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SENATE BILL 174

46TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2004

INTRODUCED BY

Dede Feldman

AN ACT

RELATING TO MOTOR VEHICLES; INCREASING OFF-HIGHWAY MOTOR
VEHICLE REGISTRATION FEES; REQUIRING NONRESIDENT OFF-HIGHWAY
MOTOR VEHICLE PERMITS; IMPOSING SAFETY REQUIREMENTS; CREATING
THE OFF-HIGHWAY MOTOR VEHICLE SAFETY BOARD; CREATING THE TRAIL
SAFETY FUND; PROVIDING PENALTIES; MAKING AN APPROPRIATION.

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

Section 1. Section 7-1-6.10 NMSA 1978 (being Laws 1983,
Chapter 211, section 15, as amended) is amended to read:

"7-1-6.10. DISTRIBUTIONS--STATE ROAD FUND. --

A. A distribution pursuant to Section 7-1-6.1 NMSA
1978 shall be made to the state road fund in an amount equal to
the net receipts attributable to the taxes, surcharges,
penalties and interest imposed pursuant to the Gasoline Tax Act
and to the taxes, surtaxes, fees, penalties and interest

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1 imposed pursuant to the Special Fuels Supplier Tax Act and the
2 Alternative Fuel Tax Act less:

3 (1) the amount distributed to the state
4 aviation fund pursuant to Subsection B of Section 7-1-6.7 NMSA
5 1978;

6 (2) the amount distributed to the motorboat
7 fuel tax fund pursuant to Section 7-1-6.8 NMSA 1978;

8 (3) the amount distributed to municipalities
9 and counties pursuant to Subsection A of Section 7-1-6.9 NMSA
10 1978;

11 (4) the amount distributed to the county
12 government road fund pursuant to Section 7-1-6.19 NMSA 1978;

13 (5) the amount distributed to the local
14 governments road fund pursuant to Section 7-1-6.39 NMSA 1978;

15 (6) the amount distributed to the
16 municipalities pursuant to Section 7-1-6.27 NMSA 1978;

17 (7) the amount distributed to the municipal
18 arterial program of the local governments road fund pursuant to
19 Section 7-1-6.28 NMSA 1978; [and]

20 (8) the amount distributed to a qualified
21 tribe pursuant to a gasoline tax sharing agreement entered into
22 between the secretary of highway and transportation and the
23 qualified tribe pursuant to the provisions of Section
24 67-3-8.1 NMSA 1978; and

25 (9) the amount distributed to the trail safety

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1 fund pursuant to Section 19 of this 2004 act.

2 B. A distribution pursuant to Section 7-1-6.1 NMSA
3 1978 shall be made to the state road fund in an amount equal to
4 the net receipts attributable to the taxes, fees, interest and
5 penalties from the Weight Distance Tax Act. "

6 Section 2. A new section of the Off-Highway Motor Vehicle
7 Act is enacted to read:

8 "[NEW MATERIAL] DEFINITIONS. --As used in the Off-Highway
9 Motor Vehicle Act:

10 A. "board" means the off-highway motor vehicle
11 safety board;

12 B. "department" means the taxation and revenue
13 department;

14 C. "division" means the motor vehicle division of
15 the taxation and revenue department;

16 D. "fund" means the trail safety fund;

17 E. "off-highway motor vehicle" means a motor
18 vehicle designed by the manufacturer for operation exclusively
19 off-highway, including snowmobiles, all-terrain vehicles and
20 off-highway motorcycles; and

21 F. "staging area" means a parking lot, trailhead or
22 other location to or from which an off-highway motor vehicle is
23 transported so that it may be placed into operation or removed
24 from operation. "

25 Section 3. Section 66-3-1003 NMSA 1978 (being Laws 1978,
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1 Chapter 35, Section 199, as amended) is amended to read:

2 "66-3-1003. OFF-HIGHWAY MOTOR VEHICLES--REGISTRATION.--

3 ~~[A.] Unless exempted from the provisions of the Off-Highway~~
4 ~~Motor Vehicle Act, no person shall operate [a] an off-highway~~
5 ~~motor vehicle [which is to be operated or used exclusively off~~
6 ~~the highways of this state] unless the off-highway motor~~
7 ~~vehicle has been registered in accordance with [the Off-Highway~~
8 ~~Motor Vehicle Act and the regulations of the division adopted~~
9 ~~pursuant to that act.~~

10 ~~B. Application for registration and certificate of~~
11 ~~title shall be made as provided in Subsections A through C of~~
12 ~~Section 66-3-4 NMSA 1978. Upon receipt of an application for~~
13 ~~an original registration of the motor vehicle or for any~~
14 ~~certificate of title, the division shall make such examination~~
15 ~~of records and indexes as provided in Section 66-3-8 NMSA 1978,~~
16 ~~and registration indexes shall be kept and maintained for the~~
17 ~~motor vehicles in the manner provided in Section 66-3-9 NMSA~~
18 ~~1978. The division shall issue evidence of registration and a~~
19 ~~certificate of title for the motor vehicles as provided in~~
20 ~~Section 66-3-10 NMSA 1978.~~

21 ~~C. Upon receipt of the registration certificate,~~
22 ~~the owner of an off-highway motor vehicle shall affix the~~
23 ~~registration plate on the motor vehicle as prescribed by the~~
24 ~~regulations adopted by the division] Chapter 66, Article 3 NMSA~~
25 ~~1978. The owner shall affix the registration plate or~~

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1 validating sticker as provided in that article. "

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

4 "66-3-1004. REGISTRATION CERTIFICATE AND NONRESIDENT
5 PERMIT FEES. --

6 A. The ~~[fee]~~ fees for ~~[registration-of]~~ registering
7 an off-highway motor vehicle ~~[is]~~ are:

8 (1) fifteen dollars (\$15.00) to the division
9 for each off-highway motor vehicle; and

10 (2) no more than forty dollars (\$40.00) for an
11 off-highway user fee for each off-highway motor vehicle. The
12 tourism department shall promulgate rules authorizing an off-
13 highway user fee.

14 B. The registration certificate shall be good for
15 two years after the ~~[year]~~ month in which the off-highway motor
16 vehicle is registered. Each registration [must] certificate
17 shall be renewed [every three years to be valid] every two
18 years.

19 ~~[B.]~~ C. Upon a change of ownership, the new owner
20 ~~[must]~~ shall make application and pay [a] registration [fee]
21 fees of:

22 (1) fifteen dollars (\$15.00) to the division
23 in the same manner as provided by ~~[regulations]~~ rules of the
24 division for original registration; and

25 (2) no more than forty dollars (\$40.00) per

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1 year for an off-highway user fee for each off-highway motor
2 vehicle. The tourism department shall promulgate rules
3 authorizing an off-highway user fee.

4 D. The fees for a nonresident permit of an
5 unregistered off-highway motor vehicle for a nonresident of the
6 state are:

7 (1) fifteen dollars (\$15.00) to the division
8 for each off-highway motor vehicle that has not already been
9 registered in another state; and

10 (2) no more than forty dollars (\$40.00) for an
11 off-highway user fee for each off-highway motor vehicle. The
12 tourism department shall promulgate rules authorizing an off-
13 highway user fee.

14 E. The nonresident permit shall be good for ninety
15 days after the day the nonresident permit is issued.

16 ~~[E.]~~ F. Duplicate [certificates of] registration
17 certificates and nonresident permits shall be issued upon
18 payment of a [one dollar (\$1.00)] seven-dollar-fifty-cent
19 (\$7.50) fee.

20 G. The New Mexico clean and beautiful program may
21 impose a one-dollar (\$1.00) annual fee on registration
22 certificates and nonresident permits.

23 H. Except as otherwise stated in this section, fees
24 collected under the provisions of this section shall be
25 deposited in the fund."

