

**REPORT OF THE
JOINT SUBCOMMITTEE STUDYING**

ALL-TERRAIN VEHICLES

**TO THE GOVERNOR AND
THE GENERAL ASSEMBLY OF VIRGINIA**



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Summary

The 1988 Session of the General Assembly considered three pieces of legislation dealing with all-terrain vehicles (ATV's). Two bills imposed limits on ATV operations and sales, and one resolution called for a study of the general issue of ATV regulation. The resolution calling for the study was approved. A substitute for the Senate bill, recommended by a subcommittee of the Senate Transportation Committee, was carried over, pending the results of the study. The House bill, once the study resolution was approved, was stricken from the calendar of the House Committee on Roads and Internal Navigation at the request of the measure's patron. This report is the result of the study.

Since their introduction in the 1970's, ATV's have been a source of controversy. There were complaints that they were noisy, that they damaged wetlands and other property on which they were operated, and that they were unsafe. The issue of ATV safety was particularly brought to public attention in late 1987, when, under pressure from the federal Consumer Product Safety Commission and the Justice Department, ATV distributors entered into a consent decree with the Consumer Product Safety Commission to cease marketing new three-wheeled ATV's and place various conditions on the sales of ATV's.

The Joint Subcommittee conducting the study early on discovered that it was difficult to get reliable statistical information concerning ATV's in Virginia. There is no precise data on the number of ATV's owned by Virginians, the proportion of ATV's used for industrial or agricultural purposes rather than personal recreation, the ages of ATV riders, or the number or severity of ATV accidents. What data was presented to the Joint Subcommittee proved sufficient to convince the group that (i) there are a substantial number of ATV's in use in Virginia, (ii) many ATV's are being used in agriculture, (iii) some ATV's are being driven by very young children, (iv) many persons, particularly children, are being injured, sometimes severely, in ATV accidents, and (iv) parents find it difficult to control their children's access to ATV's.

Based on the information it gathered, the Joint Subcommittee considered legislation to address the ATV safety question, taking the Senate Transportation Subcommittee's proposed substitute for Senate Bill No. 54 as its starting point. The resulting draft legislation (see Appendix I) prohibits ATV operation on public highways or other public property without authorization; limits operation of ATV's to persons over the age of twelve; requires ATV riders to wear helmets; prohibits the riding of ATV's on another person's property without written permission; and prohibits operating an ATV with any passenger other than the driver. The draft also imposes several requirements on ATV dealers. It would require dealers to affix to ATV's that they sell permanent decals or stickers which clearly and completely set out the limits placed on ATV operations by individuals. It would also prohibit the sale of any all-terrain vehicle powered by a gasoline engine of seventy cubic centimeters displacement or less. Any ATV used either (i) on Tangier Island, (ii) in farming anywhere in Virginia, and (iii) by members of the household of the owner or lessee of private property on which the ATV is operated would be exempt from all the bill's requirements.

General Background

All-terrain vehicles, more commonly known as ATV's, have been generally available in the American market since the early 1970's. Almost since their introduction here, they have been controversial. They have been attacked for the noise they produce, for the environmental damage they cause (particularly when operated in wetlands), and for the danger they present to young and inexperienced riders.

Gradually these concerns, especially the concern for rider safety, made themselves felt by representative bodies and government agencies at the local, state, and federal levels. Governmental responses were varied, particularly at the state level. While some states placed no restrictions at all on ATV operations, others limited the age of ATV riders, required riders to wear helmets, required registration of ATV's, and imposed various other requirements. None of the state efforts appeared, by the fall of 1987, to have had any noticeable impact on ATV rider safety.

The most dramatic action affecting ATV's was taken in late 1987 at the federal level. Faced with the prospect of possibly even more stringent action, distributors for the major ATV manufacturers (Honda, Kawasaki, Polaris, Suzuki, and Yamaha) entered into a consent decree in December, 1987, with the Consumer Product Safety Commission to improve ATV safety. On the basis of this agreement (effective April 28, 1988), the distributors agreed:

- To stop marketing new three-wheeled ATV's;
- To provide training for ATV riders;
- To mail safety warning letters to past ATV purchasers;
- To stop marketing ATV's to children; and
- To educate the general public about ATV safety hazards.

