
SUBSTITUTE HOUSE BILL 2356

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 growing popularity of ORV use and the limited amount of ORV trails
10 presents a challenge for ORV recreational users, natural resource land
11 managers, and private landowners. The legislature further finds that
12 many nonhighway and unpaved roads provide opportunities for ORV use.
13 However, restrictions intended for motor vehicles may prevent ORV use
14 on certain roads, including forest service roads. Therefore, the
15 legislature finds that local, state, and federal jurisdictions should
16 be given the flexibility to allow ORV use on nonhighway roads.

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

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

4 "Person" means any individual, firm, partnership, association, or
5 corporation.

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

15 Nonhighway vehicle does not include:

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

18 (2) Snowmobiles or any military vehicles; or

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

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

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

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

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

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

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

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

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

9 "Department" means the department of licensing.

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

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

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

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

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

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

36 (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 helmet fastened securely while in motion. For purposes of this
8 section, "helmet" means a protective covering for the head that meets
9 standards established by the United States department of
10 transportation.

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

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

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

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

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

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

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

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

35 (1) It is unlawful for a person to operate any vehicle over and

1 along a public highway of this state without first having obtained and
2 having in full force and effect a current and proper vehicle license
3 and display vehicle license number plates therefor as by this chapter
4 provided.

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

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

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

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

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

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

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

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

28 (a) Motorized foot scooters;

29 (b) Electric-assisted bicycles;

30 (c) Off-road vehicles operating on nonhighway roads under section
31 4 of this act;

32 (d) Farm vehicles if operated within a radius of fifteen miles of
33 the farm where principally used or garaged, farm tractors and farm
34 implements including trailers designed as cook or bunk houses used
35 exclusively for animal herding temporarily operating or drawn upon the
36 public highways, and trailers used exclusively to transport farm
37 implements from one farm to another during the daylight hours or at
38 night when such equipment has lights that comply with the law;

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

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

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

38 Exclusions:

1 "Special highway construction equipment" does not include any of
2 the following:

3 Dump trucks originally designed to comply with the legal size and
4 weight provisions of this code notwithstanding any subsequent
5 modification which would require a permit, as specified in RCW
6 46.44.090, to operate such vehicles on a public highway, including
7 trailers, truck-mounted transit mixers, cranes and shovels, or other
8 vehicles designed for the transportation of persons or property to
9 which machinery has been attached.

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

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

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

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

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

35 (2) Nothing contained in this chapter or the state patrol's
36 regulations shall be construed to prohibit the use of additional parts

1 and accessories on any vehicle not inconsistent with the provisions of
2 this chapter or the state patrol's regulations.

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

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

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

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

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

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

23 ((+8)) (9) Notices of traffic infraction issued to commercial
24 drivers under the provisions of this chapter with respect to equipment
25 required on commercial motor vehicles shall not be considered for
26 driver improvement purposes under chapter 46.20 RCW.

27 ((+9)) (10) Whenever a traffic infraction is chargeable to the
28 owner or lessee of a vehicle under subsection (1) of this section, the
29 driver shall not be arrested or issued a notice of traffic infraction
30 unless the vehicle is registered in a jurisdiction other than
31 Washington state, or unless the infraction is for an offense that is
32 clearly within the responsibility of the driver.

33 ((+10)) (11) Whenever the owner or lessee is issued a notice of
34 traffic infraction under this section the court may, on the request of
35 the owner or lessee, take appropriate steps to make the driver of the
36 vehicle, or any other person who directs the loading, maintenance, or
37 operation of the vehicle, a codefendant. If the codefendant is held

1 solely responsible and is found to have committed the traffic
2 infraction, the court may dismiss the notice against the owner or
3 lessee.

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

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