner shall deposit all monies received from all penalties and fines collected pursuant to this article and article forty-eight-c of this title or as a result of a 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 the environmental conservation law to the credit of the ATV environmental restoration fund.

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

(c) 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 ATVs to gain access to areas or trails adjacent to the highway and travel corridors; provided, however, that highway 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 of environmental conservation, except that such five mile limit shall not apply to the Remsen to Lake Placid railroad right-of-way, and such five mile limit shall increase to ten miles five years after the effective date of this paragraph.

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

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

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

1. Highways. (a) Except with respect to interstate highways or controlled access highways, the department of transportation with respect to state highways, maintained by the state and any other governmental agency with respect to highways, including bridge and culvert crossings, under its jurisdiction may designate and post any such public highway or portion thereof as open for travel by ATVs when in the determination of the governmental agency concerned, it is otherwise impossible for ATVs to gain access to areas or trails adjacent to the highway. Such designations by a state agency shall be by rule or regulation, and such designations by any municipality other than a state agency shall be by local law or ordinance.

(b) Any ATV operator utilizing a highway in accordance with paragraph (a) of this subdivision shall be in possession of a valid driver's license; provided, however, that the provisions of this paragraph shall not apply to an operator utilizing a highway in accordance with para-
§ 14. The vehicle and traffic law is amended by adding a new section 2414 to read as follows:

§ 2414. Operating an ATV upon a street, highway, public trails, lands, bodies of water, or private property of another while under the influence of alcohol or drugs. 1. Offenses; criminal penalties. (a) No person shall operate an ATV upon a street, highway, public trails, lands, bodies of water, or private property of another while his or her ability to operate such ATV is impaired by the consumption of alcohol. A violation of this subdivision shall be an offense and shall be punishable by a fine of not less than two hundred fifty dollars nor more than three hundred fifty dollars, or by imprisonment in a penitentiary or county jail for not more than fifteen days, or by both such fine and imprisonment. A person who operates an ATV in violation of this subdivision after being convicted of a violation of any subdivision of this section within the preceding five years shall be punished by a fine of not less than five hundred dollars nor more than fifteen hundred dollars, or by imprisonment of not more than thirty days in a penitentiary or county jail or by both such fine and imprisonment.

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

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

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

(e) A violation of paragraph (b), (c), or (d) of this subdivision shall be a misdemeanor and shall be punishable by imprisonment in a penitentiary or county jail for not more than ninety days, or by a fine of not less than three hundred fifty dollars nor more than five hundred dollars, or by both such fine and imprisonment. A person who operates an ATV in violation of paragraph (b), (c), or (d) of this subdivision after having been convicted of a violation of paragraph (b), (c), or (d) of this subdivision, or of operating an ATV while intoxicated or while under the influence of drugs, within the preceding ten years, shall be guilty of a misdemeanor and shall be punished by imprisonment for not more than one year, or by a fine of not less than five hundred dollars nor more than fifteen hundred dollars, or by both such fine and imprisonment. A person who operates an ATV in violation of paragraph (b), (c), or (d) of this subdivision after having been twice convicted of a violation of paragraph (b), (c), or (d) of this subdivision, or of operating an ATV while intoxicated or under the influence of drugs, within the preceding ten years, shall be guilty of a class E felony and shall be punished by a fine of not less than five hundred dollars nor more than five thousand dollars or by a period of imprisonment as provided in the penal law, or by both such fine and imprisonment.

2. Privilege to operate an ATV; suspensions. (a) The court shall suspend a person's privilege to operate an ATV and may suspend an ATV registration for:
A period of six months where an operator is convicted of a violation of paragraph (a) of subdivision one of this section;

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

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

(b) The court shall report each conviction recorded pursuant to this section to the commissioner on forms provided by the department. Such reports shall include the length of any suspension imposed on the privilege to operate an ATV and any suspension imposed against an ATV registration. The department shall maintain a record of all convictions and suspensions in order to effectuate the provisions of this section.

