City of Las Cruces®

PEOPLE HELPING PEOPLE

Council Action and Executive Summary

Item # 21 **Ordinance #** ~~10-~~ 2549 **Council District:** ___

For Meeting of December 7, 2009
(Adoption Date)

AN ORDINANCE AMENDING LAS CRUCES MUNICIPAL CODE, SECTIONS 27-12-7-1 THROUGH 27-12-7-10, *SPECIAL RULES FOR MOTORCYCLES AND OFF-HIGHWAY VEHICLES*, TO CONFORM WITH AMENDMENTS MADE TO NEW MEXICO STATUTES ANNOTATED, SECTIONS 66-3-1001.1, ET SEQ. BY THE 49th LEGISLATURE OF THE STATE OF NEW MEXICO, 2009.

PURPOSE(S) OF ACTION: This ordinance amendment is presented so that the Las Cruces Municipal Code will conform to the amendments made by the 49th Legislature applicable to off-highway vehicles.

Name of Drafter: Monica Campbell MC		**Department:** Legal		**Phone:** 541-2128	
Department	**Signature**	**Phone**	**Department**	**Signature**	**Phone**
Originating Department			Budget		541-2107
			Assistant City Manager		541-2271
Legal		541-2128	City Manager		541-2076

BACKGROUND / KEY ISSUES / CONTRIBUTING FACTORS:

Pursuant to Senate Bill 379, the 49th Legislature of the State of New Mexico, 2009, adopted amendments to New Mexico Statutes Annotated, Sections 66-3-1001.1, et seq. ("Statutes") concerning Off-Highway Motor Vehicles. The amendments include added definitions (Exhibit "B", pages 3-4) and safety requirements (Exhibit "B", pages 7-8).

The Legislature's amendments to the Statutes require the City Council to now adopt amendments to the Las Cruces Municipal Code.

SUPPORT INFORMATION:

Fund Name / Account Number	Amount of Expenditure	Budget Amount
N/A	N/A	N/A

1. Ordinance with Exhibit "A" attached.

2. Ordinance in legislative format, Exhibit "B".

(Continue on additional sheets as required)

3. Senate Bill 379, Attachment "1".

OPTIONS / ALTERNATIVES:

1. Adopt the ordinance. Adoption means the amendments made by the 49th Legislature applicable to off-highway vehicles will be codified in the Las Cruces Municipal Code.

2. Do not adopt the ordinance. This means that Las Cruces Municipal Code, Sections 27-12-7-1 through 27-12-7-10, *Special Rules for Motorcycles and Off-Highway Vehicles*, will not conform with the amendments made by the 49th Legislature.

3. Modify the ordinance and provide further direction to staff.

(Continue on additional sheets as required)

COUNCIL BILL NO. 10-020
ORDINANCE NO. 2549

AN ORDINANCE AMENDING LAS CRUCES MUNICIPAL CODE, SECTIONS 27-12-7-1 THROUGH 27-12-7-10, *SPECIAL RULES FOR MOTORCYCLES AND OFF-HIGHWAY VEHICLES*, TO CONFORM WITH AMENDMENTS MADE TO NEW MEXICO STATUTES ANNOTATED, SECTIONS 66-3-1001.1, ET SEQ. BY THE 49th LEGISLATURE OF THE STATE OF NEW MEXICO, 2009.

The City Council is informed that:

WHEREAS, pursuant to Senate Bill 379, the 49th Legislature of the State of New Mexico, 2009, adopted amendments to New Mexico Statutes Annotated 1978, Sections 66-3-1001.1, et seq. concerning Off-Highway Motor Vehicles; and

WHEREAS, the amendments include added definitions (Exhibit "B", pages 3-4) and safety requirements (Exhibit "B", pages 7-8); and

WHEREAS, the new material requires the City Council to adopt amendments to the Las Cruces Municipal Code, 1997 ("LCMC"), Sections 27-12-7-1 through 27-12-7-10, *Special Rules for Motorcycles and Off-Highway Vehicles*.

NOW, THEREFORE, BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF LAS CRUCES:

(I)

THAT LCMC 1997, Sections 27-12-7-1 through 27-12-7-10, *Special Rules for Motorcycles and Off-Highway Vehicles* are hereby enacted to read as shown on Exhibit "A" attached hereto and made a part of this Ordinance.

(II)

THAT City staff is authorized to do all deeds necessary to accomplish the intent of this Ordinance.

DONE AND APPROVED on this _____ day of _____, 2009.

_____
Mayor

ATTEST:

_____
City Clerk

{SEAL}

Moved by: _____

Seconded by: _____

Mayor Miyagishima:	_____
Councillor Silva:	_____
Councillor Connor:	_____
Councillor Pedroza:	_____
Councillor Small:	_____
Councillor Sorg:	_____
Councillor Thomas:	_____

APPROVED AS TO FORM:

_____
City Attorney

ARTICLE VII.

SPECIAL RULES FOR MOTORCYCLES AND OFF-HIGHWAY VEHICLES

Sec. 27-12-7-1. Traffic regulations apply to persons operating motorcycles.

Every person operating a motorcycle shall be granted all the rights and shall be subject to all of the duties applicable to the driver of any other vehicle under this chapter, except as to special regulations in sections 27-12-7-1 through 27-12-7-8 and except as to those provisions of this chapter which by their nature can have no application.
(Ord. No. 2121, § VII, 7-19-04)

Sec. 27-12-7-2. Operating motorcycles on streets laned for traffic.

A. All motorcycles are entitled to full use of a lane and no motor vehicle shall be driven in such a manner as to deprive any motorcycle of the full use of a lane. This section shall not apply to motorcycles operated two abreast in a single lane.

B. The operator of a motorcycle shall not overtake and pass in the same lane occupied by the vehicle being overtaken, except that this provision shall not apply to police officers in the performance of their official duties.

C. No person shall operate a motorcycle between lanes of traffic or between adjacent lines or rows of vehicles, except that this provision shall not apply to police officers in the performance of their official duties.

D. Motorcycles shall not be operated more than two abreast in a single lane.
(Ord. No. 2121, § VII, 7-19-04)

Sec. 27-12-7-3. Clinging to other vehicles.

No person riding upon a motorcycle shall attach himself or the motorcycle to any other vehicle on a street.
(Ord. No. 2121, § VII, 7-19-04)

Sec. 27-12-7-4. Riding on motorcycles.

A. A person operating a motorcycle, motor scooter or motor-driven cycle shall ride only upon the permanent and regular seat attached thereto, and shall have his feet upon the footrests provided on the machine.

B. The operator shall not carry any other person nor shall any other person ride on a motorcycle, motor scooter or motor-driven cycle unless it is designated to carry more than one person. If a motorcycle, motor scooter or motor-driven cycle is designed to carry more than one person, the passenger may ride upon the permanent

and regular seat if designed for two persons, or upon another seat firmly attached to the rear or side of the motorcycle, motor scooter or motor-driven cycle. The passenger shall have his feet upon the footrests attached for passenger use. (NMSA 1978, § 66-7-355)

C. No person shall operate a motorcycle while carrying any package, bundle or other article which prevents him from keeping both hands on the handlebars.

D. No operator of a motorcycle shall carry any person nor shall any person ride in a position that will interfere with the operation or control of the motorcycle or the view of the operator.
(Ord. No. 2121, § VII, 7-19-04)

Sec. 27-12-7-5. Eye-protective devices or windshields.

Any person operating a motorcycle, motor scooter or motor-driven cycle, not having a fixed windshield of a type approved by regulation of the secretary, shall wear an eye-protective device which may be a faceshield attached to a safety helmet, goggles or safety eyeglasses. All eye-protective devices or windshields shall be of a type approved by regulations authorized by NMSA 1978, § 66-7-355. (NMSA 1978, § 66-7-355)
(Ord. No. 2121, § VII, 7-19-04)

Sec. 27-12-7-6. Mandatory use of protective helmet.

A. No person under the age of eighteen shall operate a motorcycle unless he is wearing a safety helmet securely fastened on his head in a normal manner as headgear and meeting the standards authorized by NMSA 1978, § 66-7-356. No dealer or person who leases or rents motorcycles shall lease or rent a motorcycle to a person under the age of 18 unless the lessee or renter shows such person a valid operator's license or permit and possesses the safety equipment required of an operator who is under the age of 18. No person shall carry any passenger under the age of eighteen on any motorcycle unless the passenger is wearing a securely fastened safety helmet, as specified in this section, meeting the standards specified by the director.

B. Failure to wear a safety helmet as required in this section shall not constitute contributory negligence. (NMSA 1978, § 66-7-356)
(Ord. No. 2121, § VII, 7-19-04)

Sec. 27-12-7-7. Footrests and handlebars.

Any motorcycle carrying a passenger, other than in a sidecar or enclosed cab, shall be equipped with footrests for the passenger.
(Ord. No. 2121, § VII, 7-19-04)

Sec. 27-12-7-8. Motorcycle maneuverability.

