

# STATE OF NEW YORK

1429--B

2017-2018 Regular Sessions

## IN ASSEMBLY

January 12, 2017

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

AN ACT to amend the environmental conservation law and 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 land-owners who allow all terrain vehicle access

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

Section 1. 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

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

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1 hundred pounds dry weight, consists of a side-by-side passenger config-  
2 uration and has safety features which include, but are not limited to,  
3 seat belts and roll-over bars. Provided, however, that this definition  
4 shall not include a "snowmobile" or other self-propelled vehicles manu-  
5 factured for off-highway use exclusively designed for travel on snow or  
6 ice, steered by skis or runners and supported in whole or in part by one  
7 or more skis, belts or cleats which utilize an endless belt tread.

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

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

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

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

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

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

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

31 f. All terrain vehicles may be used, by or under the supervision of  
32 appropriate officials, in cases of sudden, actual and ongoing emergen-  
33 cies that involve the protection or preservation of human life or  
34 intrinsic resource values, and that involve search and rescue oper-  
35 ations, forest fires or large-scale contamination of water bodies.

36 § 2. The environmental conservation law is amended by adding a new  
37 section 19-0306-b to read as follows:

38 § 19-0306-b. All terrain vehicle emissions regulations.

39 1. The department shall annually review the air emission standards for  
40 all terrain vehicles adopted by the United States environmental  
41 protection agency and the California air resources board (CARB). On or  
42 before April first of each year, the commissioner shall publish in the  
43 state register a finding of which standard is more protective of human  
44 health and the environment. If the finding determines that the Califor-  
45 nia standards are more protective, the department shall promulgate regu-  
46 lations to apply such standards to every all terrain vehicle sold or  
47 offered for sale in the state. Such standard shall apply to the next  
48 applicable model year.

49 2. For purposes of this section, the term "all terrain vehicle" shall  
50 have the same meaning as in subdivision one of section twenty-two  
51 hundred eighty-one of the vehicle and traffic law.

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

55 1. (a) "All terrain vehicle" or "ATV" means (i) any self-propelled  
56 vehicle which is manufactured for sale for operation primarily on off-

1 highway trails or off-highway competitions and only incidentally oper-  
2 ated on public highways providing that such vehicle does not exceed  
3 seventy inches in width, or one thousand five hundred pounds dry weight.  
4 Provided, however, this definition shall not include a "snowmobile" or  
5 other self-propelled vehicles manufactured for off-highway use exclu-  
6 sively designed for travel on snow or ice, steered by skis or runners  
7 and supported in whole or in part by one or more skis, belts or cleats  
8 which utilize an endless belt tread; or

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

20 (b) Notwithstanding the provisions of [~~paragraph (a)~~] subparagraphs  
21 (i) and (ii) of paragraph (a) of this subdivision, the [~~term~~] terms "all  
22 terrain vehicle" or "ATV" shall not include any vehicle used for agri-  
23 cultural purposes or for snowplowing, other than for hire, provided,  
24 however, that any such vehicle shall register as an "all terrain vehi-  
25 cle" or "ATV" pursuant to the provisions of this article if such vehicle  
26 is used or is intended to be used for any purpose other than agricul-  
27 tural purposes or for snowplowing and shall be regulated in accordance  
28 with provisions governing the operation of "all terrain vehicles" or  
29 "ATV's" while in such use.

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

32 § 71-0717. Additional all terrain vehicle enforcement on sensitive state  
33 lands.

34 1. In addition to the penalties set forth in subdivision one of  
35 section 71-0703 of this title, and sections 71-4001 and 71-4003 of this  
36 article, a police officer or peace officer may immediately impound any  
37 all terrain vehicle operated in violation of subdivision eight of  
38 section 9-0303, paragraph (d) of subdivision two of section 57-0121 or  
39 subparagraph (v) of paragraph a of subdivision two of section 46-0111 of  
40 this chapter. A surcharge of one hundred dollars shall be paid by the  
41 owner of such vehicle, and monies therefrom shall be deposited into a  
42 separate, non-lapsing enforcement fund of the impounding law enforcement  
43 agency, except as provided by subdivision two of this section.

44 2. Where the impounding officer is a peace officer employed by the  
45 department, the environmental regulatory account of the environmental  
46 conservation special revenue fund shall be credited with the monies  
47 received from the surcharge required by subdivision one of this section.  
48 Monies collected pursuant to this subdivision shall be made available to  
49 the department for the purpose of enforcing laws applicable to the  
50 forest preserve, Long Island Central Pine Barrens area and the Albany  
51 Pine Bush preserve.

