

**HB 1003 - H AMD 45**

By Representative Hinkle

ADOPTED 03/04/2005

1 Strike everything after the enacting clause and insert the  
2 following:

3 "NEW SECTION. **Sec. 1.** The legislature finds that off-road  
4 recreational vehicles (ORVs) provide opportunities for a wide variety  
5 of outdoor recreation activities. The legislature further finds that  
6 the limited amount of ORV recreation areas presents a challenge for ORV  
7 recreational users, natural resource land managers, and private  
8 landowners. The legislature further finds that many nonhighway roads  
9 provide opportunities for ORV use and that these opportunities may  
10 reduce conflicts between users and facilitate responsible ORV  
11 recreation. However, restrictions intended for motor vehicles may  
12 prevent ORV use on certain roads, including forest service roads.  
13 Therefore, the legislature finds that local, state, and federal  
14 jurisdictions should be given the flexibility to allow ORV use on  
15 nonhighway roads they own and manage or for which they are authorized  
16 to allow public ORV use under an easement granted by the owner.  
17 Nothing in this act authorizes trespass on private property.

18 **Sec. 2.** RCW 46.09.010 and 1972 ex.s. c 153 s 2 are each amended to  
19 read as follows:

20 The provisions of this chapter shall apply to all lands in this  
21 state. Nothing in this chapter (~~((43.09-RCW))~~), RCW (~~((67.32.050,~~  
22 ~~67.32.080, 67.32.100, 67.32.130 or 67.32.140))~~ 79A.35.040, 79A.35.070,  
23 79A.35.090, 79A.35.110, and 79A.35.120 shall be deemed to grant to any  
24 person the right or authority to enter upon private property without  
25 permission of the property owner.

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

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

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

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

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

11 (d) Without a spark arrester approved by the department of natural  
12 resources;

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

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

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

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

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

36 (g) On lands not owned by the operator or owner of the nonhighway  
37 vehicle in any area or in such a manner so as to unreasonably expose

1 the underlying soil, or to create an erosion condition, or to injure,  
2 damage, or destroy trees, growing crops, or other vegetation;

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

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

8 (j) On a private nonhighway road in violation of section 3 of this  
9 act.

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

13 (3)(a) Except for an off-road vehicle equipped with seat belts and  
14 roll bars or an enclosed passenger compartment, it is a traffic  
15 infraction for any person to operate or ride an off-road vehicle on a  
16 nonhighway road without wearing upon his or her head a motorcycle  
17 helmet fastened securely while in motion. For purposes of this  
18 section, "motorcycle helmet" has the same meaning as provided in RCW  
19 46.37.530.

20 (b) Subsection (3)(a) of this section does not apply to an off-road  
21 vehicle operator operating on his or her own land.

22 (c) Subsection (3)(a) of this section does not apply to an off-road  
23 vehicle operator operating on agricultural lands owned or leased by the  
24 off-road vehicle operator or the operator's employer.

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

27 (1) Except as otherwise provided in this section, it is lawful to  
28 operate an off-road vehicle upon a nonhighway road and in parking areas  
29 serving designated off-road vehicle areas if the state, federal, local,  
30 or private authority responsible for the management of the nonhighway  
31 road authorizes the use of off-road vehicles.

32 (2) Operations of an off-road vehicle on a nonhighway road under  
33 this section is exempt from licensing requirements of RCW 46.16.010 and  
34 vehicle lighting and equipment requirements of chapter 46.37 RCW.

35 (3) It is unlawful to operate an off-road vehicle upon a private  
36 nonhighway road if the road owner has not authorized the use of off-  
37 road vehicles.

1 (4) Nothing in this section authorizes trespass on private  
2 property.

3 NEW SECTION. **Sec. 5.** A new section is added to chapter 46.09 RCW  
4 to read as follows:

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

8 (2) Persons under sixteen years of age may operate an off-road  
9 vehicle on a nonhighway road designated for off-road vehicle use under  
10 the direct supervision of a person eighteen years of age or older  
11 possessing a valid license to operate a motor vehicle under chapter  
12 46.20 RCW.