A. No motorcycle shall be equipped in a manner such that it is incapable of turning a 90-degree angle with a circle having a radius of not more than 14 feet. Evidence of a motorcycle being unable to turn a 90-degree angle within a circle having a radius of not more than 14 feet shall be prima facie evidence of an unsafe vehicle as described in section 27-12-10-1.1.

B. For the purposes of this section, a police officer may require the driver of a motorcycle to demonstrate the ability of any motorcycle to be ridden as described in subsection A of this section. Failure or refusal of any operator to demonstrate the ability of any motorcycle being operated upon the highways shall be prima facie evidence of an unsafe vehicle as described in section 27-12-10-1.1. (NMSA 1978, § 66-3-842) (Ord. No. 2121, § VII, 7-19-04)

Sec. 27-12-7-9. Off-highway motor vehicles--Definitions.

As used in this section:

A. “Department” means the Department of Game and Fish;

B. "Division" means the motor vehicle division of the Taxation and Revenue Department;

C. "Fund" means the trail safety fund; and

D. “Off-highway motor vehicle" means a motor vehicle designed by the manufacturer for operation exclusively off the highway or road and includes:

(1) "All-terrain vehicle," which means a motor vehicle 50 inches or less in width, having an unladen dry weight of 1,000 pounds or less, traveling on three or more low-pressure tires and having a seat designed to be straddled by the operator and handlebar-type steering control;

(2) "Off-highway motorcycle," which means a motor vehicle traveling on not more than two tires and having a seat designed to be straddled by the operator and that has handlebar-type steering control; or

(3) "Snowmobile," which means a motor vehicle designed to travel on snow or ice and steered and supported in whole or in part by skis, belts, cleats, runners or low-pressure tires;

(4) “Recreational off-highway vehicle,” which means a motor vehicle designed for travel on four or more non-highway tires, for recreational use by one or more persons and having:

(a) A steering wheel for steering control;

(b) Non-straddle seating;

(c) Maximum speed capability greater than 35 miles per hour;

(d) Gross vehicle weight rating no greater than 1,750 pounds;

(e) Less than 80 inches in overall width, exclusive of accessories;

(f) Engine displacement of less than 1,000 cubic centimeters; and

(g) Identification by means of a 17-character vehicle identification number; or

(5) By rule of the department, any other vehicles that may enter the market that fit the general profile of vehicles operated off-highway for recreational purposes;

E. "Staging area" means a parking lot, trailhead or other location to or from which an off-highway motor vehicle is transported so that it may be placed into operation or removed from operation; and

F. "Unpaved public roadway" means a dirt graveled street or road that is constructed, signed and maintained for regular passenger-car use by the general public. (Ord. No. 2121, § VII, 7-19-04; Ord. No. 2228, § VII, 8-15-05)

Sec. 27-12-7-9.1. Off-highway motor vehicles--Registration; plate requirement and definition.

Unless exempted from the provisions of this chapter, a person shall not operate an off-highway motor vehicle unless the off-highway motor vehicle has been registered in accordance with Chapter 66, Article 3 NMSA 1978. The owner shall affix the validating sticker as provided in Chapter 66, Article 3 NMSA 1978.
(Ord. No. 2121, § VII, 7-19-04; Ord. No. 2228, § VII, 8-15-05)

State Law References: Similar provisions NMSA 1978, § 66-3-1003.

Sec. 27-12-7-9.2. Operation of off-highway motor vehicles on streets or highways--Prohibited areas.

A. No person shall operate an off-highway motor vehicle on any limited access street at any time or any paved street or highway except as provided in subsection B of this section.

B. Off-highway motor vehicles may cross streets or highways, except limited access highways or freeways, if the crossings are made after coming to a complete stop prior to entering the street. Off-highway motor vehicles shall yield the right-of-way to oncoming traffic and shall begin a crossing only when it can be executed

safely and then crossing in the most direct manner, as close to a perpendicular angle as possible.

C. A person shall not operate an off-highway motor vehicle on state game commission-owned, -controlled or -administered land except as specifically allowed pursuant to NMSA 1978, Chapter 17, Article 6.

D. A person shall not operate an off-highway motor vehicle on land owned, controlled or administered by the state parks division of the energy, minerals and natural resources department, pursuant to NMSA 1978, Chapter 16, Article 2, except in areas designated by and permitted by rules adopted by the secretary of energy, minerals and natural resources.

E. Unless authorized, a person shall not:

(1) Remove, deface or destroy any official sign installed by a state, federal, local or private land management agency; or

(2) Install any off-highway motor vehicle-related sign.
(Ord. No. 2121, § VII, 7-19-04; Ord. No. 2228, § VII, 8-15-05
State Law References: Similar provisions NMSA 1978, § 66-3-1011.

Sec. 27-12-7-9.3. Driving of off-highway motor vehicles adjacent to streets.

A. Off-highway motor vehicles issued a validating sticker or nonresident permit may be driven adjacent to a street, yielding to all vehicles entering or exiting the street, in a manner so as not to interfere with traffic upon the street, only for the purpose of gaining access to, or returning from areas designed for the operation of off-highway motor vehicles by the shortest route possible and when no other route is available or when the area adjacent to a street is being used as a staging area. Such use must occur between the street and fencing that separates the street from private or public lands.

B. When snow conditions permit, an off-highway motor vehicle may be operated on the right-hand side of a street, parallel, but not closer than ten feet, to the inside of the plow bank.
(Ord. No. 2121, § VII, 7-19-04; Ord. No. 2228, § VII, 8-15-05)
State Law References: Similar provisions NMSA 1978, § 66-3-1012.

Sec. 27-12-7-9.4. Operation of off-highway motor vehicles on private lands.

It is unlawful to operate an off-highway motor vehicle on private lands except with the express permission of the owner of the lands. (NMSA 1978, § 66-3-1013)
(Ord. No. 2121, § VII, 7-19-04)

Sec. 27-12-7-9.5. Accidents and accident reports.

The driver of an off-highway motor vehicle involved in an accident resulting in injuries to, or the death of, any person, or resulting in damage to public or private property to the extent of $500.00 or more, shall immediately notify law enforcement agency of the accident and the facts relating to the accident. If the driver is under the age of 18, the driver's parent or legal guardian shall immediately notify a law enforcement agency of the accident and the facts relating to the accident.
(Ord. No. 2121, § VII, 7-19-04; Ord. No. 2228, § VII, 8-15-05)
State Law References: Similar provisions NMSA 1978, § 66-3-1014.

Sec. 27-12-7-9.6. Enforcement of off-highway motor vehicle regulations.

Every police officer displaying his badge of office, has the authority to enforce the provisions of sections 27-12-7-9.1 through 27-12-7-9.5 of this chapter and may require the operator of any off-highway motor vehicle to produce the certificate of registration or nonresident permit, proof of successful completion of an off-highway motor vehicle training course conducted by an off-highway safety training organization approved and certified by the department, when required by section 27-12-7-9.8 and the personal identification of the operator, and may issue citations for violations of the provisions of sections 27-12-7-9.1 through 27-12-7-9.5 of this chapter.
(Ord. No. 2121, § VII, 7-19-04; Ord. No. 2228, § VII, 8-15-05)
State Law References: Similar provisions NMSA 1978, § 66-3-1015.

Sec. 27-12-7-9.7. Exemptions.

The provisions of this section shall not apply to persons who operate off-highway motor vehicles on privately held lands or to off-highway motor vehicles that are:

A. Owned and operated by an agency or department of the United States, this state or a political subdivision of this state;

B. Operated exclusively on lands privately held; provided that the appropriate tax or fee has been paid in lieu of the motor vehicle registration fees;

C. Owned by nonresidents and used in this state only for organized and endorsed competition purposes; provided that the use is not on a rental basis;

D. Brought into this state by manufacturers or distributors for wholesale purposes and not used for demonstrations;

E. In the possession of dealers as stock-in-trade and not used for demonstration purposes;

F. Farm tractors, as defined in NMSA 1978, § 66-1-4.6, special mobile equipment, as defined in NMSA 1978, § 66-1-4.16, or off-highway motor vehicles being used for agricultural operations; or

G. Used exclusively on private closed courses, whether owned by the rider or another person; provided that, if applicable, the excise tax and registration fees have been paid and are current.
(Ord. No. 2228, § VII, 8-15-05)

State Law References: Similar provisions NMSA 1978, § 66-3-1005.

Sec. 27-12-7-9.8. Off-highway motor vehicle safety permit; requirements, issuance.

A person under the age of 18 shall be required to successfully complete an off-highway motor vehicle safety training course for which the person shall have parental permission. The course shall be conducted by an off-highway motor vehicle safety training organization that is approved and certified by the department. Upon successful completion of the course, the person shall receive an off-highway motor vehicle safety permit issued by the organization.
(Ord. No. 2228, § VII, 8-15-05)

State Law References: Similar provisions NMSA 1978, § 66-3-1020.

