



BILL NO. 275

Government Bill

*1st Session, 59th General Assembly
Nova Scotia
54 Elizabeth II, 2005*

An Act to Amend Chapter 323 of the Revised Statutes, 1989, the Off-highway Vehicles Act

CHAPTER 56
ACTS OF 2005

**AS ASSENTED TO BY THE LIEUTENANT GOVERNOR
DECEMBER 8, 2005**

The Honourable Richard Hurlburt
Minister of Natural Resources

*Halifax, Nova Scotia
Printed by Authority of the Speaker of the House of Assembly*

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**An Act to Amend Chapter 323
of the Revised Statutes, 1989,
the Off-highway Vehicles Act**

Be it enacted by the Governor and Assembly as follows:

1 Section 2 of Chapter 323 of the Revised Statutes, 1989, the *Off-highway Vehicles Act*, is amended by

(a) striking out “Communications” in the second line of clause (b) and substituting “Public Works or such other member of the Executive Council assigned responsibility for this Act”; and

(b) striking out “three-wheel or four-wheel” in subclause (d)(ii).

2 Subsection 4(1) of Chapter 323 is amended by

(a) striking out “either” in the second line; and

(b) striking out “or” at the end of clause (a) and substituting “and”.

3 Clause 10(b) of Chapter 323 is amended by striking out “three-wheel or four-wheel”.

4 (1) Subsection 11(1) of Chapter 323 is amended by

(a) striking out “and (3)” in the first and second lines and substituting “to (4)”; and

(b) striking out “fourteen” in the second and in the sixth lines and substituting in each case “sixteen”.

(2) Subsections 11(2) and (3) of Chapter 323 are repealed and the following subsections substituted:

(2) An off-highway vehicle may be operated by a person under the age of sixteen years and not under the age of fourteen years if

(a) that person is under the direct supervision of that person’s parent or guardian and within the sight of that parent or guardian; and

(b) both the parent or guardian referred to in clause (a) and the person who is under the age of sixteen years are certified as having successfully completed off-highway vehicle safety training in accordance with the regulations.

(3) An off-highway vehicle, other than an all-terrain vehicle, may be operated on private property or, in the case of a snow vehicle, on a trail designated pursuant to this Act for snow vehicles by a person under the age of fourteen years if

(a) that person is under the direct supervision of that person's parent or guardian and within the sight of that parent or guardian;

(b) both the parent or guardian referred to in clause (a) and the person who is under the age of fourteen years are certified as having successfully completed off-highway vehicle safety training in accordance with the regulations; and

(c) the off-highway vehicle does not have an engine size in excess of that recommended by the manufacturer for an operator of the age and weight of the person under the age of fourteen years and, in any event, has an engine size of less than that prescribed by the regulations.

(4) An off-highway vehicle of a particular class of off-highway vehicle may be operated under the auspices of an organization accredited by the regulations by a person who is under the age of sixteen years on a closed course designed and maintained for that class of off-highway vehicle if

(a) the person is wearing personal protective equipment as prescribed by the regulations;

(b) the person is certified as having successfully completed off-highway vehicle safety training appropriate for the person's age in accordance with the regulations;

(c) course rules are enforced;

(d) the vehicle is operated in a class based upon the person's age, size and ability;

(e) that person is under the direct supervision of that person's parent or guardian;

(f) a trained official is present;

(g) a trained first-responder is present; and

(h) the off-highway vehicle does not have an engine size in excess of that recommended by the manufacturer for an operator of the age and weight of the person under the age of sixteen years and, in any event, has an engine size of less than that prescribed by the regulations.

5 Chapter 323 is further amended by adding immediately after Section 11 the following Section:

11A No person who is of the age of sixteen years or more shall operate an off-highway vehicle unless that person is certified as having successfully completed off-highway vehicle safety training in accordance with the regulations.

6 Subsection 12(1) of Chapter 323 is amended by adding "or 12D" immediately after "13" in the second line.

7 Chapter 323 is further amended by adding immediately after Section 12 the following Sections:

- 12A (1) No person shall operate an off-highway vehicle in or on
- (a) a wetland, swamp or marsh;
 - (b) a watercourse as defined by the *Environment Act*;
 - (c) a sand dune;
 - (d) a coastal or highland barren; or
 - (e) a sensitive area as designated by or defined in the regulations.

