

HOUSE No. 4747

The Commonwealth of Massachusetts

In the Year Two Thousand Ten

An Act regulating the use of off-highway and recreation vehicles..

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 Said chapter 90B is hereby amended by inserting after section 28, as so appearing, the
2 following 2 sections:-

3 Section 28A. Notwithstanding section 28, upon conviction of, or adjudication of
4 delinquency by reason of a violation of subsections (c) to (e), inclusive, of section 26B the
5 registrar shall immediately suspend the operator's license or right to operate a motor vehicle and
6 the director shall revoke the registration of any snow vehicle or recreation vehicle issued to such
7 person. The registrar, after having suspended or revoked the license or right to operate of a
8 person pursuant to this section, shall issue a new license or reinstate the right to operate of such
9 person if the prosecution or adjudication of such person is terminated in favor of the defendant or
10 juvenile and the director shall issue a new registration number if a vehicle was registered to such
11 person. The registrar may, after an investigation or upon a hearing, issue a new license or
12 reinstate the right to operate and the director may issue a new snow vehicle or recreation vehicle
13 registration number to a person convicted or adjudicated delinquent for a violation of said
14 subsections (c) to (e), inclusive, of said section 26B ; provided, however, that no such license,

15 right to operate or registration shall be reinstated by the registrar or issued by the director to any
16 person so convicted or adjudicated delinquent by reason of said subsection (c) or (d) of said
17 section 26B until 1 year after the date of suspension or revocation following his original
18 conviction or adjudication of delinquency if for a first offense or until 2 years after the date of
19 suspension or revocation if for a subsequent conviction or adjudication of delinquency, or to any
20 person convicted of or adjudicated delinquent by reason of subsection (e) of said section 26B
21 until 5 years after the date of suspension or revocation following his original conviction or
22 adjudication if for a first offense, or until 15 years after the date of suspension or revocation if
23 for a subsequent conviction or adjudication.

24 If the person so convicted or adjudicated is under age 17 at the time of a conviction or
25 adjudication of delinquency under subsections (c) to (e), inclusive, of section 26B, inclusive, and
26 he has not been issued a license or right to operate or has not been issued a snow vehicle or
27 recreation vehicle registration number, neither the registrar nor the director shall issue such
28 license or right to operate a motor vehicle or a snow vehicle or recreation vehicle registration
29 until the time periods provided in the previous paragraph have passed and calculation of such
30 time period shall not commence to run until such person reaches age 16 for purposes of issuance
31 of a right to operate a motor vehicle and 16 and one-half for purposes of issuance of a license to
32 operate a motor vehicle and for issuance of a snow vehicle or recreation vehicle registration
33 number.

34 Section 28B. Notwithstanding section 28, upon conviction of, or adjudication of
35 delinquency by reason of a violation of section 26A, the registrar shall immediately suspend the
36 operator's license or right to operate a motor vehicle and the director shall revoke the registration
37 of any snow vehicle or recreation vehicle issued to such person. The registrar, after having

suspended or revoked the license or right to operate of any person under this section, shall issue a new license or reinstate the right to operate and the director shall issue a new registration number, if the prosecution or adjudication of delinquency of such person is terminated in favor of the defendant or juvenile. The registrar may, after an investigation or upon hearing, issue a new license or reinstate the right to operate and the director may issue a new snow vehicle or recreation vehicle registration number to a person so convicted of or adjudicated delinquent by means of a violation of said section 26A; provided, however, that no such license or right to operate shall be issued by the registrar nor shall a registration number be issued by the director to a person convicted of a violation of subsection (a) of said section 26A, for a first offense, until 1 year after the date of suspension or revocation following his original conviction, or from the date of his original conviction if the person is unlicensed or has not been issued the right to operate or, for a subsequent offense, until 2 years after the date of such suspension, revocation or conviction , or to any person convicted of or adjudicated delinquent for a violation of subsection (b) of said section 26A, for a first offense, until 2 years after the date of suspension or revocation or, if the person is unlicensed or has not been issued a right to operate, until 2 years after the date of his original conviction or adjudication or, for a subsequent offense, until 3 years after the date of such suspension, revocation, conviction or adjudication; provided, however, that a person whose license or right to operate was suspended due to a conviction of said subsection (a) of said section 26A may, after the expiration of 3 months from the date of conviction, apply for and shall be granted a hearing before the registrar for the purpose of requesting the issuance of a new license for employment or educational purposes, which license shall be effective for not more than an identical 12-hour period every day on the grounds of hardship and a showing by the person that the causes of the present and past violations have been dealt with or brought under