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

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

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

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

13 § 5. The state finance law is amended by adding a new section 92-gg to  
14 read as follows:

15 § 92-gg. ATV trail development and maintenance fund. 1. There is here-  
16 by established in the joint custody of the commissioner of motor vehi-  
17 cles and the state comptroller a special fund to be known as the "all  
18 terrain vehicle trail development and maintenance fund". The moneys in  
19 such fund shall be available for payment of any and all costs and  
20 expenditures incurred in performing any of the work required in develop-  
21 ing and maintaining a system of all terrain vehicle trails pursuant to  
22 section two thousand two hundred ninety-two of the vehicle and traffic  
23 law, including costs and expenses incidental and appurtenant thereto.

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

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

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

36 § 6. The state finance law is amended by adding a new section 92-hh to  
37 read as follows:

38 § 92-hh. ATV environmental restoration fund. 1. There is hereby estab-  
39 lished in the joint custody of the commissioner of motor vehicles and  
40 the state comptroller a special fund to be known as the "ATV environ-  
41 mental restoration fund". The moneys in such fund shall be available for  
42 the payment of any and all costs and expenditures for the repair of any  
43 environmental damage caused by all terrain vehicles, including costs and  
44 expenses incidental and appurtenant thereto.

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

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

54 § 7. The vehicle and traffic law is amended by adding a new section  
55 2292 to read as follows:

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

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

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

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

49     5. The amount of state aid to be allocated to each county or, where  
50 applicable, any city, town or village within such county, shall be drawn  
51 upon the monies remaining in the ATV trail development and maintenance  
52 fund pursuant to section ninety-two-gg of the state finance law after  
53 withdrawal pursuant to subdivisions two and four of this section and  
54 shall be determined by the commissioner as hereinafter provided. The  
55 commissioner shall determine the percentage proportion which the author-  
56 ized 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.

§ 8. 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 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.

§ 9. 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.

§ 10. 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.

§ 11. 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 paragraph g of subdivision eight of section 9-0303 of the environmental conservation law.

§ 12. 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:

(1) 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;

(4) a period of one year or until the person reaches the age of twenty-one, whichever is the greater period of time, where a person has been found to have operated a motor vehicle after having consumed alcohol in violation of section eleven hundred ninety-two-a of this chapter where such person was under the age of twenty-one at the time of commission of such violation.

(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

1 a period of imprisonment for a period of not more than one year or by  
2 both such fine and imprisonment.

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

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

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

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

44 (b) If such person having been placed under arrest or after a breath  
45 test indicates the presence of alcohol in the person's system and having  
46 thereafter been requested to submit to such chemical test and having  
47 been informed that the person's privilege to operate an ATV shall be  
48 immediately suspended for refusal to submit to such chemical test or any  
49 portion thereof, whether or not the person is found guilty of the charge  
50 for which such person is arrested, refuses to submit to such chemical  
51 test or any portion thereof, unless a court order has been granted  
52 pursuant to subdivision seven of this section, the test shall not be  
53 given and a written report of such refusal shall be immediately made by  
54 the police officer before whom such refusal was made. Such report may be  
55 verified by having the report sworn to, or by affixing to such report a  
56 form notice that false statements made therein are punishable as a class

1 A misdemeanor pursuant to section 210.45 of the penal law and such form  
2 notice together with the subscription of the deponent shall constitute a  
3 verification of the report. The report of the police officer shall set  
4 forth reasonable grounds to believe such arrested person to have been  
5 operating an ATV in violation of any paragraph of subdivision one of  
6 this section, that such person had refused to submit to such chemical  
7 test, and that no chemical test was administered pursuant to the  
8 requirements of subdivision seven of this section. The report shall be  
9 presented to the court upon the arraignment of the arrested person. The  
10 privilege to operate an ATV shall, upon the basis of such written  
11 report, be temporarily suspended by the court without notice pending the  
12 determination of a hearing as provided herein. Copies of such report  
13 must be transmitted by the court to the commissioner and such transmit-  
14 tal may not be waived even with the consent of all the parties. Such  
15 report shall be forwarded to the commissioner within forty-eight hours  
16 of such arraignment. The court shall provide such person with a hearing  
17 date schedule, a waiver form, and such other information as may be  
18 required by the commissioner. If a hearing, as provided for in paragraph  
19 (c) of this subdivision, is waived by such person, the commissioner of  
20 motor vehicles shall immediately suspend the privilege to operate an  
21 ATV, as of the date of receipt of such waiver in accordance with the  
22 provisions of paragraph (d) of this subdivision.

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

54 (d) (1) Any privilege to operate an ATV which has been suspended  
55 pursuant to paragraph (c) of this subdivision shall not be restored for  
56 six months after such suspension. However, no such privilege shall be

1 restored for at least one year after such suspension in any case where  
2 the person has had a prior suspension resulting from refusal to submit  
3 to a chemical test pursuant to this subdivision, or has been convicted  
4 of a violation of any paragraph of subdivision one of this section not  
5 arising out of the same incident, within the five years immediately  
6 preceding the date of such suspension.