- (2) Subsection (1) does not apply to
- (a) peace officers in the performance of their duties;
 - (b) a frozen watercourse;
 - (c) a coastal or highland barren or wetland, swamp or marsh that is covered by compacted or groomed snow of at least thirty centimetres in depth;
 - (d) a wetland, swamp or marsh or a watercourse when use is authorized pursuant to the *Environment Act*;
 - (e) a coastal or highland barren, a sand dune or a sensitive area when use is authorized by an order or a licence issued pursuant to this Section.

(3) The Minister may authorize emergency operation of an off-highway vehicle in or on a coastal or highland barren, a sand dune or a sensitive area by an order providing general authority or by an order issued in specific circumstances.

(4) The Minister may, in accordance with the regulations, issue a licence for the operation of an off-highway vehicle in or on a coastal or highland barren, a sand dune or a sensitive area if

- (a) for non-recreational use;
- (b) required to access private land; or
- (c) on a trail or route that is an essential link with a more extensive off-highway vehicle trail network,

and, in the opinion of the Minister, there is no reasonable alternative for such use and the use will have a minimal environmental impact.

(5) A licence issued pursuant to subsection (4) must designate the specific routes on which the off-highway vehicle may be operated.

(6) A licence issued pursuant to subsection (4) may contain such terms and conditions as the Minister considers necessary or advisable for the protection of the environment.

12B No person shall operate an off-highway vehicle

- (a) on a beach as defined by the *Beaches Act*;
- (b) in a core habitat as defined by the *Endangered Species Act*;
- (c) in a provincial park or park reserve as defined by the *Provincial Parks Act*;

(d) in a protected site or ecological site designated pursuant to the *Special Places Protection Act*,

except as provided by the *Beaches Act*, the *Endangered Species Act*, the *Provincial Parks Act* or the *Specials Places Protection Act* or regulations made pursuant thereto.

12C No person shall operate an off-highway vehicle in a wilderness area as defined in the *Wilderness Areas Protection Act* except in accordance with that Act.

12D (1) The Minister may, in accordance with the regulations, designate trails for off-highway vehicles, or a class of off-highway vehicles, for the purpose of this Section.

(2) The Minister may enter into an agreement with any person for the purpose of this Section including, without limiting the generality of the foregoing, the management of a trail designated pursuant to this Section.

(3) No person shall operate an off-highway vehicle on a trail designated pursuant to this Section except as authorized by the regulations.

(4) No person shall operate an off-highway vehicle on a trail designated pursuant to this Section unless a trail permit is displayed or carried in accordance with the regulations.

(5) No person shall operate an off-highway vehicle on a trail designated pursuant to this Section unless insured against third-party liability as required by the regulations.

12E (1) No person shall hold or participate in an off-highway vehicle rally unless a permit for the rally has been issued pursuant to this Section.

(2) The Minister may issue a permit for an off-highway vehicle rally in accordance with the regulations.

(3) No permit shall be issued pursuant to this Section unless

(a) written permission has been received from the owners or occupiers of all land used by the rally;

(b) all necessary precautions to protect the environment have been taken; and

(c) local enforcement authorities have been notified of the rally.

12F (1) At the request of the water works operator for a drinking-water supply area, the Minister of Environment and Labour may, for the protection of water quality in the supply area, make an order, consistent with any applicable source-water protection plan, controlling, prohibiting or regulating off-highway vehicle use in the supply area.

(2) No person shall operate an off-highway vehicle in a drinking-water supply area contrary to an order made pursuant to subsection (1).

8 (1) Subsection 14(1) of Chapter 323 is amended by

(a) striking out “watercourse,” in the third line;

(b) striking out “, beach, sand dune” in the fourth and fifth lines; and

(c) adding “written” immediately after “the” the first time it appears in the fifth line.

(2) Clauses 14(2)(d) and (e) and subclause 14(2)(f)(i) of Chapter 323 are repealed.