Sec. 27-12-7-9.9. Operation and equipment--safety requirements.

A. A person shall not operate an off-highway motor vehicle:

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

(2) While under the influence of intoxicating liquor or drugs as provided by section 27-12-6-12.2;

(3) While in pursuit of and with intent to hunt or take a species of animal or bird protected by law unless otherwise authorized by the state game commission;

(4) In pursuit of or harassment of livestock in any manner that negatively affects the livestock's condition;

(5) On or within an earthen tank or other structure meant to water livestock or wildlife;

(6) In a manner that has a direct negative effect on or interferes with persons engaged in agricultural practices;

(7) In excess of ten miles per hour within 200 feet of a business, animal shelter, horseback rider, bicyclist, pedestrian or occupied dwelling, unless the person operates the vehicle on a closed course or track;

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

(9) Unless the vehicle is equipped with a spark arrester approved by the United States forest service; provided that a snowmobile is exempt from this provision;

(10) When conditions such as darkness limit visibility to 500 feet or less, unless the vehicle is equipped with:

(a) One or more headlights of sufficient candlepower to light objects at a distance of 150 feet; and

(b) At least one taillight of sufficient intensity to exhibit a red or amber light at a distance of 200 feet under normal atmospheric conditions; or

(11) That produces noise that exceeds 96 decibels when measured using test procedures established by the society of automotive engineers pursuant to standard J-1287.

(12) Where off-highway motor vehicle traffic is prohibited under local, state or federal rules or regulations.

B. A person under the age of 18 shall not operate an off-highway motor vehicle:

(1) Or ride upon an off-highway motor vehicle without wearing eye protection and a safety helmet that is securely fastened in a normal manner as headgear and that meets the standards established by the department;

(2) Without an off-highway motor vehicle safety permit; or

(3) While carrying a passenger.

C. A person under the age of 18 but at least ten years of age shall not operate an off-highway motor vehicle unless the person is visually supervised at all times by a parent, legal guardian or a person over the age of 18 who has a valid driver's license. This subsection shall not apply to a person who is at least:

(1) Thirteen years of age and has a valid motorcycle license and off-highway motor vehicle safety permit; or

(2) Fifteen years of age and has a valid driver's license, instructional permit or provisional license and off-highway motor vehicle safety permit.

D. A person under the age of ten shall not operate an off-highway motor vehicle unless:

(1) The all-terrain vehicle or recreational off-highway vehicle is an age-appropriate size-fit vehicle established by rule of the department; and

(2) The person is visually supervised at all times by a parent, legal guardian or instructor of a safety training course certified by the department.

E. An off-highway motor vehicle may not be sold or offered for sale if the vehicle produces noise that exceeds 96 decibels when measured using test procedures established by the society of automotive engineers pursuant to standard J-1287. This subsection shall not apply to an off-highway motor vehicle that is sold or offered for sale only for organized competition.
(Ord. No. 2228, § VII, 8-15-05)

State Law References: Similar provisions NMSA 1978, § 66-3-1021.

Sec. 27-12-7-9.10. Penalties.

A. Unless the violation is declared a felony, a petty misdemeanor or a citation under the Motor Vehicle Code, a person who violates the provisions of this section is subject to a fine of not more than $300.00 or by imprisonment for not more than 90 days or both. A parent, guardian or custodian who causes or knowingly permits a child under the age of eighteen years to operate an off-highway motor vehicle in violation of the provisions of this Section is in violation of this Section and subject to the same penalty as the child operating the off-highway motor vehicle in violation of this section. (66-3-1020 NMSA 1987)
(Ord. No. 2228, § VII, 8-15-05)

Sec. 27-12-7-10. Mopeds--Standards--Operator requirements--Application of Motor Vehicle Code.

A. Mopeds shall comply with those motor vehicle safety standards deemed necessary and prescribed by the director of motor vehicles.

B. Operators of mopeds shall have in their possession while operating a moped a valid operator's or restricted operator's license of any class issued to them.

C. Except as provided in subsections A and B of this section, none of the provisions of the New Mexico Motor Vehicle Code or of this chapter relating to motor vehicles or motor-driven cycles as defined in these codes shall apply to a moped.
(NMSA 1978, § 66-3-1101)
(Ord. No. 2121, § VII, 7-19-04)

ARTICLE VII.

SPECIAL RULES FOR MOTORCYCLES AND OFF-HIGHWAY VEHICLES

Sec. 27-12-7-1. Traffic regulations apply to persons operating motorcycles.

Every person operating a motorcycle shall be granted all the rights and shall be subject to all of the duties applicable to the driver of any other vehicle under this chapter, except as to special regulations in sections 27-12-7-1 through 27-12-7-8 and except as to those provisions of this chapter which by their nature can have no application.
(Ord. No. 2121, § VII, 7-19-04)

Sec. 27-12-7-2. Operating motorcycles on streets laned for traffic.

A. All motorcycles are entitled to full use of a lane and no motor vehicle shall be driven in such a manner as to deprive any motorcycle of the full use of a lane. This section shall not apply to motorcycles operated two abreast in a single lane.

B. The operator of a motorcycle shall not overtake and pass in the same lane occupied by the vehicle being overtaken, except that this provision shall not apply to police officers in the performance of their official duties.

C. No person shall operate a motorcycle between lanes of traffic or between adjacent lines or rows of vehicles, except that this provision shall not apply to police officers in the performance of their official duties.

D. Motorcycles shall not be operated more than two abreast in a single lane.
(Ord. No. 2121, § VII, 7-19-04)

Sec. 27-12-7-3. Clinging to other vehicles.

No person riding upon a motorcycle shall attach himself or the motorcycle to any other vehicle on a street.
(Ord. No. 2121, § VII, 7-19-04)

Sec. 27-12-7-4. Riding on motorcycles.

A. A person operating a motorcycle, motor scooter or motor-driven cycle shall ride only upon the permanent and regular seat attached thereto, and shall have his feet upon the footrests provided on the machine.

B. The operator shall not carry any other person nor shall any other person ride on a motorcycle, motor scooter or motor-driven cycle unless it is designated to carry more than one person. If a motorcycle, motor scooter or motor-driven cycle is designed to carry more than one person, the passenger may ride upon the permanent and regular seat if designed for two persons, or upon another seat firmly attached to the rear or side of the motorcycle, motor scooter or

motor-driven cycle. The passenger shall have his feet upon the footrests attached for passenger use. (NMSA 1978, § 66-7-355)

C. No person shall operate a motorcycle while carrying any package, bundle or other article which prevents him from keeping both hands on the handlebars.

D. No operator of a motorcycle shall carry any person nor shall any person ride in a position that will interfere with the operation or control of the motorcycle or the view of the operator.
(Ord. No. 2121, § VII, 7-19-04)

Sec. 27-12-7-5. Eye-protective devices or windshields.

Any person operating a motorcycle, motor scooter or motor-driven cycle, not having a fixed windshield of a type approved by regulation of the secretary, shall wear an eye-protective device which may be a faceshield attached to a safety helmet, goggles or safety eyeglasses. All eye-protective devices or windshields shall be of a type approved by regulations authorized by NMSA 1978, § 66-7-355. (NMSA 1978, § 66-7-355)
(Ord. No. 2121, § VII, 7-19-04)

Sec. 27-12-7-6. Mandatory use of protective helmet.

A. No person under the age of eighteen shall operate a motorcycle unless he is wearing a safety helmet securely fastened on his head in a normal manner as headgear and meeting the standards authorized by NMSA 1978, § 66-7-356. No dealer or person who leases or rents motorcycles shall lease or rent a motorcycle to a person under the age of 18 unless the lessee or renter shows such person a valid operator's license or permit and possesses the safety equipment required of an operator who is under the age of 18. No person shall carry any passenger under the age of eighteen on any motorcycle unless the passenger is wearing a securely fastened safety helmet, as specified in this section, meeting the standards specified by the director.

B. Failure to wear a safety helmet as required in this section shall not constitute contributory negligence. (NMSA 1978, § 66-7-356)
(Ord. No. 2121, § VII, 7-19-04)

Sec. 27-12-7-7. Footrests and handlebars.

Any motorcycle carrying a passenger, other than in a sidecar or enclosed cab, shall be equipped with footrests for the passenger.
(Ord. No. 2121, § VII, 7-19-04)

Sec. 27-12-7-8. Motorcycle maneuverability.

A. No motorcycle shall be equipped in a manner such that it is incapable of turning a 90-degree angle with a circle having a radius of not more than 14 feet. Evidence of a motorcycle

being unable to turn a 90-degree angle within a circle having a radius of not more than 14 feet shall be prima facie evidence of an unsafe vehicle as described in section 27-12-10-1.1.