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

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

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

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

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

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

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

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

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

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

8 (a) Motorized foot scooters;

9 (b) Electric-assisted bicycles;

10 (c) Off-road vehicles operating on nonhighway roads under section  
11 4 of this act;

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

19 ~~((d))~~ (e) Spray or fertilizer applicator rigs designed and used  
20 exclusively for spraying or fertilization in the conduct of  
21 agricultural operations and not primarily for the purpose of  
22 transportation, and nurse rigs or equipment auxiliary to the use of and  
23 designed or modified for the fueling, repairing, or loading of spray  
24 and fertilizer applicator rigs and not used, designed, or modified  
25 primarily for the purpose of transportation;

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

32 ~~((f))~~ (g) "Special highway construction equipment" defined as  
33 follows: Any vehicle which is designed and used primarily for grading  
34 of highways, paving of highways, earth moving, and other construction  
35 work on highways and which is not designed or used primarily for the  
36 transportation of persons or property on a public highway and which is  
37 only incidentally operated or moved over the highway. It includes, but  
38 is not limited to, road construction and maintenance machinery so

1 designed and used such as portable air compressors, air drills, asphalt  
2 spreaders, bituminous mixers, bucket loaders, track laying tractors,  
3 ditchers, leveling graders, finishing machines, motor graders, paving  
4 mixers, road rollers, scarifiers, earth moving scrapers and carryalls,  
5 lighting plants, welders, pumps, power shovels and draglines, self-  
6 propelled and tractor-drawn earth moving equipment and machinery,  
7 including dump trucks and tractor-dump trailer combinations which  
8 either (i) are in excess of the legal width, or (ii) which, because of  
9 their length, height, or unladen weight, may not be moved on a public  
10 highway without the permit specified in RCW 46.44.090 and which are not  
11 operated laden except within the boundaries of the project limits as  
12 defined by the contract, and other similar types of construction  
13 equipment, or (iii) which are driven or moved upon a public highway  
14 only for the purpose of crossing such highway from one property to  
15 another, provided such movement does not exceed five hundred feet and  
16 the vehicle is equipped with wheels or pads which will not damage the  
17 roadway surface.

18 Exclusions:

19 "Special highway construction equipment" does not include any of  
20 the following:

21 Dump trucks originally designed to comply with the legal size and  
22 weight provisions of this code notwithstanding any subsequent  
23 modification which would require a permit, as specified in RCW  
24 46.44.090, to operate such vehicles on a public highway, including  
25 trailers, truck-mounted transit mixers, cranes and shovels, or other  
26 vehicles designed for the transportation of persons or property to  
27 which machinery has been attached.

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

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

36 (b) A tow dolly that is used for towing a motor vehicle behind  
37 another motor vehicle. The front or rear wheels of the towed vehicle

1 are secured to and rest on the tow dolly that is attached to the towing  
2 vehicle by a tow bar.

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

5 (1) It is a traffic infraction for any person to drive or move or  
6 for the owner to cause or knowingly permit to be driven or moved on any  
7 highway any vehicle or combination of vehicles which is in such unsafe  
8 condition as to endanger any person, or which does not contain those  
9 parts or is not at all times equipped with such lamps and other  
10 equipment in proper condition and adjustment as required in this  
11 chapter or in regulations issued by the chief of the Washington state  
12 patrol, or which is equipped in any manner in violation of this chapter  
13 or the state patrol's regulations, or for any person to do any act  
14 forbidden or fail to perform any act required under this chapter or the  
15 state patrol's regulations.

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

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

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

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

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

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

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

4        ~~((+8))~~ (9) Notices of traffic infraction issued to commercial  
5 drivers under the provisions of this chapter with respect to equipment  
6 required on commercial motor vehicles shall not be considered for  
7 driver improvement purposes under chapter 46.20 RCW.

8        ~~((+9))~~ (10) Whenever a traffic infraction is chargeable to the  
9 owner or lessee of a vehicle under subsection (1) of this section, the  
10 driver shall not be arrested or issued a notice of traffic infraction  
11 unless the vehicle is registered in a jurisdiction other than  
12 Washington state, or unless the infraction is for an offense that is  
13 clearly within the responsibility of the driver.

14        ~~((+10))~~ (11) Whenever the owner or lessee is issued a notice of  
15 traffic infraction under this section the court may, on the request of  
16 the owner or lessee, take appropriate steps to make the driver of the  
17 vehicle, or any other person who directs the loading, maintenance, or  
18 operation of the vehicle, a codefendant. If the codefendant is held  
19 solely responsible and is found to have committed the traffic  
20 infraction, the court may dismiss the notice against the owner or  
21 lessee.

22        NEW SECTION. **Sec. 8.** This act is necessary for the immediate  
23 preservation of the public peace, health, or safety, or support of the  
24 state government and its existing public institutions, and takes effect  
25 July 1, 2005."

26        Correct the title.

EFFECT: Clarifies that the chapter and the section authorizing  
ORV use on nonhighway roads do not authorize trespass on private  
property. Establishes an infraction for operating an ORV on a private  
nonhighway road without authorization from the road owner. Establishes  
a traffic infraction for operating or riding an ORV on a nonhighway  
road without wearing a helmet, except for ORVs with seat belts and roll  
bars or an enclosed passenger compartment. The helmet requirement does  
not apply to an ORV operator operating on his or her own land. The  
helmet requirement also does not apply to an ORV operator or the



operator's employee operating on agricultural lands owned or leased by the ORV operator.

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