(3) Section 14 of Chapter 323 is further amended by adding immediately after subsection (2) the following subsection:

(3) Written permission for the purpose of subsection (1) may be given by the owner or occupier of land to an individual or through a recognized club or association.

9 Chapter 323 is further amended by adding immediately after Section 14 the following Sections:

14A Notwithstanding the *Occupiers’ Liability Act*, a person who owns or operates or who is a passenger on an off-highway vehicle on land, with or without the permission of the owner or occupier of the land, is deemed to have willingly assumed all risks related to the ownership or operation of or carriage on the off-highway vehicle except a danger created by the owner or occupier of the land with the deliberate intent of doing harm or damage to the person or property of the owner, operator or passenger.

14B No person who operates or who is a passenger on an off-highway vehicle on land, with or without the permission of the owner or occupier of the land, thereby acquires any property rights with respect to the land.

10 Chapter 323 is further amended by adding immediately after Section 15 the following Sections:

15A No person shall operate an off-highway vehicle if the noise level of the vehicle is higher than the level originally set by the manufacturer because of the removal of the muffler or other noise-dampening device or the modification of the muffler or other noise-dampening device so as to increase the noise level.

15B No person shall operate an off-highway vehicle on any land of which the person is not an owner or occupier unless that person carries third-party liability insurance in at least the amount required by the regulations.

11 Subsection 16(2) of Chapter 323 is repealed.

12 Chapter 323 is further amended by adding immediately after Section 17 the following Section:

17A (1) There is hereby established a fund to be known as the Off-highway Vehicle Infrastructure Fund.

(2) The Fund consists of

(a) money acquired by agreement, gift, donation, bequest or contribution;

- (b) income accruing to the Fund; and
- (c) penalties received by Her Majesty in right of the Province pursuant to this Act.

(3) The Minister may expend, in accordance with the *Provincial Finance Act*, money from the Fund for

- (a) trail development and maintenance;
- (b) funding of off-highway vehicle user organizations;
- (c) projects relating to off-highway vehicle operator health and safety;
- (d) education and training for operators of off-highway vehicles;
- (e) any other purpose related to off-highway vehicles.

13 Section 18 of Chapter 323 is amended by

- (a) adding “(1)” immediately after the Section number;**
- (b) striking out “, except as otherwise provided,” in the second and third lines;**
- (c) striking out “twenty-five” in the fourth line and substituting “two hundred and fifty”;**
- (d) striking out “one” in the fourth line and substituting “two”; and**
- (e) adding the following subsection:**

(2) Notwithstanding subsection (1), a person who is guilty of a second or subsequent offence is liable to a fine of not less than five hundred dollars or more than two thousand dollars.

14 (1) Subsection 19(1) of Chapter 323 is amended by striking out “for a period not exceeding twenty-four hours” in the fourth and fifth lines and substituting “until the final disposition of the case at trial or any charges are otherwise disposed of”.

(2) Section 19 of Chapter 323 is further amended by adding immediately after subsection (2) the following subsections:

(3) Where the costs of impounding and storing an off-highway vehicle pursuant to this Act have not been paid within thirty days of the final disposition as provided in subsection (1), the sheriff shall sell the vehicle in the same manner and in all respects as other goods are sold under execution.

(4) The sheriff shall pay from the money recovered pursuant to subsection (3)

- (a) the sheriff’s fees, commission and poundage expenses; and
- (b) the costs of impounding and storing the off-highway vehicle, and any surplus that remains to the person entitled thereto.

(5) Where money is levied upon such execution, the *Creditors' Relief Act* does not apply to such portion of such money as is obtained by the levying on and selling of the off-highway vehicle under the execution.