B. For the purposes of this section, a police officer may require the driver of a motorcycle to demonstrate the ability of any motorcycle to be ridden as described in subsection A of this section. Failure or refusal of any operator to demonstrate the ability of any motorcycle being operated upon the highways shall be prima facie evidence of an unsafe vehicle as described in section 27-12-10-1.1. (NMSA 1978, § 66-3-842)
(Ord. No. 2121, § VII, 7-19-04)

Sec. 27-12-7-9. Off-highway motor vehicles--Definitions.

As used in this section:

~~A. "Board" means the off-highway motor vehicle safety board;~~

~~B~~A. "Department" means the Department of Game and Fish;

~~C~~B. "Division" means the motor vehicle division of the Taxation and Revenue Department;

~~D~~C. "Fund" means the trail safety fund; and

~~E~~D. "Off-highway motor vehicle" means a motor vehicle designed by the manufacturer for operation exclusively off the highway or road and includes:

(1) "All-terrain vehicle," which means a motor vehicle 50 inches or less in width, having an unladen dry weight of 1,000 pounds or less, traveling on three or more low-pressure tires and having a seat designed to be straddled by the operator and handlebar-type steering control;

(2) "Off-highway motorcycle," which means a motor vehicle traveling on not more than two tires and having a seat designed to be straddled by the operator and that has handlebar-type steering control; or

(3) "Snowmobile," which means a motor vehicle designed to travel on snow or ice and steered and supported in whole or in part by skis, belts, cleats, runners or low-pressure tires;

(4) "Recreational off-highway vehicle," which means a motor vehicle designed for travel on four or more non-highway tires, for recreational use by one or more persons and having:

(a) A steering wheel for steering control;

(b) Non-straddle seating;

(c) Maximum speed capability greater than 35 miles per hour;

(d) Gross vehicle weight rating no greater than 1,750 pounds;

(e) Less than 80 inches in overall width, exclusive of accessories;

(f) Engine displacement of less than 1,000 cubic centimeters; and

(g) Identification by means of a 17-character vehicle identification number; or

(5) By rule of the department, any other vehicles that may enter the market that fit the general profile of vehicles operated off-highway for recreational purposes;

~~F~~E. "Staging area" means a parking lot, trailhead or other location to or from which an off-highway motor vehicle is transported so that it may be placed into operation or removed from operation; and

~~G~~F. "Unpaved public roadway" means a dirt graveled street or road that is constructed, signed and maintained for regular passenger-car use by the general public.
(Ord. No. 2121, § VII, 7-19-04; Ord. No. 2228, § VII, 8-15-05)

Sec. 27-12-7-9.1. Off-highway motor vehicles--Registration; plate requirement and definition.

Unless exempted from the provisions of this chapter, a person shall not operate an off-highway motor vehicle unless the off-highway motor vehicle has been registered in accordance with Chapter 66, Article 3 NMSA 1978. The owner shall affix the validating sticker as provided in Chapter 66, Article 3 NMSA 1978.
(Ord. No. 2121, § VII, 7-19-04; Ord. No. 2228, § VII, 8-15-05)
State Law References: Similar provisions NMSA 1978, § 66-3-1003.

Sec. 27-12-7-9.2. Operation of off-highway motor vehicles on streets or highways--Prohibited areas.

A. No person shall operate an off-highway motor vehicle on any limited access street at any time or any paved street or highway except as provided in subsection B of this section.

B. Off-highway motor vehicles may cross streets or highways, except limited access highways or freeways, if the crossings are made after coming to a complete stop prior to entering the street. Off-highway motor vehicles shall yield the right-of-way to oncoming traffic and shall begin a crossing only when it can be executed safely and then crossing in the most direct manner, as close to a perpendicular angle as possible.

C. A person shall not operate an off-highway motor vehicle on state game commission-owned, -controlled or -administered land except as specifically allowed pursuant to NMSA 1978, Chapter 17, Article 6.

D. A person shall not operate an off-highway motor vehicle on land owned, controlled or administered by the state parks division of the energy, minerals and natural resources department, pursuant to NMSA 1978, Chapter 16, Article 2, except in areas designated by and permitted by rules adopted by the secretary of energy, minerals and natural resources.

E. Unless authorized, a person shall not:

(1) Remove, deface or destroy any official sign installed by a state, federal, local or private land management agency; or

(2) Install any off-highway motor vehicle-related sign.
(Ord. No. 2121, § VII, 7-19-04; Ord. No. 2228, § VII, 8-15-05
State Law References: Similar provisions NMSA 1978, § 66-3-1011.

Sec. 27-12-7-9.3. Driving of off-highway motor vehicles adjacent to streets.

A. Off-highway motor vehicles issued a validating sticker or nonresident permit may be driven adjacent to a street, yielding to all vehicles entering or exiting the street, in a manner so as not to interfere with traffic upon the street, only for the purpose of gaining access to, or returning from areas designed for the operation of off-highway motor vehicles by the shortest route possible and when no other route is available or when the area adjacent to a street is being used as a staging area. Such use must occur between the street and fencing that separates the street from private or public lands.

B. When snow conditions permit, an off-highway motor vehicle may be operated on the right-hand side of a street, parallel, but not closer than ten feet, to the inside of the plow bank.
(Ord. No. 2121, § VII, 7-19-04; Ord. No. 2228, § VII, 8-15-05)
State Law References: Similar provisions NMSA 1978, § 66-3-1012.

Sec. 27-12-7-9.4. Operation of off-highway motor vehicles on private lands.

It is unlawful to operate an off-highway motor vehicle on private lands except with the express permission of the owner of the lands. (NMSA 1978, § 66-3-1013)
(Ord. No. 2121, § VII, 7-19-04)

Sec. 27-12-7-9.5. Accidents and accident reports.

The driver of an off-highway motor vehicle involved in an accident resulting in injuries to, or the death of, any person, or resulting in damage to public or private property to the extent of $500.00 or more, shall immediately notify law enforcement agency of the accident and the facts relating to the accident. If the driver is under the age of 18, the driver's parent or legal guardian shall immediately notify a law enforcement agency of the accident and the facts relating to the accident.
(Ord. No. 2121, § VII, 7-19-04; Ord. No. 2228, § VII, 8-15-05)
State Law References: Similar provisions NMSA 1978, § 66-3-1014.

Sec. 27-12-7-9.6. Enforcement of off-highway motor vehicle regulations.

Every police officer displaying his badge of office, has the authority to enforce the provisions of sections 27-12-7-9.1 through 27-12-7-9.5 of this chapter and may require the operator of any off-highway motor vehicle to produce the certificate of registration or nonresident permit, proof of successful completion of an off-highway motor vehicle training course conducted by an off-highway safety training organization approved and certified by the ~~board~~ department, when required by section 27-12-7-9.8 and the personal identification of the operator, and may issue citations for violations of the provisions of sections 27-12-7-9.1 through 27-12-7-9.5 of this chapter.
(Ord. No. 2121, § VII, 7-19-04; Ord. No. 2228, § VII, 8-15-05)
State Law References: Similar provisions NMSA 1978, § 66-3-1015.

Sec. 27-12-7-9.7. Exemptions.

The provisions of this section shall not apply to persons who operate off-highway motor vehicles on privately held lands or to off-highway motor vehicles that are:

A. Owned and operated by an agency or department of the United States, this state or a political subdivision of this state;

B. Operated exclusively on lands privately held; provided that the appropriate tax or fee has been paid in lieu of the motor vehicle registration fees;

C. Owned by nonresidents and used in this state only for organized and endorsed competition purposes; provided that the use is not on a rental basis;

D. Brought into this state by manufacturers or distributors for wholesale purposes and not used for demonstrations;

E. In the possession of dealers as stock-in-trade and not used for demonstration purposes;

F. Farm tractors, as defined in NMSA 1978, § 66-1-4.6, special mobile equipment, as defined in NMSA 1978, § 66-1-4.16, or off-highway motor vehicles being used for agricultural operations; or

G. Used exclusively on private closed courses, whether owned by the rider or another person; provided that, if applicable, the excise tax and registration fees have been paid and are current.

(Ord. No. 2228, § VII, 8-15-05)
State Law References: Similar provisions NMSA 1978, § 66-3-1005.

Sec. 27-12-7-9.8. Off-highway motor vehicle safety permit; requirements, issuance.

A person under the age of 18 shall be required to successfully complete an off-highway motor vehicle safety training course for which the person shall have parental permission. The

course shall be conducted by an off-highway motor vehicle safety training organization that is approved and certified by the ~~board~~ department. Upon successful completion of the course, the person shall receive an off-highway motor vehicle safety permit issued by the organization. (Ord. No. 2228, § VII, 8-15-05)

State Law References: Similar provisions NMSA 1978, § 66-3-1020.

Sec. 27-12-7-9.9. Operation and equipment--safety requirements.