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

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

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

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

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

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

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

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

(c) Any person whose privilege to operate an ATV has been suspended
pursuant to paragraph (b) of this subdivision is entitled to a hearing
in accordance with a hearing schedule to be promulgated by the commis-
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sioner. If the department fails to provide for such hearing fifteen days
after the date of the arraignment of the arrested person, the privilege
to operate an ATV of such person shall be reinstated pending a hearing
pursuant to this section. The hearing shall be limited to the following
issues: (1) did the police officer have reasonable cause to believe that
such person had been operating an ATV in violation of any paragraph of
subdivision one of this section; (2) did the police officer make a
lawful arrest of such person; (3) was such person given sufficient warn-
ing, in clear and unequivocal language, prior to such refusal that such
refusal to submit to such chemical test or any portion thereof, would
result in the immediate suspension of such person's privilege to operate
an ATV whether or not such person is found guilty of the charge for
which the arrest was made; and (4) did such person refuse to submit to
such chemical test or any portion thereof. If, after such hearing, the
hearing officer, acting on behalf of the commissioner, finds on any one
of said issues in the negative, the hearing officer shall immediately
terminate any suspension arising from such refusal. If, after such hear-
ing, the hearing officer, acting on behalf of the commissioner finds all
of the issues in the affirmative, such officer shall immediately suspend
the privilege to operate an ATV in accordance with the provisions of
paragraph (d) of this subdivision. A person who has had the privilege to
operate an ATV suspended pursuant to this subdivision may appeal the
findings of the hearing officer in accordance with the provisions of
article three-A of this chapter. Any person may waive the right to a
hearing under this section. Failure by such person to appear for the
scheduled hearing shall constitute a waiver of such hearing, provided,
however, that such person may petition the commissioner for a new hear-
ing which shall be held as soon as practicable.

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

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

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

(f) Evidence of a refusal to submit to such chemical test shall be
admissible in any trial, proceeding or hearing based upon a violation of
the provisions of this section, but only upon a showing that the person
was given sufficient warning, in clear and unequivocal language, of the
effect of such refusal and that the person persisted in his or her
refusal.
(g) Upon the request of the person tested, the results of such test
shall be made available to him or her.
7. Compulsory chemical tests. (a) Notwithstanding the provisions of
subdivision six of this section, no person who operates an ATV upon a
street, highway, public trails, lands, bodies of water, or private prop-
erty of another may refuse to submit to a chemical test of one or more
of the following: breath, blood, urine or saliva, for the purpose of
determining the alcoholic and/or drug content of the blood when a court
order for such chemical test has been issued in accordance with the
provisions of this subdivision.
(b) Upon refusal by any person to submit to a chemical test or any
portion thereof as described in paragraph (a) of this subdivision, the
test shall not be given unless a police officer or a district attorney,
as defined in subdivision thirty-two of section 1.20 of the criminal
procedure law, requests and obtains a court order to compel a person to
submit to a chemical test to determine the alcoholic or drug content of
the person’s blood upon a finding of reasonable cause to believe that:
(1) such person was the operator of an ATV and in the course of such
operation a person other than the operator was killed or suffered seri-
ous physical injury as defined in section 10.00 of the penal law; and
(2) (i) either such person operated the ATV in violation of any para-
graph of subdivision one of this section, or
(ii) a breath test administered by a police officer in accordance with
subdivision five of this section indicates that alcohol has been
consumed by such person; and
(3) such person has been placed under lawful arrest; and
(4) such person has refused to submit to a chemical test or any
portion thereof, requested in accordance with the provisions of subdi-
vision six of this section or is unable to give consent to such a test.
(c) For the purpose of this subdivision "reasonable cause" shall be
determined by viewing the totality of circumstances surrounding the
incident which, when taken together, indicate that the operator was
operating an ATV in violation of any paragraph of subdivision one of
this section. Such circumstances may include, but are not limited to:
evidence that the operator was operating an ATV in violation of any
provision of this chapter which regulates the manner in which an ATV is
to be properly operated at the time of the incident; any visible indi-
cation of alcohol or drug consumption or impairment by the operator; any
other evidence surrounding the circumstances of the incident which indi-
cates that the operator has been operating an ATV while impaired by the
consumption of alcohol or drugs or was intoxicated at the time of the
incident.
(d) (1) An application for a court order to compel submission to a
chemical test or any portion thereof, may be made to any supreme court
justice, county court judge or district court judge in the judicial
district in which the incident occurred, or if the incident occurred in
the city of New York before any supreme court justice or judge of the
criminal court of the city of New York. Such application may be communi-
cated by telephone, radio or other means of electronic communication, or
in person.
(2) The applicant must provide identification by name and title and
must state the purpose of the communication. Upon being advised that an
application for a court order to compel submission to a chemical test is
being made, the court shall place under oath the applicant and any other
person providing information in support of the application as provided
in subparagraph three of this paragraph. After being sworn the applicant
must state that the person from whom the chemical test was requested was
the operator of an ATV and in the course of such operation a person,
other than the operator, has been killed or seriously injured and, based
upon the totality of circumstances, there is reasonable cause to believe
that such person was operating an ATV in violation of any paragraph of
subdivision one of this section and, after being placed under lawful
arrest such person refused to submit to a chemical test or any portion
thereof, in accordance with the provisions of this section or is unable
to give consent to such a test or any portion thereof. The applicant
must make specific allegations of fact to support such statement. Any
other person properly identified may present sworn allegations of fact
in support of the applicant’s statement.