1988 Virginia Legislation

During the 1988 Session of the General Assembly, the Senate Transportation Committee considered Senate Bill No. 54, proposed by Senator Thomas Michie. The bill would have placed restrictions on the operation of ATV's and prohibited the sale of certain kinds of ATV accessories. In its original form, Senate Bill No. 54 contained the following major provisions:

- An absolute prohibition on ATV operation by persons under 16.
- A requirement that every ATV operator have a driver's license in his immediate possession.
- A requirement that ATV operators, when engaged in nonfarm activities, wear helmets approved by the Superintendent of State Police for use by motorcyclists.

- An absolute prohibition on ATV operation on highways and other public property.
- An absolute prohibition on ATV operation on private property without the written consent of the property's owner.
- An absolute prohibition on ATV operation while carrying any passenger other than the driver.
- An absolute prohibition on sale of any ATV with an engine displacement of 60cc's or less.
- An absolute prohibition on sale of accessories to permit an ATV to carry passengers other than the driver.
- A requirement that ATV dealers affix to ATV's permanent stickers of decals setting out these prohibitions.
- A Class 1 misdemeanor penalty (up to twelve months in jail, a fine of up to \$1,000, either or both) for any violation.

After some preliminary discussion of the bill in the full Committee, the measure was considered in more detail by a subcommittee (Senator Michie, Senator Bird, Senator Saslaw, Senator Scott, and Senator Macfarlane), which recommended to the full committee a substitute for the original version of the bill. The substitute was adopted by the Transportation Committee and carried over to the 1989 Session. The substitute placed several limitations on ATV's, but generally was not as restrictive as the original version of Senate Bill No. 54. The substitute contained the following major provisions:

- A general prohibition on ATV operation by children under twelve.
- Permission for operation of ATV's in connection with farming by children between fourteen and sixteen.
- A requirement that ATV's used by children between twelve and sixteen have between 70 and 90 cc's engine displacements.
- A requirement that any person aged sixteen or older have a valid Virginia driver's license in his immediate possession when operating an ATV, unless engaged in farming.
- A requirement that all ATV operators wear helmets, unless engaged in farming.
- A prohibition on operation of ATV's on public highways, except to cross a highway by the most direct route.
- A prohibition on operation of ATV's on public property, except as authorized by the proper authorities.

- A prohibition on operation of ATV's on another person's private property without his consent, except for ATV's operated by public employees in the course of official duties.
- An absolute prohibition of ATV operation with a passenger other than the driver at any time.
- The same decal and sticker requirements as the original bill.
- The same prohibition on sale of ATV's with engines smaller than 60cc's as the original bill.
- The same prohibition on sale of accessories to enable ATV's to carry passengers other than the driver as the original bill.
- A stipulation that operation of an ATV in violation of state law did not constitute negligence per se.
- A requirement that ATV purchasers pay a \$10 fee to be used for ATV education programs;
- An exemption from the bill's requirement for ATV's operated on Tangier Island.
- A "sunset" of the bill's provisions on July 1, 1990, unless reenacted by the General Assembly.
- A Class 1 misdemeanor penalty (a fine up to \$1,000, a jail term up to twelve months, either or both) for any violation of the bill's provisions relating to dealers and a Class 3 misdemeanor penalty (a fine up to \$500) for other violations.

ATV Numbers, Uses, and Dangers

The federal Consumer Product Safety Commission and the Specialty Vehicle Institute of America estimate that there are about 2.5 million ATV's presently in use in the United States. The number of ATV's being operated in Virginia is estimated to be between 32,500¹ and 43,000.² The Consumer Product Safety Commission and the United States Justice Department found ATV's to have been involved in over 800 deaths and 300,000 injuries since 1982. One fifth of these deaths were children under eleven years old and another fifth were children between twelve and fifteen.³

¹ Estimate presented to the Joint Subcommittee by Mr. John T. Hanna, Deputy Commissioner for Transportation Safety, Virginia Department of Motor Vehicles.

² Estimate presented to the Joint Subcommittee by Mr. Meade Spotts, representing the Specialty Vehicle Institute of America.

³ Council of State Governments, CSG Backgrounder: All Terrain Vehicles, January, 1988, p. 1.