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1 Section 5. Section 66-3-1005 NMSA 1978 (being Laws 1978,
2 Chapter 35, Section 201, as amended) is amended to read:

3 "66-3-1005. EXEMPTIONS. -- The provisions of the Off-
4 Highway Motor Vehicle Act shall not apply to off-highway motor
5 vehicles that are:

6 A. owned and operated by [~~any~~] an agency or
7 department of the United States, this state or [~~any~~] a
8 political subdivision of this state;

9 B. operated exclusively on lands privately held by
10 the off-highway motor vehicle owner; provided that the gross
11 receipts tax has been paid in lieu of the motor vehicle excise
12 tax and registration fees;

13 C. owned by nonresidents of this state; provided
14 that the use in this state shall [~~be for competition purposes~~
15 ~~only and~~] only be for competition purposes sanctioned by the
16 appropriate regulatory agency and shall not exceed fifteen
17 days; and provided [~~further~~] that the use is not on a rental
18 basis;

19 D. brought into this state by manufacturers or
20 distributors for wholesale purposes and not used for
21 demonstrations;

22 E. [~~which are~~] in the possession of dealers as
23 stock in trade and not used for demonstration purposes; [~~or~~]
24 and

25 F. [~~which are~~] farm tractors as defined in Section
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1 66-1-4.6 NMSA 1978 or special mobile equipment as defined in
2 Section [~~66-1-4~~] 66-1-4.16 NMSA 1978. "

3 Section 6. Section 66-3-1006 NMSA 1978 (being Laws 1978,
4 Chapter 35, Section 202, as amended) is amended to read:

5 "66-3-1006. GROUNDS FOR REFUSING REGISTRATION OR
6 CERTIFICATE OF TITLE. -- The division may refuse registration or
7 issuance of a certificate of title or any transfer of a
8 registration certificate upon the grounds that:

9 A. the division has reasonable grounds to believe
10 that the application contains any false or fraudulent statement
11 or that the applicant has failed to furnish the required
12 information or reasonable additional information requested by
13 the division or that the applicant is not entitled to the
14 issuance of a certificate of title or registration certificate
15 of the off-highway motor vehicle under the Motor Vehicle Code
16 or laws of this state;

17 B. the division has reasonable [~~ground~~] grounds to
18 believe that the off-highway motor vehicle is [a] stolen or
19 embezzled [~~vehicle~~] or that the granting of a registration
20 certificate or the issuance of a certificate of title would
21 constitute a fraud against the rightful owner or other person
22 having a valid lien upon the off-highway motor vehicle;

23 C. the division has reasonable grounds to believe
24 that a nonresident applicant is not entitled to registration
25 issuance under the laws of the nonresident applicant's state of

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1 residence;

2 [C-] D. the required [~~fee has~~] fees have not been
3 paid; [~~or~~

4 ~~D-]~~ E. the motor vehicle excise tax has not been
5 paid pursuant to Section 66-3-1005 NMSA 1978; or

6 F. the applicant has not completed a training
7 course certified by the board, when required by Section 11 of
8 this 2004 act. "

9 Section 7. Section 66-3-1007 NMSA 1978 (being Laws 1978,
10 Chapter 35, Section 203, as amended) is amended to read:

11 "66-3-1007. [~~EVIDENTIAL~~] EVIDENTIARY VALUE OF
12 CERTIFICATE. --A certificate of title issued by the division for
13 [~~a~~] an off-highway motor vehicle shall be received [~~in~~
14 ~~evidence~~] as prima facie evidence of the ownership of the off-
15 highway motor vehicle named in the certificate and as prima
16 facie evidence of all liens and encumbrances against the off-
17 highway motor vehicle appearing on the certificate. "

18 Section 8. Section 66-3-1008 NMSA 1978 (being Laws 1978,
19 Chapter 35, Section 204, as amended) is amended to read:

20 "66-3-1008. REGISTRATION PLATES TO BE FURNISHED BY
21 DIVISION. --The division, upon registering [~~a~~] an off-highway
22 motor vehicle, shall issue to the owner registration plates or
23 [~~validation~~] validating stickers, as provided in Section
24 66-3-14 NMSA 1978. "

25 Section 9. A new section of the Off-Highway Motor Vehicle
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1 Act is enacted to read:

2 "[NEW MATERIAL] DEALER DEMONSTRATION CERTIFICATES. --

3 A. A dealer selling off-highway motor vehicles to
4 the public, either retail or wholesale, shall purchase from the
5 division a dealer demonstration certificate for each off-
6 highway motor vehicle used as a demonstrator on lands not owned
7 by the dealer. The division shall adopt rules providing for
8 the form and use of these demonstration certificates.

