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ENGROSSED SUBSTITUTE HOUSE BILL 2356

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State of Washington

58th Legislature

2004 Regular Session

By House Committee on Fisheries, Ecology & Parks (originally sponsored by Representatives Hinkle, Buck, Condotta, O'Brien, Pearson and Shabro)

READ FIRST TIME 01/23/04.

1 AN ACT Relating to the operation of off-road vehicles on roadways;  
2 amending RCW 46.09.020, 46.09.120, and 46.37.010; reenacting and  
3 amending RCW 46.16.010; adding new sections to chapter 46.09 RCW;  
4 creating a new section; and providing an effective date.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

6 NEW SECTION. **Sec. 1.** The legislature finds that off-road  
7 recreational vehicles (ORVs) provide opportunities for a wide variety  
8 of outdoor recreation activities. The legislature further finds that  
9 the limited amount of ORV recreation areas presents a challenge for ORV  
10 recreational users, natural resource land managers, and private  
11 landowners. The legislature further finds that many nonhighway roads  
12 provide opportunities for ORV use. However, restrictions intended for  
13 motor vehicles may prevent ORV use on certain roads, including forest  
14 service roads. Therefore, the legislature finds that local, state, and  
15 federal jurisdictions should be given the flexibility to allow ORV use  
16 on nonhighway roads they own and manage or for which they are  
17 authorized to allow public ORV use under an easement granted by the  
18 owner.

1       **Sec. 2.** RCW 46.09.020 and 1986 c 206 s 1 are each amended to read  
2 as follows:

3       As used in this chapter the following words and phrases have the  
4 designated meanings unless a different meaning is expressly provided or  
5 the context otherwise clearly indicates:

6       "Person" means any individual, firm, partnership, association, or  
7 corporation.

8       "Nonhighway vehicle" means any motorized vehicle when used for  
9 recreation travel on trails and nonhighway roads or for recreation  
10 cross-country travel on any one of the following or a combination  
11 thereof: Land, water, snow, ice, marsh, swampland, and other natural  
12 terrain. Such vehicles include but are not limited to, off-road  
13 vehicles, two, three, or four-wheel vehicles, motorcycles, four-wheel  
14 drive vehicles, dune buggies, amphibious vehicles, ground effects or  
15 air cushion vehicles, and any other means of land transportation  
16 deriving motive power from any source other than muscle or wind.

17       Nonhighway vehicle does not include:

18       (1) Any vehicle designed primarily for travel on, over, or in the  
19 water;

20       (2) Snowmobiles or any military vehicles; or

21       (3) Any vehicle eligible for a motor vehicle fuel tax exemption or  
22 rebate under chapter 82.36 RCW while an exemption or rebate is claimed.  
23 This exemption includes but is not limited to farm, construction, and  
24 logging vehicles.

25       "Off-road vehicle" or "ORV" means any nonhighway vehicle when used  
26 for cross-country travel on trails or on any one of the following or a  
27 combination thereof: Land, water, snow, ice, marsh, swampland and  
28 other natural terrain.

29       "ORV use permit" means a permit issued for operation of an off-road  
30 vehicle under this chapter.

31       "ORV trail" means a multiple-use corridor designated and maintained  
32 for recreational travel by off-road vehicles that is not normally  
33 suitable for travel by conventional two-wheel drive vehicles and is  
34 posted or designated by the managing authority of the property that the  
35 trail traverses as permitting ORV travel.

36       "ORV use area" means the entire area of a parcel of land except for  
37 camping and approved buffer areas that is posted or designated for ORV  
38 use in accordance with rules adopted by the managing authority.

1 "ORV recreation facility" includes ORV trails and ORV use areas.

2 "Owner" means the person other than the lienholder, having an  
3 interest in or title to a nonhighway vehicle, and entitled to the use  
4 or possession thereof.

5 "Operator" means each person who operates, or is in physical  
6 control of, any nonhighway vehicle.

7 "Dealer" means a person, partnership, association, or corporation  
8 engaged in the business of selling off-road vehicles at wholesale or  
9 retail in this state.

10 "Department" means the department of licensing.

11 "Hunt" means any effort to kill, injure, capture, or purposely  
12 disturb a wild animal or wild bird.

13 "Nonhighway road" means any road owned or managed by a public  
14 agency, or any private road for which the owner has granted ((a  
15 permanent)) an easement for public use ((of the road, other than a  
16 highway generally capable of travel by a conventional two-wheel drive  
17 passenger automobile during most of the year and in use by such  
18 vehicles)) and that ((is)) was not originally built or ((maintained))  
19 reconstructed in the last twenty-five years or maintained during the  
20 last four years with appropriations from the motor vehicle fund.