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

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

24 (f) Evidence of a refusal to submit to such chemical test shall be  
25 admissible in any trial, proceeding or hearing based upon a violation of  
26 the provisions of this section, but only upon a showing that the person  
27 was given sufficient warning, in clear and unequivocal language, of the  
28 effect of such refusal and that the person persisted in his or her  
29 refusal.

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

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

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

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

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

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

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

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

4 (c) For the purpose of this subdivision "reasonable cause" shall be  
5 determined by viewing the totality of circumstances surrounding the  
6 incident which, when taken together, indicate that the operator was  
7 operating an ATV in violation of any paragraph of subdivision one of  
8 this section. Such circumstances may include, but are not limited to:  
9 evidence that the operator was operating an ATV in violation of any  
10 provision of this chapter which regulates the manner in which an ATV is  
11 to be properly operated at the time of the incident; any visible indi-  
12 cation of alcohol or drug consumption or impairment by the operator; any  
13 other evidence surrounding the circumstances of the incident which indi-  
14 cates that the operator has been operating an ATV while impaired by the  
15 consumption of alcohol or drugs or was intoxicated at the time of the  
16 incident.

17 (d) (1) An application for a court order to compel submission to a  
18 chemical test or any portion thereof, may be made to any supreme court  
19 justice, county court judge or district court judge in the judicial  
20 district in which the incident occurred, or if the incident occurred in  
21 the city of New York before any supreme court justice or judge of the  
22 criminal court of the city of New York. Such application may be communi-  
23 cated by telephone, radio or other means of electronic communication, or  
24 in person.

25 (2) The applicant must provide identification by name and title and  
26 must state the purpose of the communication. Upon being advised that an  
27 application for a court order to compel submission to a chemical test is  
28 being made, the court shall place under oath the applicant and any other  
29 person providing information in support of the application as provided  
30 in subparagraph three of this paragraph. After being sworn the applicant  
31 must state that the person from whom the chemical test was requested was  
32 the operator of an ATV and in the course of such operation a person,  
33 other than the operator, has been killed or seriously injured and, based  
34 upon the totality of circumstances, there is reasonable cause to believe  
35 that such person was operating an ATV in violation of any paragraph of  
36 subdivision one of this section and, after being placed under lawful  
37 arrest such person refused to submit to a chemical test or any portion  
38 thereof, in accordance with the provisions of this section or is unable  
39 to give consent to such a test or any portion thereof. The applicant  
40 must make specific allegations of fact to support such statement. Any  
41 other person properly identified may present sworn allegations of fact  
42 in support of the applicant's statement.

43 (3) Upon being advised that an oral application for a court order to  
44 compel a person to submit to a chemical test is being made, a judge or  
45 justice shall place under oath the applicant and any other person  
46 providing information in support of the application. Such oath or oaths  
47 and all of the remaining communication must be recorded, either by means  
48 of a voice recording device or verbatim stenographic or verbatim long-  
49 hand notes. If a voice recording device is used or a stenographic record  
50 made, the judge must have the record transcribed, certify to the accura-  
51 cy of the transcription and file the original record and transcription  
52 with the court within seventy-two hours of the issuance of the court  
53 order. If the longhand notes are taken, the judge shall subscribe a copy  
54 and file it with the court within twenty-four hours of the issuance of  
55 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 subdivision 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 accordance 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 ten of the criminal procedure law on the grounds that the order was obtained and the test administered in violation of the provisions of this subdivision or any other applicable law.

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 professional 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 withdrawal 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 officer 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

1 a political subdivision of the state. No action shall be maintained  
2 pursuant to this paragraph unless notice of claim is duly filed or  
3 served in compliance with law.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

55 (2) To be eligible for the credit, the taxpayer (or taxpayers filing  
56 joint returns) on the personal income tax return must allow all terrain

1 vehicle access in the form of a state-funded all terrain vehicle trail  
2 or portion thereof on property owned by the taxpayer that either  
3 receives an agricultural assessment under section three hundred five or  
4 three hundred six of the agriculture and markets law or is eligible  
5 forest land under section four hundred eighty-a of the real property tax  
6 law.

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

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

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

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

38 § 16. This act shall take effect on the thirtieth day after it shall  
39 have become a law; provided, however that sections thirteen and fourteen  
40 of this act shall take effect on the first of January next succeeding  
41 the date on which it shall have become a law and shall apply to taxable  
42 years beginning on or after such date; provided, however, that the  
43 department of taxation and finance is authorized and directed to promul-  
44 gate rules and regulations necessary for the timely implementation of  
45 sections thirteen and fourteen of this act on or before such effective  
46 date.