9 B. Dealer demonstration certificates shall be
10 issued on a calendar-year basis to a bona fide motor vehicle
11 dealer and shall be valid for an off-highway motor vehicle as
12 provided by the terms of the certificate. The fee for a
13 demonstration certificate is fifteen dollars (\$15.00) for each
14 of the first three certificates issued in the name of a dealer
15 and five dollars (\$5.00) for each additional certificate."

16 Section 10. A new section of the Off-Highway Motor
17 Vehicle Act is enacted to read:

18 "[NEW MATERIAL] OFF-HIGHWAY MOTOR VEHICLE SAFETY TRAINING
19 ORGANIZATION-- LICENSE. --

20 A. The division shall issue a license to an off-
21 highway motor vehicle safety training organization when the
22 division is satisfied that the organization:

- 23 (1) maintains an established place of business
- 24 open to the public;
- 25 (2) has the proper equipment necessary to give

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1 instruction in the operation of the class of off-highway motor
2 vehicles for which a course is designed; and

3 (3) has been approved and certified by the
4 board.

5 B. The license shall be valid for a period of one
6 year from midnight of the last day of the month of issuance of
7 the license, unless canceled, suspended or revoked by the
8 division.

9 C. The license shall be renewed annually. For
10 renewal of the license, the division shall require that the
11 off-highway motor vehicle safety training organization satisfy
12 all requirements of the initial licensure. "

13 Section 11. A new section of the Off-Highway Motor
14 Vehicle Act is enacted to read:

15 "[NEW MATERIAL] OPERATION AND EQUIPMENT-- SAFETY
16 REQUIREMENTS. --

17 A. A driver shall not operate an off-highway motor
18 vehicle:

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

21 (2) while under the influence of intoxicating
22 beverages or narcotic or other drugs to a degree that renders
23 the driver incapable of reasonable operation, as provided by
24 Section 66-8-102 NMSA 1978;

25 (3) if the spark arrester installed by the

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1 manufacturer has been removed, altered or modified;

2 (4) when conditions such as darkness limit
3 visibility to five hundred feet or less, unless the off-highway
4 motor vehicle is equipped with:

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

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

11 (5) unless it is equipped in such a way so
12 that the noise produced by the off-highway motor vehicle does
13 not exceed ninety-six decibels when measured from a distance of
14 twenty inches using test procedures established by the society
15 of automotive engineers pursuant to standard J-1287;

16 (6) in pursuit of any species of animal or
17 bird protected by law;

18 (7) while in the possession of a bow or a
19 firearm, unless the bow or firearm is unloaded or disabled in a
20 manner so that it is not able to fire either deliberately or
21 accidentally and secured in a manner so that it cannot be fired
22 or discharged either deliberately or accidentally;

23 (8) unless in possession of the person's
24 certificate of registration or nonresident permit; or

25 (9) unless in possession of the person's off-

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1 highway vehicle safety permit when required by Subsection D of
2 this section.

3 B. An off-highway motor vehicle may not be sold or
4 offered for sale unless it is:

5 (1) equipped in such a way so that the noise
6 produced by the off-highway motor vehicle does not exceed
7 ninety-six decibels when measured from a distance of twenty
8 inches using test procedures established by the society of
9 automotive engineers pursuant to standard J-1287; or

10 (2) sold or offered for sale only for
11 competition in officially sanctioned public racing events.