15 (1) Subsection 25(1) of Chapter 323 is amended by

(a) adding immediately after clause (c) the following clauses:

(ca) respecting off-highway vehicle safety training and certification;

(cb) prescribing the maximum engine size for the purpose of Section 11;

(cc) respecting the operation of off-highway vehicles on a closed course by persons under the age of sixteen years;

(cd) respecting the accreditation of organizations for the purpose of subsection 11(4);

(ce) adopting by reference standards for off-highway vehicle safety training;

(cf) designating sensitive areas for the purpose of Section 12A;

(cg) respecting licences issued pursuant to Section 12A;

(ch) respecting trails for off-highway vehicles;

(ci) respecting off-highway vehicle rallies;

(cj) respecting the recognition of clubs or associations for the purpose of Section 14;

(ck) respecting third-party liability insurance required for the operation of an off-highway vehicle;

(cl) respecting the Off-highway Vehicle Infrastructure Fund;

(cm) respecting the publication of a handbook respecting off-highway vehicles;

and

(b) striking out clause (k) and substituting the following clauses:

(k) exempting a vehicle or class of vehicle used exclusively for non-recreational purposes from any or all of the requirements of this Act and prescribing the terms or conditions, if any, under which a vehicle or class of vehicle is to be exempt;

(ka) exempting a person or class of persons from any or all of the requirements of this Act and prescribing the terms or conditions, if any, under which a person or class of persons is to be exempt;

(2) Section 25 of Chapter 323 is further amended by adding immediately after subsection (1) the following subsection:

(1A) A regulation may apply to all persons or off-highway vehicles or to a class of persons or vehicles that this Act applies to and there may be different regulations for different classes of such persons or vehicles.

16 (1) Notwithstanding the *Off-highway Vehicles Act* and regulations made pursuant to that Act, during the period from October 12, 2005, to March 31, 2006, inclusive, no person shall be charged for failing to register or obtain a permit for the operation of an off-highway vehicle, or to display or produce evidence thereof, before April 1, 2006.

(2) In this Section, words have the same meaning as in the *Off-highway Vehicles Act* and regulations made pursuant to that Act.

17 (1) Within five years of this Act coming into force, the Minister shall review and report upon the Act to determine the effectiveness of the amendments to Chapter 323 including, in particular, the accident rates for the classes of off-highway vehicle.

(2) The Minister shall table the report in the House of Assembly or, if the Assembly is not then sitting, with the Clerk of the Assembly.

18 Subsections 23(3) and (4) of Chapter 27 of the Acts of 1998, the *Wilderness Areas Protection Act*, are repealed and the following subsections substituted:

(3) Within a wilderness area included in a Schedule to this Act, the Minister may designate a trail or route upon which the use and operation of snowmobiles is permitted if

(a) the trail was designated at any time before January 1, 2006, whether or not presently designated;

(b) the Minister has entered into a management agreement with a group or organization setting out the terms and conditions for the use of the trail;

(c) the Minister intends the relocation of the trail or route to another location outside the wilderness area, or near the wilderness area boundary where adverse environmental effects will be minimal; and

(d) in the opinion of the Minister, the continued use or operation of snowmobiles within the wilderness area will have a minimal environmental impact on the wilderness area.

(4) Within a wilderness area not included in a Schedule to this Act, the Minister may designate a trail or route upon which the use and operation of vehicles is permitted if

(a) the Minister has entered into a management agreement with a group or organization setting out the terms and conditions for the use of the trail;

(b) the trail or route existed before the area was designated as a wilderness area;

(c) the trail is an essential link with a more extensive trail network;

(d) the Minister intends the relocation of the trail or route to another location outside the wilderness area, or near the wilderness area boundary where adverse environmental effects will be minimal; and

(e) in the opinion of the Minister, the continued use or operation of vehicles within the wilderness area will have a minimal environmental impact on the wilderness area.

(4A) The Minister may issue a licence permitting the use of a motor boat, a motor vessel or an aircraft to enable access for wilderness recreation, sport fishing or traditional patterns of hunting or trapping if, in the opinion of the Minister,

(a) the continued use will have a minimal environmental impact on the wilderness area; and

(b) no reasonable alternative exists to enable the access.

(4B) Until January 1, 2010, the Minister may issue a licence permitting the holder of the licence to use a vehicle on an approved trail or route within the Polletts Cove-Aspy Fault Wilderness Area to enable access for moose hunting.

19 (1) This Act, except Section 15B of Chapter 323 as enacted by Section 10 of this Act and except Section 16, has effect on and after April 1, 2006, or such earlier day as the Governor in Council orders and declares by proclamation.

(2) Section 15B of Chapter 323, as enacted by this Act, has effect on and after April 1, 2007.