Dr. Janine C. Jagger, Assistant Professor of Neurosurgery at the University of Virginia Medical Center, Ms. Susan D. McHenry, Director of the Division of Emergency Medical Services of the Virginia Department of Health, and Mr. David McAllister of the Department of Motor Vehicles presented to the Joint Subcommittee statistical information on ATV-related injuries in Virginia from January, 1987, through August, 1988, based on (i) the Virginia Trauma Registry,⁴ maintained by the Division of Emergency Medical Services, (ii) records of the University of Virginia Hospital,⁵ (iii) the ATV death registry compiled by the Consumer Product Safety Commission,⁶ and (iv) data compiled by the Crash Investigation Team of the Department of Motor Vehicles.⁷ They documented approximately 120 cases of ATV-related injuries and at least eight ATV-related deaths.⁸ Of these injuries, thirty-eight percent occurred to persons under sixteen years old; fourteen percent were injuries to the head and spine, seven percent were injuries to internal organs, twenty-eight percent were extremity and trunk fractures, seven percent were sprains and dislocations, thirty-five percent were abrasions and lacerations, and nine percent were other injuries. The Specialty Vehicle Institute of America estimated that, during 1987, there were 77,000 cases of ATV-related injuries nationally, and 1,300 in Virginia. The Institute estimated that between January 1, 1982, and December 8, 1987, there were 977 ATV-related fatalities nationally, and thirteen in Virginia. Industry representatives pointed out that the injury rate involving ATV's has been declining since the implementation of the consent decree and the attendant publicity involving the potential hazards of ATV operation.

The difficulty with the data on ATV use and ATV-related injuries, though, is that there is presently no uniform, complete, and reliable mechanism for collecting the data. ATV's are not required to be registered with any state or federal agency. Although many ATV-related injuries are treated by hospitals, emergency medical facilities (including hospital emergency rooms), and individual physicians, there is no systematic procedure for collecting and reporting the data. Much of the data consists of estimates.

⁴ Includes only ATV-injured persons admitted to Virginia hospitals. Completeness depends on compliance of reporting hospitals and time lag in reporting. Seventy cases were identified.

⁵ Data was obtained for 1987 through August, 1988. Fifty-one cases were identified, only one of which overlapped data reported by the Trauma Registry.

⁶ This data is known to be incomplete.

⁷ Data was supplied to the Joint Subcommittee by Mr. David McAllister.

⁸ There is no reporting system for ATV-related deaths, since fatal cases are not always brought to hospitals. Of the eight deaths nevertheless identified, four involved 4-wheeled ATV's, three involved 2-wheeled ATV's, and one was unspecified.

Legislative Action in Other States

The laws of all eastern, northeastern, and southeastern states of the United States were examined by the Joint Subcommittee's staff. Data on ATV laws in other states was collected through the Council of State Governments and the National Conference of State Legislatures. There was no pattern or consistency in the information which resulted.

While no state prohibits operation of ATV's many do have limits of some sort on their sale, operation, or both. Some require that ATV's be registered, but others require registration only of ATV's operated on property other than that belonging to the ATV owner. Some require that ATV operators have driver's licenses, some do not, and still others require driver's licenses only under certain circumstances (such as when crossing a public highway). Some states require ATV operators to wear helmets, some require only ATV operators below a certain age (which also varies) to wear helmets. There was also a wide variety of age limits for ATV operation. Convinced that there was no particular trend to the ATV legislation in other states, the Joint Subcommittee chose, rather than looking to another state's legislation as a model, to concentrate on adapting Senate Bill No. 54 to what it perceived as Virginia's need for some limits on ATV operation.

Findings and Recommendations

The Joint Subcommittee found that, although data was perhaps incomplete or inexact, statistical evidence was sufficient to support a contention that ATV's are sufficiently dangerous to their riders to warrant the imposition of limits on their use -- particularly by young children -- in the interest of the public health, safety, and welfare. It is in the Commonwealth's best interest, the Joint Subcommittee concluded, not only to prevent individual injury, but also to spare families the trauma and expense of having one of its members injured, incapacitated, or killed, and to save the considerable public expenses often involved in the rehabilitation of accident victims who sustain severe head, neck, and spinal injuries.

The Joint Subcommittee also found it desirable, through the enactment of sensible limitations on operation of ATV's, particularly by young children, to aid parents who seek to limit the access of their children to ATV's. The lack of any state limitations on use of ATV's by children makes it difficult for some parents to say "no" to their children who want to ride ATV's, and permits young children whose parents disapprove of their use of ATV's to have easy access to ATV's owned by their friends, neighbors, or other relatives.

Additionally, the Joint Subcommittee found that a considerable amount of the danger posed by ATV's derives from the inexperience of many ATV riders. While there may be no real substitute for individual, "hands on" experience, provision of practical, step-by-step, carefully supervised training can keep many novice ATV riders safe long enough to acquire the needed personal experience in using the machine.