12 C. A person under the age of eighteen shall not
13 operate or ride upon an off-highway motor vehicle unless the
14 person is wearing eye protection and a safety helmet that is
15 securely fastened in a normal manner as headgear and that meets
16 the standards specified by the board. The board shall adopt
17 rules establishing standards covering the types and
18 specifications of eye protection and safety helmets and shall
19 establish and maintain a list of approved eye protection and
20 safety helmets meeting the standards and specifications of the
21 board.

22 D. A person under the age of ten shall not operate
23 an off-highway motor vehicle on public land or trails unless
24 the public land or trails have been designated by the board or
25 appropriate land manager as approved for instruction and safety

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1 training of off-highway motor vehicle drivers under ten years
2 of age on off-highway motor vehicles under one hundred ten
3 cubic centimeters. Off-highway motor vehicle drivers under the
4 age of ten shall be supervised at all times by a parent or
5 legal guardian in possession of a board-certified safety
6 training course permit and a driver's license or by a certified
7 instructor of a safety training course certified by the board.
8 A person between the ages of ten and eighteen shall obtain an
9 off-highway motor vehicle safety permit from the division, for
10 which the person must have parental permission. The safety
11 permit shall be in the person's possession when operating an
12 off-highway motor vehicle and shall be obtained only when the
13 person successfully completes a training course certified by
14 the board.

15 E. A person between the ages of ten and eighteen
16 shall not operate an off-highway motor vehicle unless:

17 (1) the person is visually supervised at all
18 times by a parent or legal guardian or the person is visually
19 supervised at all times by a person over the age of eighteen
20 who has a valid driver's license and has successfully completed
21 a board-certified safety training course; and

22 (2) the engine size of the off-highway motor
23 vehicle being operated does not exceed the engine size
24 recommendation for the person's age made by the board.

25 F. A person under the age of eighteen may operate

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1 an off-highway motor vehicle without supervision if the person
2 is:

3 (1) over the age of fifteen and has a valid
4 driver's license and off-highway motor vehicle safety permit;

5 (2) over the age of twelve and has a valid
6 motorcycle license and off-highway motor vehicle safety permit;
7 or

8 (3) part of an organized tour under the
9 supervision of a guide certified by the board.

10 G. A person shall not operate an off-highway motor
11 vehicle while carrying a passenger unless the vehicle is
12 specifically designed by the manufacturer to carry a passenger.

13 H. A person shall not operate an off-highway motor
14 vehicle in excess of ten miles per hour within two hundred feet
15 of a business, animal shelter, horseback rider or pedestrian or
16 an occupied dwelling. A person operating an off-highway motor
17 vehicle on a closed course or track designed and built for
18 competitive use or practice with safety fencing or barriers to
19 separate spectators from the track is exempt from the
20 provisions of this subsection. "

21 Section 12. A new section of the Off-Highway Motor
22 Vehicle Act is enacted to read:

23 " [NEW MATERIAL] REQUIREMENTS OF DEALERS TO DISTRIBUTE
24 SAFETY INFORMATION. --

25 A. A dealer selling off-highway motor vehicles
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1 shall distribute information to off-highway motor vehicle
2 purchasers on state laws, safety requirements, training
3 programs, operating characteristics and potential risk of
4 injury associated with off-highway motor vehicles.

5 B. The board shall adopt rules prescribing the
6 information that a dealer shall provide to purchasers of off-
7 highway motor vehicles. "

8 Section 13. Section 66-3-1011 NMSA 1978 (being Laws 1975,
9 Chapter 240, Section 11, as amended) is amended to read:

10 "66-3-1011. OPERATION ON STREETS OR HIGHWAYS. --

11 A. ~~[No]~~ A person shall not operate an off-highway
12 motor vehicle on ~~[any limited access]~~ a public road, street or
13 highway ~~[or freeway at any time]~~ unless:

14 (1) the public road, street or highway is
15 closed to motor vehicles or is specifically designated for off-
16 highway motor vehicle use by the appropriate regulatory agency;

17 (2) the public road, street or highway is
18 drifted or covered with snow to an extent that travel by a
19 motor vehicle is not allowed or is impossible;

20 (3) a period of emergency is authorized by the
21 governor;

22 (4) travel by motor vehicles is not permitted;
23 or

24 (5) special events of limited duration are
25 conducted according to a prearranged schedule approved by the

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1 appropriate regulatory agency having jurisdiction over the
2 public road, street or highway; provided that traffic control
3 assistance is provided.