21 "Highway," for the purpose of this chapter only, means the entire  
22 width between the boundary lines of every ((way)) roadway publicly  
23 maintained by the state department of transportation or any county or  
24 city ((when any part thereof is generally open to the use of the public  
25 for purposes of vehicular travel as a matter of right)) with funding  
26 from the motor vehicle fund. A highway is generally capable of travel  
27 by a conventional two-wheel drive passenger automobile during most of  
28 the year and in use by such vehicles.

29 "Organized competitive event" means any competition, advertised in  
30 advance through written notice to organized clubs or published in local  
31 newspapers, sponsored by recognized clubs, and conducted at a  
32 predetermined time and place.

33 **Sec. 3.** RCW 46.09.120 and 2003 c 377 s 1 are each amended to read  
34 as follows:

35 (1) It is a traffic infraction for any person to operate any  
36 nonhighway vehicle:

37 (a) In such a manner as to endanger the property of another;

1 (b) On lands not owned by the operator or owner of the nonhighway  
2 vehicle without a lighted headlight and taillight between the hours of  
3 dusk and dawn, or when otherwise required for the safety of others  
4 regardless of ownership;

5 (c) On lands not owned by the operator or owner of the nonhighway  
6 vehicle without an adequate braking device or when otherwise required  
7 for the safety of others regardless of ownership;

8 (d) Without a spark arrester approved by the department of natural  
9 resources;

10 (e) Without an adequate, and operating, muffling device which  
11 effectively limits vehicle noise to no more than eighty-six decibels on  
12 the "A" scale at fifty feet as measured by the Society of Automotive  
13 Engineers (SAE) test procedure J 331a, except that a maximum noise  
14 level of one hundred and five decibels on the "A" scale at a distance  
15 of twenty inches from the exhaust outlet shall be an acceptable  
16 substitute in lieu of the Society of Automotive Engineers test  
17 procedure J 331a when measured:

18 (i) At a forty-five degree angle at a distance of twenty inches  
19 from the exhaust outlet;

20 (ii) With the vehicle stationary and the engine running at a steady  
21 speed equal to one-half of the manufacturer's maximum allowable ("red  
22 line") engine speed or where the manufacturer's maximum allowable  
23 engine speed is not known the test speed in revolutions per minute  
24 calculated as sixty percent of the speed at which maximum horsepower is  
25 developed; and

26 (iii) With the microphone placed ten inches from the side of the  
27 vehicle, one-half way between the lowest part of the vehicle body and  
28 the ground plane, and in the same lateral plane as the rearmost exhaust  
29 outlet where the outlet of the exhaust pipe is under the vehicle;

30 (f) On lands not owned by the operator or owner of the nonhighway  
31 vehicle on any highway, upon the shoulder or inside bank or slope of  
32 any nonhighway road or highway, or upon the median of any divided  
33 highway;

34 (g) On lands not owned by the operator or owner of the nonhighway  
35 vehicle in any area or in such a manner so as to unreasonably expose  
36 the underlying soil, or to create an erosion condition, or to injure,  
37 damage, or destroy trees, growing crops, or other vegetation;

1 (h) On lands not owned by the operator or owner of the nonhighway  
2 vehicle or on any nonhighway road or trail, when these are restricted  
3 to pedestrian or animal travel; (~~and~~)

4 (i) On any public lands in violation of rules and regulations of  
5 the agency administering such lands;

6 (j) On a nonhighway road without wearing upon his or her head a  
7 motorcycle helmet fastened securely while in motion. For purposes of  
8 this section, "motorcycle helmet" means a protective covering for the  
9 head consisting of a hard outer shell, padding adjacent to and inside  
10 the outer shell, and a neck or chin strap type retention system, with  
11 a sticker indicating that the motorcycle helmet meets standards  
12 established by the United States department of transportation.

13 (2) It is a misdemeanor for any person to operate any nonhighway  
14 vehicle while under the influence of intoxicating liquor or a  
15 controlled substance.

16 NEW SECTION. Sec. 4. A new section is added to chapter 46.09 RCW  
17 to read as follows:

18 (1) It is lawful to operate an off-road vehicle upon a nonhighway  
19 road and in parking areas serving designated off-road vehicle areas  
20 when the responsible governing body, including state, federal, or local  
21 authorities, authorizes the use of off-road vehicles.

22 (2) An off-road vehicle operated on a nonhighway road under this  
23 section is exempt from licensing requirements of RCW 46.16.010 and  
24 vehicle lighting and equipment requirements of chapter 46.37 RCW.

25 NEW SECTION. Sec. 5. A new section is added to chapter 46.09 RCW  
26 to read as follows:

27 (1) Except as specified in subsection (2) of this section, no  
28 person under sixteen years of age may operate an off-road vehicle on or  
29 across a highway or nonhighway road in this state.