A. A person shall not operate an off-highway motor vehicle:

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

(2) While under the influence of intoxicating liquor or drugs as provided by section 27-12-6-12.2;

(3) While in pursuit of and with intent to hunt or take a species of animal or bird protected by law unless otherwise authorized by the state game commission;

(4) In pursuit of or harassment of livestock in any manner that negatively affects the livestock's condition;

(5) On or within an earthen tank or other structure meant to water livestock or wildlife;

(6) In a manner that has a direct negative effect on or interferes with persons engaged in agricultural practices;

~~(4)~~(7) In excess of ten miles per hour within 200 feet of a business, animal shelter, horseback rider, bicyclist, pedestrian or occupied dwelling, unless the person operates the vehicle on a closed course or track;

~~(5)~~(8) Unless in possession of the person's registration certificate or nonresident permit;

~~(6)~~(9) Unless the vehicle is equipped with a spark arrester approved by the United States forest service; provided that a snowmobile is exempt from this provision;

~~(7)~~(10) When conditions such as darkness limit visibility to 500 feet or less, unless the vehicle is equipped with:

(a) One or more headlights of sufficient candlepower to light objects at a distance of 150 feet; and

(b) At least one taillight of sufficient intensity to exhibit a red or amber light at a distance of 200 feet under normal atmospheric conditions; or

~~(8)~~(11) That produces noise that exceeds 96 decibels when measured using test procedures established by the society of automotive engineers pursuant to standard J-1287.

(12) Where off-highway motor vehicle traffic is prohibited under local, state or federal rules or regulations.

B. A person under the age of 18 shall not operate an off-highway motor vehicle:

(1) Or ride upon an off-highway motor vehicle without wearing eye protection and a safety helmet that is securely fastened in a normal manner as headgear and that meets the standards established by the ~~board~~ department;

(2) Without an off-highway motor vehicle safety permit; or

(3) While carrying a passenger.

C. A person under the age of 18 but at least ten years of age shall not operate an off-highway motor vehicle unless the person is visually supervised at all times by a parent, legal guardian or a person over the age of 18 who has a valid driver's license. This subsection shall not apply to a person who is at least:

(1) Thirteen years of age and has a valid motorcycle license and off-highway motor vehicle safety permit; or

(2) Fifteen years of age and has a valid driver's license, instructional permit or provisional license and off-highway motor vehicle safety permit.

D. A person under the age of ten shall not operate an off-highway motor vehicle unless:

(1) The all-terrain vehicle or recreational off-highway vehicle is an age-appropriate size-fit vehicle established by rule of the ~~board~~ department; and

(2) The person is visually supervised at all times by a parent, legal guardian or instructor of a safety training course certified by the ~~board~~ department.

~~E. The requirements of subsections C and D of this section do not apply to a person who is part of an organized tour under the guidance or direction of a guide certified by the board.~~

~~F.~~E. An off-highway motor vehicle may not be sold or offered for sale if the vehicle produces noise that exceeds 96 decibels when measured using test procedures established by the society of automotive engineers pursuant to standard J-1287. This subsection shall not apply to an off-highway motor vehicle that is sold or offered for sale only for organized competition. (Ord. No. 2228, § VII, 8-15-05)

State Law References: Similar provisions NMSA 1978, § 66-3-1021.

Sec. 27-12-7-9.10. Penalties.

A. Unless the violation is declared a felony, a petty misdemeanor or a citation under the Motor Vehicle Code, a person who violates the provisions of this section is subject to a fine of not more than $300.00 or by imprisonment for not more than 90 days or both. A parent, guardian or custodian who causes or knowingly permits a child under the age of eighteen years to operate an off-highway motor vehicle in violation of the provisions of this Section is in violation of this Section and subject to the same penalty as the child operating the off-highway motor vehicle in violation of this section. (66-3-1020 NMSA 1987)

~~B. When a person is convicted of a crime committed while operating an off-highway motor vehicle, the court may order the person to complete a board-certified safety training course.~~
(Ord. No. 2228, § VII, 8-15-05)

Sec. 27-12-7-10. Mopeds--Standards--Operator requirements--Application of Motor Vehicle Code.

A. Mopeds shall comply with those motor vehicle safety standards deemed necessary and prescribed by the director of motor vehicles.

B. Operators of mopeds shall have in their possession while operating a moped a valid operator's or restricted operator's license of any class issued to them.

C. Except as provided in subsections A and B of this section, none of the provisions of the New Mexico Motor Vehicle Code or of this chapter relating to motor vehicles or motor-driven cycles as defined in these codes shall apply to a moped. (NMSA 1978, § 66-3-1101)
(Ord. No. 2121, § VII, 7-19-04)

AN ACT

RELATING TO MOTOR VEHICLES; AMENDING SECTIONS OF THE OFF-HIGHWAY MOTOR VEHICLE ACT TO PROVIDE FOR REGULATION OF THE OPERATION OF OFF-HIGHWAY VEHICLES TO ENSURE THEIR SAFE AND RESPONSIBLE OPERATION; AMENDING, REPEALING AND ENACTING SECTIONS OF THE NMSA 1978; PROVIDING PENALTIES; MAKING APPROPRIATIONS; DECLARING AN EMERGENCY.

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

Section 1. Section 66-3-1001.1 NMSA 1978 (being Laws 2005, Chapter 325, Section 1) is amended to read:

"66-3-1001.1. DEFINITIONS.--As used in the Off-Highway Motor Vehicle Act:

A. "board" means the off-highway motor vehicle advisory board;

B. "department" means the department of game and fish;

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

D. "fund" means the trail safety fund;

E. "off-highway motor vehicle" means a motor vehicle designed by the manufacturer for operation exclusively off the highway or road and includes:

(1) "all-terrain vehicle", which means a motor vehicle fifty inches or less in width, having an

1 unladen dry weight of one thousand pounds or less, traveling
2 on three or more low-pressure tires and having a seat
3 designed to be straddled by the operator and handlebar-type
4 steering control;
5 (2) "off-highway motorcycle", which means a
6 motor vehicle traveling on not more than two tires and having
7 a seat designed to be straddled by the operator and that has
8 handlebar-type steering control;
9 (3) "snowmobile", which means a motor
10 vehicle designed for travel on snow or ice and steered and
11 supported in whole or in part by skis, belts, cleats, runners
12 or low-pressure tires;
13 (4) "recreational off-highway vehicle",
14 which means a motor vehicle designed for travel on four or
15 more non-highway tires, for recreational use by one or more
16 persons, and having:
17 (a) a steering wheel for steering
18 control;
19 (b) non-straddle seating;
20 (c) maximum speed capability greater
21 than thirty-five miles per hour;
22 (d) gross vehicle weight rating no
23 greater than one thousand seven hundred fifty pounds;
24 (e) less than eighty inches in overall
25 width, exclusive of accessories;

1 (f) engine displacement of less than
2 one thousand cubic centimeters; and
3 (g) identification by means of a
4 seventeen-character vehicle identification number; or
5 (5) by rule of the department, any other
6 vehicles that may enter the market that fit the general
7 profile of vehicles operated off the highway for recreational
8 purposes;
9 F. "staging area" means a parking lot, trailhead
10 or other location to or from which an off-highway motor
11 vehicle is transported so that it may be placed into
12 operation or removed from operation; and
13 G. "unpaved public roadway" means a dirt graveled
14 street or road that is constructed, signed and maintained for
15 regular passenger-car use by the general public."
16 Section 2. Section 66-3-1004 NMSA 1978 (being Laws
17 1978, Chapter 35, Section 200, as amended) is amended to
18 read:
19 "66-3-1004. REGISTRATION CERTIFICATE AND NONRESIDENT
20 PERMIT FEES--RENEWAL--DISTRIBUTION OF FEES.--Fees shall be
21 collected and distributed as follows:
22 A. the fees for registering an off-highway motor
23 vehicle are:
24 (1) seventeen dollars ($17.00) for each
25 off-highway motor vehicle, of which five dollars ($5.00) is

1 appropriated to the division to defray the cost of making and
2 issuing registration certificates, validating stickers and
3 nonresident permits for off-highway motor vehicles. The
4 remaining twelve dollars ($12.00) shall be deposited in the
5 motor vehicle suspense fund for distribution pursuant to
6 Section 66-6-23 NMSA 1978; and
7 (2) an amount determined by rule of the
8 department not to exceed forty dollars ($40.00) for an
9 off-highway user fee for each off-highway motor vehicle,
10 which shall be distributed to the fund;
11 B. upon a change of ownership, the new owner shall
12 make application and pay registration fees of:
13 (1) seventeen dollars ($17.00) in the same
14 manner as provided by rules of the division for original
15 registration; and
16 (2) an amount determined by rule of the
17 department not to exceed forty dollars ($40.00) for an
18 off-highway user fee for each off-highway motor vehicle,
19 which shall be distributed to the fund;
20 C. except for an off-highway vehicle that is
21 currently in compliance with another state's off-highway
22 vehicle registration, user fee or similar law or rule
23 demonstrated by certificate of registration, permit or
24 similar evidence, the fees for a nonresident permit of an
25 off-highway motor vehicle are either:

1 (1) seventeen dollars ($17.00), of which
2 five dollars ($5.00) is appropriated to the division to
3 defray the cost of making and issuing registration
4 certificates, validating stickers and nonresident permits for
5 off-highway motor vehicles. The remaining twelve dollars
6 ($12.00) shall be deposited in the motor vehicle suspense
7 fund for distribution pursuant to Section 66-6-23 NMSA 1978,
8 and an amount determined by rule of the department not to
9 exceed forty dollars ($40.00) for each off-highway motor
10 vehicle, which shall be distributed to the fund; or
11 (2) seventeen dollars ($17.00) for a
12 ninety-day permit, of which five dollars ($5.00) is
13 appropriated to the division to defray the cost of making and
14 issuing registration certificates, validating stickers and
15 nonresident permits for off-highway motor vehicles. The
16 remaining twelve dollars ($12.00) shall be deposited in the
17 motor vehicle suspense fund for distribution pursuant to
18 Section 66-6-23 NMSA 1978;
19 D. except as provided in Paragraph (2) of
20 Subsection C of this section, each nonresident permit shall
21 be:
22 (1) good for two years after the month in
23 which the off-highway motor vehicle nonresident permit is
24 issued; and
25 (2) renewed every two years;

1 E. the off-highway user fee for each off-highway
2 motor vehicle shall be paid upon obtaining and renewing each
3 registration certificate or nonresident permit;
4 F. duplicate registration certificates and
5 nonresident permits shall be issued upon payment of a
6 seven-dollar-fifty-cent ($7.50) fee, which is appropriated to
7 the division to defray the cost of making and issuing
8 duplicate registration certificates and nonresident permits
9 for off-highway motor vehicles;
10 G. a fee of one dollar ($1.00) on registration
11 certificates and nonresident permits shall be collected for
12 the litter control and beautification fund; and
13 H. the department, in conjunction with other
14 agencies and departments, may establish and maintain sites to
15 collect fees and issue permits for residents and
16 nonresidents."
17 Section 3. Section 66-3-1010.1 NMSA 1978 (being Laws
18 2005, Chapter 325, Section 9) is amended to read:
19 "66-3-1010.1. OFF-HIGHWAY MOTOR VEHICLE SAFETY TRAINING
20 ORGANIZATION--APPROVAL AND CERTIFICATION.--
21 A. An off-highway motor vehicle safety training
22 organization that offers and conducts an off-highway motor
23 vehicle safety training course shall be approved and
24 certified by the department. Applicants for approval and
25 certification shall submit an application to the department

1 for consideration.

2 B. The department may approve and certify an
3 organization that meets the minimum criteria established by
4 the department for an off-highway motor vehicle safety
5 training organization. Each approval and certification shall
6 be renewed annually."

7 Section 4. Section 66-3-1010.2 NMSA 1978 (being Laws
8 2005, Chapter 325, Section 10) is amended to read:

9 "66-3-1010.2. OFF-HIGHWAY MOTOR VEHICLE SAFETY PERMIT--
10 REQUIREMENTS--ISSUANCE.--A person under the age of eighteen
11 shall be required to successfully complete an off-highway
12 motor vehicle safety training course for which the person
13 shall have parental permission. The course shall be
14 conducted by an off-highway motor vehicle safety training
15 organization that is approved and certified by the
16 department. Upon successful completion of the course, the
17 person shall receive an off-highway motor vehicle safety
18 permit issued by the organization."

19 Section 5. Section 66-3-1010.3 NMSA 1978 (being Laws
20 2005, Chapter 325, Section 11) is amended to read:

21 "66-3-1010.3. OPERATION AND EQUIPMENT--SAFETY
22 REQUIREMENTS.--

23 A. A person shall not operate an off-highway motor
24 vehicle:

25 (1) in a careless, reckless or negligent

1 manner so as to endanger the person or property of another;
2 (2) while under the influence of
3 intoxicating liquor or drugs as provided by Section 66-8-102
4 NMSA 1978;
5 (3) while in pursuit of and with intent to
6 hunt or take a species of animal or bird protected by law
7 unless otherwise authorized by the state game commission;
8 (4) in pursuit of or harassment of livestock
9 in any manner that negatively affects the livestock's
10 condition;
11 (5) on or within an earthen tank or other
12 structure meant to water livestock or wildlife, unless the
13 off-highway motor vehicle is on a route designated by the
14 landowner or land management agency as an off-highway motor
15 vehicle route;
16 (6) in a manner that has a direct negative
17 effect on or interferes with persons engaged in agricultural
18 practices;
19 (7) in excess of ten miles per hour within
20 two hundred feet of a business, animal shelter, horseback
21 rider, bicyclist, pedestrian, livestock or occupied dwelling,
22 unless the person operates the vehicle on a closed course or
23 track;
24 (8) unless in possession of the person's
25 registration certificate or nonresident permit;

1 (9) unless the vehicle is equipped with a
2 spark arrester approved by the United States forest service;
3 provided that a snowmobile is exempt from this provision;
4 (10) when conditions such as darkness limit
5 visibility to five hundred feet or less, unless the vehicle
6 is equipped with:
7 (a) one or more headlights of
8 sufficient candlepower to light objects at a distance of one
9 hundred fifty feet; and
10 (b) at least one taillight of
11 sufficient intensity to exhibit a red or amber light at a
12 distance of two hundred feet under normal atmospheric
13 conditions;
14 (11) that produces noise that exceeds
15 ninety-six decibels when measured using test procedures
16 established by the society of automotive engineers pursuant
17 to standard J-1287; or
18 (12) where off-highway motor vehicle traffic
19 is prohibited under local, state or federal rules or
20 regulations.
21 B. A person under the age of eighteen shall not
22 operate an off-highway motor vehicle:
23 (1) or ride upon an off-highway motor
24 vehicle without wearing eye protection and a safety helmet
25 that is securely fastened in a normal manner as headgear and

1 that meets the standards established by the department;
2 (2) without an off-highway motor vehicle
3 safety permit; or
4 (3) while carrying a passenger.
5 C. A person under the age of eighteen but at least
6 ten years of age shall not operate an off-highway motor
7 vehicle unless the person is visually supervised at all times
8 by a parent, legal guardian or a person over the age of
9 eighteen who has a valid driver's license. This subsection
10 shall not apply to a person who is at least:
11 (1) thirteen years of age and has a valid
12 motorcycle license and off-highway motor vehicle safety
13 permit; or
14 (2) fifteen years of age and has a valid
15 driver's license, instructional permit or provisional license
16 and off-highway motor vehicle safety permit.
17 D. A person under the age of ten shall not operate
18 an off-highway motor vehicle unless:
19 (1) the all-terrain vehicle or recreational
20 off-highway vehicle is an age-appropriate size-fit vehicle
21 established by rule of the department; and
22 (2) the person is visually supervised at all
23 times by a parent, legal guardian or instructor of a safety
24 training course certified by the department.
25 E. An off-highway motor vehicle shall not be sold

1 or offered for sale if the vehicle produces noise that
2 exceeds ninety-six decibels when measured using test
3 procedures established by the society of automotive engineers
4 pursuant to standard J-1287. This subsection shall not apply
5 to an off-highway motor vehicle that is sold or offered for
6 sale only for organized competition."
7 Section 6. Section 66-3-1010.5 NMSA 1978 (being Laws
8 2005, Chapter 325, Section 13) is amended to read:
9 "66-3-1010.5. REQUIREMENTS OF DEALERS TO DISTRIBUTE
10 SAFETY INFORMATION.--A dealer selling off-highway motor
11 vehicles shall distribute information provided by the
12 department to off-highway motor vehicle purchasers on state
13 laws, environmental and cultural considerations, customs,
14 safety requirements, training programs, operating
15 characteristics and potential risk of injury associated with
16 off-highway motor vehicles."
17 Section 7. Section 66-3-1011 NMSA 1978 (being Laws
18 1975, Chapter 240, Section 11, as amended) is amended to
19 read:
20 "66-3-1011. OPERATION ON STREETS OR HIGHWAYS--
21 PROHIBITED AREAS.--
22 A. A person shall not operate an off-highway motor
23 vehicle on any:
24 (1) limited access highway or freeway at any
25 time; or

1 (2) any paved street or highway except as
2 provided in Subsection B of this section.
3 B. Off-highway motor vehicles may cross streets or
4 highways, except limited access highways or freeways, if the
5 crossings are made after coming to a complete stop prior to
6 entering the roadway. Off-highway motor vehicles shall yield
7 the right of way to oncoming traffic and shall begin a
8 crossing only when it can be executed safely and then cross
9 in the most direct manner as close to a perpendicular angle
10 as possible.
11 C. A person shall not operate an off-highway motor
12 vehicle on state game commission-owned, -controlled or
13 -administered land except as specifically allowed pursuant to
14 Chapter 17, Article 6 NMSA 1978.
15 D. A person shall not operate an off-highway motor
16 vehicle on land owned, controlled or administered by the
17 state parks division of the energy, minerals and natural
18 resources department, pursuant to Chapter 16, Article 2 NMSA
19 1978, except in areas designated by and permitted by rules
20 adopted by the secretary of energy, minerals and natural
21 resources.
22 E. Unless authorized, a person shall not:
23 (1) remove, deface or destroy any official
24 sign installed by a state, federal, local or private land
25 management agency; or