4 B. A person shall not operate off-highway motor
5 vehicles on state game commission-owned, -controlled or
6 -administered land except as specifically permitted pursuant to
7 Chapter 17, Article 1 NMSA 1978.

8 ~~[B-]~~ C. Off-highway motor vehicles may cross
9 streets or highways, except limited access highways or
10 freeways, if the crossings are made after coming to a complete
11 stop prior to entering the roadway. [These] Off-highway motor
12 vehicles shall yield the right of way to oncoming traffic and
13 shall begin a crossing only when it can be executed safely and
14 then cross in the most direct manner as close to a
15 perpendicular angle as possible. "

16 Section 14. Section 66-3-1012 NMSA 1978 (being Laws 1978,
17 Chapter 35, Section 208, as amended) is amended to read:

18 "66-3-1012. ~~[MOVEMENT]~~ DRIVING OF OFF-HIGHWAY MOTOR
19 VEHICLES ADJACENT TO HIGHWAY. --

20 A. Off-highway motor vehicles issued a registration
21 plate [pursuant to Subsection C of Section 66-3-1003 NMSA
22 1978], validating sticker or nonresident permit may be ~~[moved,~~
23 ~~by nonmechanical means only]~~ driven adjacent to a highway, in a
24 manner so as not to interfere with traffic upon the highway,
25 yielding to all vehicles entering or exiting the highway, only

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1 for the purpose of gaining access to or returning from areas
2 designed for the operation of off-highway motor vehicles by the
3 shortest possible route and when no other route is available or
4 when the area adjacent to a highway is being used as a staging
5 area. Such use must occur between the highway and fencing that
6 separates the highway from private or public lands.

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

11 Section 15. Section 66-3-1013 NMSA 1978 (being Laws 1975,
12 Chapter 240, Section 13, as amended) is amended to read:

13 "66-3-1013. LIABILITY ON PRIVATE LANDS. --

14 A. ~~[No]~~ A landowner shall not be held liable for
15 damages arising out of off-highway motor vehicle-related
16 accidents or injuries occurring on ~~[his]~~ the landowner's lands
17 in which ~~[he]~~ the landowner is not directly involved unless the
18 entry on the lands is subject to payment of a fee.

19 B. It is unlawful to operate an off-highway motor
20 vehicle on private lands or roads except with the express
21 permission of the ~~[owner]~~ landowner or leaseholder of the
22 lands. "

23 Section 16. Section 66-3-1014 NMSA 1978 (being Laws 1975,
24 Chapter 240, Section 14, as amended) is amended to read:

25 "66-3-1014. ACCIDENTS AND ACCIDENT REPORTS. -- [Any

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1 ~~operator]~~ The driver of an off-highway motor vehicle involved
2 in an accident resulting in injuries to or the death of ~~[any]~~ a
3 person or resulting in damage to public or private property to
4 the extent of ~~[fifty dollars (\$50.00)]~~ two hundred fifty
5 dollars (\$250) or more shall immediately notify a law
6 enforcement ~~[officer or a law enforcement]~~ agency of the
7 accident and the facts relating to the accident. If the driver
8 is under the age of eighteen, the driver's parent or legal
9 guardian shall immediately notify a law enforcement agency of
10 the accident and the facts relating to the accident."