30 (2) Persons under sixteen years of age may operate an off-road  
31 vehicle on a nonhighway road designated for off-road vehicle use under  
32 the direct supervision of a person eighteen years of age or older  
33 possessing a valid license to operate a motor vehicle under chapter  
34 46.20 RCW.

1       **Sec. 6.** RCW 46.16.010 and 2003 c 353 s 8 and 2003 c 53 s 238 are  
2 each reenacted and amended to read as follows:

3       (1) It is unlawful for a person to operate any vehicle over and  
4 along a public highway of this state without first having obtained and  
5 having in full force and effect a current and proper vehicle license  
6 and display vehicle license number plates therefor as by this chapter  
7 provided.

8       (2) Failure to make initial registration before operation on the  
9 highways of this state is a misdemeanor, and any person convicted  
10 thereof must be punished by a fine of no less than three hundred thirty  
11 dollars, no part of which may be suspended or deferred.

12       (3) Failure to renew an expired registration before operation on  
13 the highways of this state is a traffic infraction.

14       (4) The licensing of a vehicle in another state by a resident of  
15 this state, as defined in RCW 46.16.028, evading the payment of any tax  
16 or license fee imposed in connection with registration, is a gross  
17 misdemeanor punishable as follows:

18       (a) For a first offense, up to one year in the county jail and a  
19 fine equal to twice the amount of delinquent taxes and fees, no part of  
20 which may be suspended or deferred;

21       (b) For a second or subsequent offense, up to one year in the  
22 county jail and a fine equal to four times the amount of delinquent  
23 taxes and fees, no part of which may be suspended or deferred;

24       (c) For fines levied under (b) of this subsection, an amount equal  
25 to the avoided taxes and fees owed will be deposited in the vehicle  
26 licensing fraud account created in the state treasury;

27       (d) The avoided taxes and fees shall be deposited and distributed  
28 in the same manner as if the taxes and fees were properly paid in a  
29 timely fashion.

30       (5) These provisions shall not apply to the following vehicles:

31       (a) Motorized foot scooters;

32       (b) Electric-assisted bicycles;

33       (c) Off-road vehicles operating on nonhighway roads under section  
34 4 of this act;

35       (d) Farm vehicles if operated within a radius of fifteen miles of  
36 the farm where principally used or garaged, farm tractors and farm  
37 implements including trailers designed as cook or bunk houses used  
38 exclusively for animal herding temporarily operating or drawn upon the

1 public highways, and trailers used exclusively to transport farm  
2 implements from one farm to another during the daylight hours or at  
3 night when such equipment has lights that comply with the law;

4 ~~((d))~~ (e) Spray or fertilizer applicator rigs designed and used  
5 exclusively for spraying or fertilization in the conduct of  
6 agricultural operations and not primarily for the purpose of  
7 transportation, and nurse rigs or equipment auxiliary to the use of and  
8 designed or modified for the fueling, repairing, or loading of spray  
9 and fertilizer applicator rigs and not used, designed, or modified  
10 primarily for the purpose of transportation;

11 ~~((e))~~ (f) Fork lifts operated during daylight hours on public  
12 highways adjacent to and within five hundred feet of the warehouses  
13 which they serve: PROVIDED FURTHER, That these provisions shall not  
14 apply to vehicles used by the state parks and recreation commission  
15 exclusively for park maintenance and operations upon public highways  
16 within state parks;

17 ~~((f))~~ (g) "Special highway construction equipment" defined as  
18 follows: Any vehicle which is designed and used primarily for grading  
19 of highways, paving of highways, earth moving, and other construction  
20 work on highways and which is not designed or used primarily for the  
21 transportation of persons or property on a public highway and which is  
22 only incidentally operated or moved over the highway. It includes, but  
23 is not limited to, road construction and maintenance machinery so  
24 designed and used such as portable air compressors, air drills, asphalt  
25 spreaders, bituminous mixers, bucket loaders, track laying tractors,  
26 ditchers, leveling graders, finishing machines, motor graders, paving  
27 mixers, road rollers, scarifiers, earth moving scrapers and carryalls,  
28 lighting plants, welders, pumps, power shovels and draglines, self-  
29 propelled and tractor-drawn earth moving equipment and machinery,  
30 including dump trucks and tractor-dump trailer combinations which  
31 either (i) are in excess of the legal width, or (ii) which, because of  
32 their length, height, or unladen weight, may not be moved on a public  
33 highway without the permit specified in RCW 46.44.090 and which are not  
34 operated laden except within the boundaries of the project limits as  
35 defined by the contract, and other similar types of construction  
36 equipment, or (iii) which are driven or moved upon a public highway  
37 only for the purpose of crossing such highway from one property to

1 another, provided such movement does not exceed five hundred feet and  
2 the vehicle is equipped with wheels or pads which will not damage the  
3 roadway surface.