Under the terms of the consent decree, the ATV industry is taking many prudent steps to make the public aware of the potential dangers of ATVs, to make ATV purchasers aware of the need for training, to make training available, and to provide incentives for taking advantage of this training. Rather than leave the training of ATV operators wholly to the operation of the consent decree and industry programs, the Joint Subcommittee finds it desirable and feasible for the Commonwealth to take what steps it can to encourage ATV purchasers and their families to take advantage of training opportunities available to them.

Considerable numbers of ATVs have been used in conjunction with farming in Virginia for many years. Information presented to the Joint Subcommittee has led it to the conclusion that ATVs, used in this context rather than in a recreational setting, pose no greater danger to farm personnel -- even children -- than other farm machinery, such as tractors. The Joint Subcommittee, accordingly, feels that no regulation of ATVs used in farming should be imposed.

The Joint Subcommittee also finds that the use of ATVs as a mode of general transportation on Tangier Island constitutes so exceptional a case as to warrant the exemption of ATVs used on Tangier Island from restrictions placed on ATV use in other parts of the Commonwealth.

The Joint Subcommittee recommends that the substitute recommended by the Senate Transportation Subcommittee for Senate Bill No. 54 during the 1988 Session of the General Assembly be amended to include the following:

- A definition of "all-terrain vehicle" which excludes go-carts;
- A prohibition of the operation of ATVs on any public highway or other public property, except as authorized by proper authorities or to the extent necessary to cross a public highway by the most direct route;
- A prohibition on the operation of ATVs by persons under sixteen, except that children between twelve and sixteen may operate ATVs with engines of no less than seventy nor more than ninety cubic centimeters engine displacement;
- A requirement that ATV riders wear protective helmets of a type approved by the Superintendent of State Police for use by motorcycle operators;
- A prohibition on riding ATVs on another person's property without the written consent of the owner of the property, except for operation of all-terrain vehicles by public employees in the course of their official duties;
- A prohibition on carrying a passenger other than the driver on an ATV at any time;
- A requirement that ATV retailers affix to their inventory permanent decals or stickers which clearly and completely state the limitations imposed on ATV operation by state law;

● A provision that violation of limits on ATV operation shall not constitute negligence per se or assumption of risk;

● A Class 3 misdemeanor penalty for any violations;

● An exemption for any ATV used in agriculture, on Tangier Island, or by any member of the household of the owner or lessee of the property on which it is being operated.

Draft legislation incorporating these recommendations is attached to this report as Appendix I.

Respectfully submitted,

Thomas J. Michie (Chairman)
(See dissenting statement, p. 11.)

V. Earl Dickinson (Vice Chairman)

Watkins M. Abbitt, Jr.

J. Robert Dobyns

William E. Fears

Raymond R. Guest, Jr.
(See dissenting statement, p. 12.)

Kevin G. Miller

APPENDIX I

Recommended Legislation

Senate Bill No. 54

Amendment in the Nature of a Substitute

A BILL to amend the Code of Virginia by adding a section numbered 46.1-172.04, relating to all-terrain vehicles; penalty.

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding a section numbered 46.1-172.04 as follows:

§ 46.1-172.04. All-terrain vehicles; penalty.--A. No all-terrain vehicle shall be operated:

1. On any public highway, or other public property, except as authorized by proper authorities or to the extent necessary to cross a public highway by the most direct route;

2. By any person under the age of sixteen, except that children between the ages of twelve and sixteen may operate all-terrain vehicles powered by engines of no less than seventy nor more than ninety cubic centimeters displacement;

3. By any person unless he is wearing a protective helmet of a type approved by the Superintendent of State Police for use by motorcycle operators;

4. On another person's property without the written consent of the owner of the property, except for operation of all-terrain vehicles by public employees and public service company employees in the course of their official duties; or

5. With a passenger at any time.

B. Any retailer selling any all-terrain vehicle shall affix thereto, or verify that there is affixed thereto, a permanent decal or sticker which clearly and completely states the prohibitions contained in subsection A of this section.

C. Violation of any provision of subsection A of this section shall not constitute negligence per se or assumption of risk in any action arising from injury or damage as a result of operation of an all-terrain vehicle.