11 Section 17. Section 66-3-1015 NMSA 1978 (being Laws 1978,
12 Chapter 35, Section 211, as amended) is amended to read:

13 "66-3-1015. ENFORCEMENT. -- ~~[Every]~~ A wildlife conservation
14 officer, state ~~[policeman]~~ police officer or peace officer of
15 this state or any of its political subdivisions, upon
16 displaying ~~[his]~~ a badge of office, has the authority to
17 enforce the provisions of the Off-Highway Motor Vehicle Act and
18 may:

19 A. require ~~[the operator of any]~~ an off-highway
20 motor vehicle operator to produce:

21 (1) the certificate of registration or
22 nonresident permit;

23 (2) proof of successfully completing a board-
24 certified training course, when required by Section 11 of this
25 2004 act; and

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1 (3) the personal identification of the
2 operator; and [~~may~~]

3 B. issue citations for violations of the provisions
4 of the Off-Highway Motor Vehicle Act. "

5 Section 18. A new section of the Off-Highway Motor
6 Vehicle Act is enacted to read:

7 "[NEW MATERIAL] OFF-HIGHWAY MOTOR VEHICLE SAFETY BOARD--
8 CREATION-- MEMBERS-- RESPONSIBILITIES-- COMPENSATION. --

9 A. The "off-highway motor vehicle safety board" is
10 created and shall be composed of nine ex-officio and fourteen
11 appointed members as follows:

12 (1) the director of the department of game and
13 fish or the director's designee;

14 (2) the director of the motor vehicle division
15 or the director's designee;

16 (3) the secretary of transportation or the
17 secretary's designee;

18 (4) the secretary of public safety or the
19 secretary's designee;

20 (5) the commissioner of public lands or the
21 commissioner's designee;

22 (6) the secretary of energy, minerals and
23 natural resources or the secretary's designee;

24 (7) the secretary of tourism or the
25 secretary's designee;

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1 (8) the secretary of health or the secretary's
2 designee;

3 (9) the director of the state parks division
4 of the energy, minerals and natural resources department or the
5 director's designee;

6 (10) one representative from each of the
7 state's six tourism regions with expertise in the areas of off-
8 highway motor vehicle safety or motorized and non-motorized
9 recreation, who shall be appointed by the secretary of tourism;

10 (11) three representatives from local law
11 enforcement agencies, who shall be appointed by the secretary
12 of public safety;

13 (12) two representatives from a conservation
14 or environmental organization, who shall be appointed by the
15 secretary of energy, minerals and natural resources;

16 (13) two off-highway motor vehicle dealers,
17 who shall be appointed by the secretary of tourism; and

18 (14) one health professional with expertise in
19 injury prevention or treatment, who shall be appointed by the
20 secretary of health.

21 B. The board shall select a chairperson, a vice
22 chairperson and other officers as it deems necessary.

23 C. The board shall meet no less than twice annually
24 and may meet more frequently upon the call of the chairperson.

25 A majority of board members then serving constitutes a quorum

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1 for the transaction of board business. The board shall:

2 (1) develop minimum criteria for certification
3 as an approved off-highway motor vehicle safety training
4 organization. The criteria shall include curriculum and
5 materials for:

6 (a) training instructors to teach off-
7 highway motor vehicle operation and safety;

8 (b) training the public about off-
9 highway motor vehicle safety; and

10 (c) teaching responsible use of off-
11 highway motor vehicles with respect to environmental
12 considerations, private property restrictions, off-highway
13 motor vehicle operating laws and prohibitions against operating
14 off-highway motor vehicles under the influence of alcohol or
15 drugs;

16 (2) upon presentation to the board of a
17 proposed program by an applicant to become an approved off-
18 highway motor vehicle safety training organization, determine
19 whether the applicant's program meets the minimum criteria and,
20 if approved, shall recommend the organization for licensing
21 pursuant to Section 10 of this 2004 act;

22 (3) set criteria for locating off-highway
23 motor vehicle parks, facilities and trails, to include
24 consideration of their effect on:

25 (a) wildlife and the environment;

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1 (b) adjacent state, county, federal,
2 tribal and private property;

3 (c) other recreational and
4 nonrecreational uses on the same or adjacent lands; and

5 (d) archaeological, cultural and
6 historic resources;