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

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

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

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

(f) A defendant who has been compelled to submit to a chemical test
pursuant to the provisions of this subdivision may move for the
suppression of such evidence in accordance with article seven hundred
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8. Testing procedures. (a) At the request of a police officer, the
following persons may withdraw blood for the purpose of determining the
alcohol or drug content therein: (1) a physician, a registered profes-
sional nurse or a registered physician's assistant; or (2) under the
supervision and at the direction of a physician: a medical laboratory
technician or medical technologist as classified by civil service; a
phlebotomist; an advanced emergency medical technician as certified by
the department of health, or a medical laboratory technician or medical
technologist employed by a clinical laboratory approved under title five
of article five of the public health law. This limitation shall not
apply to the taking of a urine, saliva or breath specimen.

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

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

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

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

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

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

9. Chemical test evidence. (a) Upon the trial of any such action or
proceeding arising out of actions alleged to have been committed by any
person arrested for a violation of any paragraph of subdivision one of this section, the court shall admit evidence of the amount of alcohol or drugs in the defendant's blood as shown by a test administered pursuant to the provisions of subdivision six or seven of this section.

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

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

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

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

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

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

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

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

(b) A suspension under this subdivision shall occur no later than twenty days after the ATV operator's first appearance before the court on the charges or at the conclusion of all proceedings required for the arraignment, whichever comes first. In order for the court to impose such suspension it must find that the accusatory instrument conforms to
the requirements of section 100.40 of the criminal procedure law and
there exists reasonable cause to believe that the accused operated an
ATV in violation of section 120.03 or 125.12 of the penal law. At such
time the operator shall be entitled to an opportunity to make a state-
ment regarding the enumerated issues and to present evidence tending to
rebut the court's findings. Where such suspension is imposed upon such
pending charge and the operator has requested a hearing pursuant to
article one hundred eighty of the criminal procedure law, the court
shall conduct such hearing. If upon completion of the hearing, the court
fails to find that there is reasonable cause to believe that the opera-
tor committed a felony under section 120.03 or 125.12 of the penal law
the court shall promptly direct restoration of such operating privileges
to the operator unless such operating privileges are suspended or
revoked pursuant to any other provision of this chapter.

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

§ 15. Section 606 of the tax law is amended by adding a new subsection
(n-3) to read as follows:

(n-3) Credit for certain landowners who allow all terrain vehicle
access. (1) An individual taxpayer who meets the eligibility standards
in paragraph two of this subsection shall be allowed a credit against
the taxes imposed by this article in the amount specified in paragraph
three of this subsection.

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

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

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

(d) Moneys from the open space account shall be available, pursuant to
appropriation, for any open space land conservation project, bio-diver-
sity stewardship and research pursuant to chapter five hundred fifty-
four of the laws of nineteen hundred ninety-three, for the purposes of
agricultural and farmland protection activities as authorized by article
twenty-five-AAA of the agriculture and markets law, for support of the
landowner all terrain vehicle access tax credit pursuant to subsection
(n-3) of section six hundred six of the tax law, non-point source abate-
ment and control projects pursuant to section 17-1409 of the environ-
mental conservation law and section eleven-b of the soil and water
conservation districts law, for Long Island Central Pine Barrens area
planning or Long Island south shore estuary reserve planning pursuant to
title thirteen of article fifty-four of the environmental conservation
law, and for operation and management of the Albany Pine Bush preserve
commission pursuant to subdivision two of section 54-0303 of the environ-
mental conservation law.

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

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