4 Exclusions:

5 "Special highway construction equipment" does not include any of  
6 the following:

7 Dump trucks originally designed to comply with the legal size and  
8 weight provisions of this code notwithstanding any subsequent  
9 modification which would require a permit, as specified in RCW  
10 46.44.090, to operate such vehicles on a public highway, including  
11 trailers, truck-mounted transit mixers, cranes and shovels, or other  
12 vehicles designed for the transportation of persons or property to  
13 which machinery has been attached.

14 (6) The following vehicles, whether operated solo or in  
15 combination, are exempt from license registration and displaying  
16 license plates as required by this chapter:

17 (a) A converter gear used to convert a semitrailer into a trailer  
18 or a two-axle truck or tractor into a three or more axle truck or  
19 tractor or used in any other manner to increase the number of axles of  
20 a vehicle. Converter gear includes an auxiliary axle, booster axle,  
21 dolly, and jeep axle.

22 (b) A tow dolly that is used for towing a motor vehicle behind  
23 another motor vehicle. The front or rear wheels of the towed vehicle  
24 are secured to and rest on the tow dolly that is attached to the towing  
25 vehicle by a tow bar.

26 **Sec. 7.** RCW 46.37.010 and 1997 c 241 s 14 are each amended to read  
27 as follows:

28 (1) It is a traffic infraction for any person to drive or move or  
29 for the owner to cause or knowingly permit to be driven or moved on any  
30 highway any vehicle or combination of vehicles which is in such unsafe  
31 condition as to endanger any person, or which does not contain those  
32 parts or is not at all times equipped with such lamps and other  
33 equipment in proper condition and adjustment as required in this  
34 chapter or in regulations issued by the chief of the Washington state  
35 patrol, or which is equipped in any manner in violation of this chapter  
36 or the state patrol's regulations, or for any person to do any act



1 forbidden or fail to perform any act required under this chapter or the  
2 state patrol's regulations.

3 (2) Nothing contained in this chapter or the state patrol's  
4 regulations shall be construed to prohibit the use of additional parts  
5 and accessories on any vehicle not inconsistent with the provisions of  
6 this chapter or the state patrol's regulations.

7 (3) The provisions of the chapter and the state patrol's  
8 regulations with respect to equipment on vehicles shall not apply to  
9 implements of husbandry, road machinery, road rollers, or farm tractors  
10 except as herein made applicable.

11 (4) No owner or operator of a farm tractor, self-propelled unit of  
12 farm equipment, or implement of husbandry shall be guilty of a crime or  
13 subject to penalty for violation of RCW 46.37.160 as now or hereafter  
14 amended unless such violation occurs on a public highway.

15 (5) It is a traffic infraction for any person to sell or offer for  
16 sale vehicle equipment which is required to be approved by the state  
17 patrol as prescribed in RCW 46.37.005 unless it has been approved by  
18 the state patrol.

19 (6) The provisions of this chapter with respect to equipment  
20 required on vehicles shall not apply to motorcycles or motor-driven  
21 cycles except as herein made applicable.

22 (7) This chapter does not apply to off-road vehicles used on  
23 nonhighway roads.

24 (8) This chapter does not apply to vehicles used by the state parks  
25 and recreation commission exclusively for park maintenance and  
26 operations upon public highways within state parks.

27 ((+8)) (9) Notices of traffic infraction issued to commercial  
28 drivers under the provisions of this chapter with respect to equipment  
29 required on commercial motor vehicles shall not be considered for  
30 driver improvement purposes under chapter 46.20 RCW.

31 ((+9)) (10) Whenever a traffic infraction is chargeable to the  
32 owner or lessee of a vehicle under subsection (1) of this section, the  
33 driver shall not be arrested or issued a notice of traffic infraction  
34 unless the vehicle is registered in a jurisdiction other than  
35 Washington state, or unless the infraction is for an offense that is  
36 clearly within the responsibility of the driver.

37 ((+10)) (11) Whenever the owner or lessee is issued a notice of  
38 traffic infraction under this section the court may, on the request of

1 the owner or lessee, take appropriate steps to make the driver of the  
2 vehicle, or any other person who directs the loading, maintenance, or  
3 operation of the vehicle, a codefendant. If the codefendant is held  
4 solely responsible and is found to have committed the traffic  
5 infraction, the court may dismiss the notice against the owner or  
6 lessee.

7 NEW SECTION. **Sec. 8.** This act takes effect July 1, 2004.

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