D. Violation of any provision of this section shall constitute a Class 3 misdemeanor.

E. The provisions of this section shall not apply:

1. On Tangier Island;

2. To any all-terrain vehicle being used in conjunction with farming activities; or

3. To members of the household of the owner or lessee of private property on which the all-terrain vehicle is operated.

F. For the purposes of this section, "all-terrain vehicle" shall mean a three-wheeled or four-wheeled motor vehicle, generally characterized by large, low-pressure tires, a seat designed to be straddled by the operator, and handlebars for steering, which is intended for off-road use by an individual rider on various types of non-paved terrain. The term does not include four-wheeled vehicles which have low centers of gravity and are typically used in racing and on relatively level surfaces, commonly known as "go-carts."

APPENDIX II

Dissenting Statements

Dissenting Comments

Senator Thomas J. Michie, Jr.

Data collected at the national level convinced the federal Consumer Product Safety Commission over a year ago that all-terrain vehicles were inherently dangerous and that it was inappropriate for them to be operated by young children. In the course of its work, the Joint Subcommittee was presented statistics on ATV use and ATV-related injuries in Virginia which confirm the accuracy of these conclusions.

While the operation of the consent decree may be reducing the number of ATV's bought by parents expressly for use by their own young children, it has not reduced the access which these young children have to ATV's through their friends, neighbors, and other relatives. Parents who would like to keep their children from using ATV's find it difficult to say, "no," when their children ask why their use of ATV's is not outlawed if ATV's are really so dangerous.

While the proposed legislation would go part of the way in limiting use of ATV's by young children, the measure would be improved if it limited all ATV use to persons at least sixteen years of age, except in conjunction with farming operations. The argument that the age limit would be difficult to enforce could be overcome by coupling a sixteen-year minimum age with a requirement that ATV riders carry driver's licenses with them. This would provide to law-enforcement personnel a ready means of determining the age of any ATV rider.

Further improvement could be made by removing the broad exemption for members of the household of the owner or lessee of land on which an ATV is operated. This exemption complicates enforcement of the legislation by requiring law-enforcement personnel not only to check the age of ATV riders, but also the identity of persons in control of the land on which ATV's are ridden, and the relationship of those persons to the ATV riders. This exemption weakens the law and complicates its enforcement at the same time.

In summary, while I feel the proposed legislation is an improvement over the existing lack of meaningful ATV legislation, it could be considerably improved by limiting its exemptions and strengthening its age restrictions.

Respectfully submitted,

Thomas J. Michie, Jr.

Dissenting Comments

Delegate Raymond R. Guest, Jr.

I agree with those who feel that the number of injuries sustained by persons who ride all-terrain vehicles should be reduced. I disagree, though, with those who feel that passage of the proposed legislation would provide an appropriate or effective mechanism for bringing about that reduction.

Even though the statistical data available to the Joint Subcommittee was incomplete and subject to a variety of interpretations, to me it seemed that the data readily supported at least two conclusions: (i) that a disproportionate number of those injured in ATV accidents were young children, and (ii) that a large share of ATV accidents involved violations of already existing law.

It has been suggested that passage of additional restrictions on ATV operation will aid parents who presently are unable to keep their young children from riding ATV's. It seems to me, however, that if parents are unable effectively to supervise the children in their family, it is unrealistic to expect local law-enforcement agencies effectively to supervise all the children in their localities. It would appear equally unlikely that, following passage of additional legislation, persons who presently operate ATV's in violation of the law, or permit their children to operate ATV's in violation of the law, will subordinate their own judgment to the requirements of new legislation.

As well-intentioned as the proposed legislation may be, even its most ardent supporters concede that it will be, at best, difficult to enforce. I doubt whether an age limit on ATV operation will be any more effective in preventing ATV use by young children than the existing age limit on moped operation has been in preventing moped use by young children. Anything approaching rigorous, effective enforcement of the proposed legislation would place an insupportable burden on law-enforcement personnel. The difficulty even of determining the age of ATV riders would be considerable.

While we can all share the goal of sparing children injury and pain, I feel that passage of the recommended legislation would bring us no nearer that goal.

Respectfully submitted,

Raymond R. Guest, Jr.

APPENDIX III

Joint Subcommittee Members

Thomas J. Michie (Chairman)

V. Earl Dickinson (Vice Chairman)

Watkins M. Abbitt, Jr.

J. Robert Dobyns

William E. Fears

Raymond R. Guest, Jr.

Kevin G. Miller

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