7 (4) make grants from the fund to:

8 (a) develop and maintain trails, build
9 and maintain staging areas, conduct restoration, market safety
10 programs and promote safety for off-highway motor vehicles; and

11 (b) meet the necessary expenses incurred
12 in carrying out the Off-Highway Motor Vehicle Act;

13 (5) determine off-highway motor vehicle park,
14 facility and trail locations based on an assessment of the
15 criteria in this subsection and all off-highway motor vehicle
16 operating laws. The board shall solicit and consider public
17 input when conducting its assessment;

18 (6) restore, or if deemed necessary, close
19 off-highway motor vehicle tracks or trails if they pose
20 significant or irreversible environmental damage, a danger to
21 users or a public nuisance as determined by the board. The
22 board shall consider and to the extent consistent with the
23 requirements of this section, construct alternative tracks or
24 trails as part of the closure process;

25 (7) set criteria for grants made from the

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1 fund, including the:

2 (a) applicant's financial and legal
3 status;

4 (b) applicant's management plan,
5 including specific measures to avoid or minimize environmental
6 damage to public and private lands and danger to users and
7 spectators;

8 (c) operating budget for the park,
9 trail, facility or staging area; and

10 (d) process by which the board will
11 solicit and incorporate public input when reviewing grant
12 applications; and

13 (8) certify tour guides as provided in Section
14 11 of this 2004 act.

15 D. Board members shall receive per diem and mileage
16 as provided for nonsalaried public officers in the Per Diem and
17 Mileage Act and shall receive no other compensation, perquisite
18 or allowance."

19 Section 19. A new section of the Off-Highway Motor
20 Vehicle Act is enacted to read:

21 "[NEW MATERIAL] FUND CREATED--DISPOSITION. --

22 A. The "trail safety fund" is created in the state
23 treasury.

24 B. The fund shall be administered by the tourism
25 department. Money collected pursuant to the Off-Highway Motor

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1 Vehicle Act, including the off-highway user fee, shall be
2 deposited with the state treasurer for credit to the fund. The
3 state treasurer shall invest the fund as other state funds are
4 invested. All balances in the fund shall remain in the fund
5 and shall not revert to the general fund.

6 C. The tourism department, as directed by the
7 board, shall make distributions from the fund to develop and
8 maintain trails, build and maintain staging areas, market
9 safety programs and promote safety for off-highway motor
10 vehicles and for the purpose of meeting the necessary expenses
11 incurred by the tourism department and the division in carrying
12 out the provisions of the Off-Highway Motor Vehicle Act.

13 D. A distribution pursuant to Section 7-1-6.1 NMSA
14 1978 shall be made to the fund in an amount equal to thirteen
15 hundredths of one percent of the net receipts attributable to
16 the gasoline tax."

17 Section 20. A new section of the Off-Highway Motor
18 Vehicle Act is enacted to read:

19 "[NEW MATERIAL] PENALTIES. --

20 A. Unless the violation is declared a felony, a
21 petty misdemeanor or a citation under the Motor Vehicle Code, a
22 person who violates the provisions of the Off-Highway Motor
23 Vehicle Act is guilty of a misdemeanor, as provided by Section
24 66-8-7 NMSA 1978.

25 B. In addition to other penalties imposed by the
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1 court, when a person is convicted of a felony or misdemeanor
2 committed while operating an off-highway motor vehicle, the
3 person shall be ordered by the court to complete a board-
4 certified safety training course. "

5 Section 21. REPEAL. -- Sections 66-9-1, 66-9-2, 66-9-4,
6 66-9-8, 66-9-9 and 66-9-11 through 66-9-13 NMSA 1978 (being
7 Laws 1971, Chapter 177, Sections 1 and 2, Laws 1973, Chapter
8 86, Section 1 and Laws 1971, Chapter 177, Sections 7, 8, 10, 11
9 and 12, as amended) are repealed.

10 Section 22. EFFECTIVE DATE. -- The effective date of the
11 provisions of this act is January 1, 2005.

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