1 (2) install any off-highway motor
2 vehicle-related sign."
3 Section 8. Section 66-3-1015 NMSA 1978 (being Laws
4 1978, Chapter 35, Section 211, as amended) is amended to
5 read:
6 "66-3-1015. ENFORCEMENT.--A wildlife conservation
7 officer, state police officer or peace officer of this state
8 or any of its political subdivisions, upon displaying the
9 officer's badge of office, has the authority to enforce the
10 provisions of the Off-Highway Motor Vehicle Act and may:
11 A. require an off-highway motor vehicle operator
12 to produce:
13 (1) the registration certificate or
14 nonresident permit;
15 (2) proof of successful completion of an
16 off-highway motor vehicle training course conducted by an
17 off-highway safety training organization approved and
18 certified by the department, when required by Section
19 66-3-1010.2 NMSA 1978; and
20 (3) the personal identification of the
21 operator; and
22 B. issue citations for violations of the
23 provisions of the Off-Highway Motor Vehicle Act."
24 Section 9. Section 66-3-1017 NMSA 1978 (being Laws
25 2005, Chapter 325, Section 19) is amended to read:

1 "66-3-1017. OFF-HIGHWAY MOTOR VEHICLE ADVISORY BOARD
2 CREATED--MEMBERS--COMPENSATION.--
3 A. The "off-highway motor vehicle advisory board"
4 is created to advise the department on matters related to
5 administration of the Off-Highway Motor Vehicle Act. The
6 board shall consist of the following seven members appointed
7 by the governor:
8 (1) one landowner living near a national
9 forest or bureau of land management property that is used
10 extensively for recreational off-highway vehicle activity;
11 (2) one producer or one grazing permittee on
12 public lands from the farming or livestock industry;
13 (3) one person from the off-highway motor
14 vehicle industry;
15 (4) one off-highway motor vehicle user;
16 (5) one hunter or angler;
17 (6) one quiet recreationalist, such as a
18 hiker, backpacker, birdwatcher, equestrian, mountain biker,
19 rock climber or archaeological enthusiast; and
20 (7) one member with expertise in injury
21 prevention or treatment.
22 B. The board shall select a chair and a vice
23 chair.
24 C. The board shall meet at the call of the chair
25 but not less than twice annually.

1 D. Members shall be appointed to staggered terms
2 of two years each; provided that no more than four terms
3 expire in any one year. The board members shall select by
4 lot four members to serve initial terms of three years each.
5 A vacancy shall be filled by appointment of the governor for
6 the remainder of the unexpired term. Members of the board
7 shall be entitled to reimbursement pursuant to the Per Diem
8 and Mileage Act."
9 Section 10. Section 66-3-1018 NMSA 1978 (being Laws
10 2005, Chapter 325, Section 20) is amended to read:
11 "66-3-1018. DEPARTMENT--POWERS AND DUTIES.--
12 A. The department shall cooperate with appropriate
13 federal agencies, public and private organizations and
14 corporations and local government units to implement the
15 provisions of the Off-Highway Motor Vehicle Act.
16 B. The department:
17 (1) shall accept and evaluate all
18 applications for approval and certification of an off-highway
19 motor vehicle safety training organization and approve and
20 certify those that meet the minimum criteria;
21 (2) shall notify the division of the
22 off-highway motor vehicle safety training organizations that
23 have received approval and certification;
24 (3) shall establish and revise as
25 appropriate minimum criteria to approve and certify an

1 off-highway motor vehicle safety training organization. The
2 criteria shall include requirements for curriculum and
3 materials for:
4 (a) training instructors to teach
5 off-highway motor vehicle safety;
6 (b) training the public about
7 off-highway motor vehicle safety and age-appropriate size-fit
8 use of off-highway motor vehicles; and
9 (c) teaching responsible use of
10 off-highway motor vehicles with respect to environmental
11 considerations, private property restrictions, agricultural
12 and rural lifestyles and cultural considerations, off-highway
13 motor vehicle operating laws and prohibitions against
14 operating off-highway motor vehicles under the influence of
15 alcohol or drugs;
16 (4) shall implement a state off-highway
17 motor vehicle safety training and certification program;
18 (5) shall adopt and promulgate rules
19 regarding the:
20 (a) age-appropriate size-fit use of
21 all-terrain vehicles or recreational off-highway motor
22 vehicles;
23 (b) acceptance or accreditation of
24 instruction or safety courses provided by other states; and
25 (c) standards covering the

1 specifications of eye protection and safety helmets;
2 (6) may recommend, with public participation
3 and input, off-highway motor vehicle park, facility and trail
4 locations to the state, county, tribal or local governing
5 body or private entity that owns or administers the land upon
6 which the park, facility or trail is located. The department
7 shall establish criteria to recommend locations that include
8 consideration of off-highway motor vehicle operating laws and
9 effects on:
10 (a) wildlife and the environment;
11 (b) adjacent state, county, federal,
12 tribal and private property;
13 (c) other recreational and
14 nonrecreational uses on the same or adjacent lands; and
15 (d) archaeological, cultural and
16 historic resources and customs;
17 (7) shall recommend restoration or, if
18 deemed necessary, closure of off-highway motor vehicle tracks
19 or trails to the state, county, tribal or local governing
20 body or private entity that owns or administers the land upon
21 which the tracks or trails are located if they pose
22 significant or irreversible environmental damage, a danger to
23 users or a public nuisance as determined by the department.
24 The department shall consider the construction of alternative
25 tracks or trails as part of the closure process;

1 (8) shall accept and evaluate all
2 applications for grants from the fund for implementation of
3 the provisions of the Off-Highway Motor Vehicle Act. The
4 department shall establish criteria for grants from the fund
5 that include consideration of the:
6 (a) applicant's financial and legal
7 status;
8 (b) applicant's management plan,
9 including specific measures to avoid or minimize
10 environmental damage to public and private lands and danger
11 to users and spectators;
12 (c) operating budget for the park,
13 trail, facility or staging area;
14 (d) availability of matching funds; and
15 (e) public participation and input;
16 (9) shall certify tour guides;
17 (10) shall prepare a management plan that
18 accomplishes the purposes of the Off-Highway Motor Vehicle
19 Act in a cost-effective manner and relies on existing
20 agencies' available funding with specific qualifications for
21 program implementation, which shall include joint powers
22 agreements with the department of public safety and other law
23 enforcement agencies for law enforcement and other agencies
24 as appropriate for carrying out the provisions of the
25 Off-Highway Motor Vehicle Act;

1 (11) shall develop and implement an overall
2 enforcement strategy for the entire state that includes:
3 (a) cooperation with federal, state and
4 local law enforcement agencies to provide training and
5 educational materials related to off-highway motor vehicle
6 use;
7 (b) coordination efforts related to
8 off-highway motor vehicle use with participating law
9 enforcement agencies;
10 (c) developing strategies for
11 addressing and mininizing impacts on farmers and ranchers in
12 rural agricultural areas, on hunters and anglers and on
13 non-motorized recreationalists by off-highway motor vehicle
14 use; and
15 (d) using law enforcement DUI-type
16 "blitzes" in heavily used areas, staging areas or other
17 problem areas;
18 (12) shall develop and implement an overall
19 educational strategy for the entire state that:
20 (a) incorporates materials developed by
21 the United States department of agriculture forest service
22 program that teaches trail etiquette and respect for natural
23 resources;
24 (b) includes the development of New
25 Mexico-specific written, video or other educational materials

1 and educational programs that address the impact of
2 off-highway motor vehicles on traditional living culture,
3 agricultural land and private property; and
4 (c) includes the development and
5 maintenance of a web site containing rules and regulations,
6 safety information and educational material relating to
7 resource protection and the impact of off-highway motor
8 vehicles on traditional living culture, agricultural land and
9 historical sites;
10 (13) shall develop an overall strategy for
11 phased implementation of an information system to track
12 information, such as use patterns, injury data, ecological
13 data, natural resource data and data relating to the impact
14 of off-highway motor vehicles on traditional living culture
15 and on agricultural land. The strategy shall include:
16 (a) identification and implementation
17 of appropriate data collecting mechanisms, such as a
18 toll-free number or a web-based data collecting process; and
19 (b) development of an information
20 system program capable of interfacing with existing
21 government and private databases or other information
22 systems;
23 (14) may implement noise enforcement by the
24 testing of sound levels of off-highway motor vehicles at the
25 time of registration and equip law enforcement officers with