61 control, and the registrar may, in his discretion, issue such license or right to operate under such
62 terms and conditions as he deems appropriate and necessary; and provided further, that such
63 person may, after the expiration of 6 months from the date of conviction, apply for and shall be
64 granted a hearing before the registrar for the purpose of requesting the issuance of a new license
65 or right to operate on a limited basis on the grounds of hardship and a showing by the person that
66 the causes of the present and past violations have been dealt with or brought under control and
67 the registrar may, in his discretion, issue such a license or right to operate under such terms and
68 conditions as he deems appropriate and necessary.

69 If the person so convicted or adjudicated is under age 17 at the time of such conviction or
70 adjudication and has not been issued a license or right to operate or a snow vehicle or recreation
71 vehicle registration number, the registrar shall not issue such license or right to operate a motor
72 vehicle and the director shall not issue a snow or recreation vehicle registration until the time
73 periods provided in the previous paragraph have passed but the calculation of such time period
74 shall not commence until such person reaches age 16 for purposes of issuance of a right to
75 operate a motor vehicle and 16 and one-half for purposes of issuance of a license to operate a
76 motor vehicle and for issuance of a snow vehicle or recreation vehicle registration number.

77 SECTION 16. The first paragraph of section 32 of said chapter 90B, as so appearing, is
78 hereby amended by striking out the first and second sentences and inserting in place thereof the
79 following sentence:- Sections 21 to 34, inclusive, and the rules and regulations promulgated
80 thereunder shall be enforced by law enforcement officers; provided, however, that any
81 investigation, arrest or decision to seek application for complaint relative to a violation of
82 subsections (c) to (e), inclusive, of section 26B shall be executed by a law enforcement officer

who has successfully completed minimum training requirements for the enforcement of such sections as determined by the secretary of public safety and security.

SECTION 17. Said chapter 90B is hereby further amended by striking out section 34, as so appearing and inserting in place thereof the following section:-

Section 34. Whoever violates any provision of sections 21 to 24, inclusive, or any rule or regulation made thereunder, shall be punished by a fine of not less than \$250 nor more than \$500.

Whoever violates subsections (e) to (h), inclusive, of section 26 shall be punished by a fine of not less than \$250 nor more than \$1,000.

Whoever violates any provision of section 25 or subsections (a) to (d), inclusive, of section 26 shall be punished for a first offense, by a fine of \$250, and for a second or subsequent offense, by a fine of not less than \$500 nor more than \$2,500, and the snow vehicle or recreation vehicle in use at the time of such second or subsequent offense shall be subject to forfeiture under section 26C.

SECTION 18. Said chapter 90B is hereby further amended by striking out section 35, as so appearing, and inserting in place thereof the following section:-

Section 35. Notwithstanding the provisions relative to the distribution of fines, penalties and forfeitures in section 10G of chapter 21A to the contrary, of the fines collected by the commonwealth pursuant to a violation of the fourth paragraph of section 10H of chapter 21A and section 21 and sections 24 to 32, inclusive, 75 per cent shall be deposited into the Off-Highway Vehicle Program Fund, established in section 35OO of chapter 10, and the remaining 25 per cent

shall be distributed equally among the divisions, departments or offices involved in the enforcement of the laws which resulted in the assessment of such fines.