1 sound meters for field testing of sound levels;
2 (15) may contract with government or
3 quasi-government agencies to conduct analysis of the impact
4 of off-highway motor vehicle use on forests, rangeland and
5 other natural resources and use the data obtained to make
6 recommendations to the appropriate land management agency;
7 (16) shall review the definition of
8 "off-highway motor vehicle" as needed to include new classes
9 of off-highway motor vehicles as they become available in the
10 marketplace;
11 (17) shall, in cooperation with the
12 division, determine the size, composition, attachment
13 mechanism, letter or number height and other properties of
14 off-highway motor vehicle identification. This
15 identification may be a traditional license plate, stick-on
16 lettering as used for boat identification or another form of
17 identification that is visible and readable;
18 (18) shall present its semiannual plans and
19 progress to the advisory board for the board's input and
20 response; and
21 (19) may collaborate with the appropriate
22 land agencies to develop criteria for signage relating to
23 off-road motor vehicle use, including the size, visibility,
24 graphics and frequency of signage."
25 Section 11. Section 66-3-1019 NMSA 1978 (being Laws

1 2005, Chapter 325, Section 21) is amended to read:
2 "66-3-1019. FUND CREATED--DISPOSITION.--
3 A. The "trail safety fund" is created in the state
4 treasury. The fund is a nonreverting fund and consists of
5 revenues from off-highway motor vehicle registration and user
6 fees, grants and donations. No more than thirty percent of
7 the fund may be used for administrative overhead, and at
8 least fifty percent shall be devoted to law enforcement and
9 education. Income from investment of the fund shall be
10 credited to the fund. The fund shall be administered by the
11 department, and money in the fund is appropriated to the
12 department to carry out the purposes of the Off-Highway Motor
13 Vehicle Act. Expenditures from the fund shall be by warrant
14 of the secretary of finance and administration upon vouchers
15 signed by the director of the department of game and fish or
16 the director's authorized representative.
17 B. The department shall make annual distributions
18 from the fund for the following purposes:
19 (1) administrative;
20 (2) law enforcement;
21 (3) education and training;
22 (4) information system development and
23 management;
24 (5) resource monitoring and protection and
25 trail building, maintenance and restoration; and

1 (6) implementation of other provisions of
2 the Off-Highway Motor Vehicle Act."
3 Section 12. Section 66-3-1020 NMSA 1978 (being Laws
4 2005, Chapter 325, Section 22) is amended to read:
5 "66-3-1020. PENALTIES.--
6 A. A person who violates the provisions of the
7 Off-Highway Motor Vehicle Act is guilty of a penalty
8 assessment misdemeanor. A parent, guardian or custodian who
9 causes or knowingly permits a child under the age of eighteen
10 years to operate an off-highway motor vehicle in violation of
11 the provisions of the Off-Highway Motor Vehicle Act is in
12 violation of that act and subject to the same penalty as the
13 child operating the off-highway motor vehicle in violation of
14 that act.
15 B. As used in the Off-Highway Motor Vehicle Act,
16 "penalty assessment misdemeanor" means violation of any
17 provision of the Off-Highway Motor Vehicle Act for which a
18 violator may be subject to the following:

CLASS 1 VIOLATIONS	SECTION VIOLATED	PENALTY ASSESSMENT
failure to possess a registration certificate or nonresident permit	66-3-1010.3	$10.00

19
20
21
22
23
24
25 violations involving

headlights or taillights	66-3-1010.3	10.00
failure to possess an off-highway motor vehicle safety permit	66-3-1010.3	10.00
selling a vehicle that produces noise in excess of ninety-six decibels	66-3-1010.3	10.00
any violation of the Off-Highway Motor Vehicle Act not otherwise specifically defined elsewhere in this section	66-3-1010.3	10.00
CLASS 2 VIOLATIONS	SECTION VIOLATED	PENALTY ASSESSMENT
failure to complete a required off-highway motor vehicle safety training course	66-3-1010.2	$50.00
operating a vehicle in excess of ten miles per hour within two hundred feet of a business, animal shelter, horseback rider, bicyclist, pedestrian, livestock or occupied dwelling	66-3-1010.3	50.00
a person under the age of eighteen but at least		

fifteen years of age who operates an off-highway motor vehicle in violation of the supervision requirements of the Off-Highway Motor Vehicle Act	66-3-1010.3	50.00
operating an off-highway motor vehicle that produces noise that exceeds ninety-six decibels	66-3-1010.3	50.00
unauthorized installation, removal, destruction or defacing of a motor vehicle sign	66-3-1011	50.00
CLASS 3 VIOLATIONS	SECTION VIOLATED	PENALTY ASSESSMENT
operating a vehicle that is not equipped with an approved spark arrester	66-3-1010.3	$100.00
operating an off-highway motor vehicle while in pursuit of and with intent to hunt or take a species of animal or bird protected by law, unless		

otherwise authorized by the state game commission	66-3-1010.3	100.00
operating an off-highway motor vehicle in pursuit of or harassment of livestock in any manner that negatively affects the livestock's condition	66-3-1010.3	100.00
operating an off-highway motor vehicle on or within an earthen tank or other structure meant to water livestock or wildlife	66-3-1010.3	100.00
operating a motor vehicle in a manner that has a direct negative effect on or interferes with persons engaged in agricultural practices	66-3-1010.3	100.00
a person under the age of eighteen operating an off-highway motor vehicle without wearing eye protection and a safety helmet	66-3-1010.3	100.00

a person under the age of eighteen operating an off-highway motor vehicle while carrying a passenger	66-3-1010.3	100.00
a person under the age of fifteen but at least ten years of age who operates an off-highway motor vehicle in violation of the supervision requirements of the Off-Highway Motor Vehicle Act	66-3-1010.3	100.00
a person under the age of ten operating an all-terrain vehicle or recreational off-highway motor vehicle that is not an age-appropriate size-fit or who operates an off-highway motor vehicle in violation of the supervision requirements of this section	66-3-1010.3	100.00

CLASS 4 VIOLATIONS	SECTION VIOLATED	PENALTY ASSESSMENT
operating an off-highway motor vehicle in a		

careless, reckless or negligent manner so as to endanger the person or property of another	66-3-1010.3	$200.00
operating an off-highway motor vehicle on any road or area closed to off-highway motor vehicle traffic under local, state or federal regulations	66-3-1010.3	200.00
operating an off-highway motor vehicle on a limited-access highway or freeway.	66-3-1011	200.00.

C. The penalty for second, third and subsequent violations within a three-year time period shall be increased as follows:

(1) a second violation in a class 1 penalty category involving failure to possess a registration certificate or nonresident permit shall be increased to a class 2 penalty category;

(2) any class 2 or class 3 violation for a second or greater infraction within a three-year period shall be increased to the next-highest penalty assessment category; and

1 (3) each subsequent violation in a class 4
2 penalty category will result in an additional penalty of two
3 hundred dollars ($200).
4 D. Multiple violations for the same incident shall
5 be treated as a single event and shall not result in
6 graduated penalties.
7 E. The term "penalty assessment misdemeanor" does
8 not include a violation that has caused or contributed to the
9 cause of an accident resulting in injury or death to a
10 person.
11 F. When an alleged violator of a penalty
12 assessment misdemeanor elects to accept a notice to appear in
13 lieu of a notice of penalty assessment, a fine imposed upon
14 later conviction shall not exceed the penalty assessment
15 established for the particular penalty assessment
16 misdemeanor, and probation imposed upon a suspended or
17 deferred sentence shall not exceed ninety days."
18 Section 13. A new section of the Off-Highway Motor
19 Vehicle Act is enacted to read:
20 "LEGISLATIVE OVERSIGHT.--In addition to reporting to the
21 legislative finance committee pursuant to the performance
22 review and budgeting process, the department shall report to
23 the appropriate interim committee appointed by the New Mexico
24 legislative council on the status of implementation of the
25 Off-Highway Motor Vehicle Act. The department shall report

1 to the appropriate committee of the legislature on the status
2 of existing and proposed rules and relevant enforcement
3 issues."
4 Section 14. TEMPORARY PROVISION--TRANSFER OF PERSONNEL,
5 PROPERTY, CONTRACTS, RECORDS AND APPROPRIATIONS.--On
6 July 1, 2009, all records, personnel, appropriations, money,
7 equipment, supplies and other property of the tourism
8 department pursuant to administration and enforcement of the
9 Off-Highway Motor Vehicle Act shall be transferred to the
10 department of game and fish and all contracts pursuant to the
11 Off-Highway Motor Vehicle Act shall be binding and effective
12 on the department of game and fish.
13 Section 15. REPEAL.--Sections 66-3-1004.1 and 66-3-1016
14 NMSA 1978 (being Laws 2005, Chapter 325, Section 4 and Laws
15 1978, Chapter 35, Section 212, as amended) are repealed.
16 Section 16. EMERGENCY.--It is necessary for the public
17 peace, health and safety that this act take effect
18 immediately.
19
20
21
22
23
24
25