SECTION 19. Section 121A of chapter 266 of the General Laws, as so appearing, is hereby amended by striking out, in line 6, the words “two hundred and fifty dollars” and inserting in place thereof the following figure:- \$500.

SECTION 20. Notwithstanding any general or special law to the contrary, in making initial appointments to the off-highway vehicle advisory committee established pursuant to section 23 of chapter 21A, added by section 4 of this act, the secretary of energy and environmental affairs shall appoint 4 members to serve for a term of 1 year, 4 members to serve for a term of 2 years and 5 members to serve for a term of 3 years.

SECTION 21. The director of law enforcement in the executive office of energy and environmental affairs may, after consultation with the off-highway vehicle advisory committee and a public hearing, promulgate regulations consistent with this act including, but not limited to, increasing the age at which persons may operate all-terrain vehicles or regulating the engine size and speed capabilities of such vehicles, based on the age of the operator.

SECTION 22. On or before February 1, 2011, the director of law enforcement in the executive office of energy and environmental affairs shall amend the regulations of the division that are inconsistent with this act.

SECTION 23. On or before November 1, 2010, the director of law enforcement in the executive office of energy and environmental affairs shall prescribe forms for application for registration fee exemption for vehicles used exclusively for agricultural, forestry, lumbering or construction purposes under section 22 of chapter 90B of the General Laws.

SECTION 24. On or before November 1, 2010, the director of law enforcement in the executive office of energy and environmental affairs shall adopt minimum training requirements for law enforcement officers, except state and municipal police officers, as required by section 32 of chapter 90B of the General Laws.

SECTION 25. Section 7 shall take effect on February 1, 2011; provided, however, that no operator of a snow vehicle or recreation vehicle shall be assessed a penalty for violation of section 22 of chapter 90B of the General Laws until May 1, 2011.

SECTION 26. The provisions of subsections (b) and (c) of section 26B of chapter 90B of the General Laws prohibiting an operator of a snow vehicle or recreation vehicle from leaving the scene after causing injury to property or to a person without making known his registration number shall take effect on February 1, 2011. Nothing in this section shall affect the prohibition in said subsections (b) and (c) of said section 26B of said chapter 90B against an operator leaving the scene after causing injury to property or to a person without stopping and making known his name, address and registration number on or after October 1, 2010.

SECTION 27. Chapter 242 of the General Laws, as appearing in the 2000 Official Edition, is hereby amended by inserting after section 7A thereof the following new section:—

Section 7B. Field crop product and agricultural property destruction.

(a) Any person operating an off-highway or recreational vehicle who damages or destroys a field crop product and agricultural property situated on the land of another shall be liable to the owner of such product in tort.

(b) A party recovering judgment under this section shall be entitled to an award of damages in an amount up to, but not greater than, three times the amount assessed for the removal, damage or destruction of the farm crop product and agricultural property, plus attorney fees and litigation costs. In assessing damages under this subsection, the courts shall consider the market value of the field crop product and agricultural property prior to its removal, damage or destruction, and all costs directly related to the production, research, testing, replacement and development of the field crop product and agricultural property.

(c) Damages awarded under this section shall not limit remedies available under chapter 266 or under any other applicable local, state or federal laws.

(d) Liability under this section shall not apply to any federal, state or local government agency, including the department of agricultural resources, or to any employee of any such agency acting in the course of their employment.

(e) For purposes of this section, a “field crop product” shall mean any product of the soil that is grown in the context of a research or product development program in conjunction or coordination with a private research facility or a university or any federal, state or local governmental agency or any crop produced for commercial purposes on an agricultural operation as defined by M.G.L. chapter 128 Section 1A.

(f) For purposes of this section, an “agricultural property” shall mean any implement of husbandry, structure used for the conveyance of water, or structure used in the production, growing, processing of field crop products or keeping and raising of livestock.