

WASHINGTON STATUTES

TITLE 46

Chapter 46.09 RCW Off-road and nonhighway vehicles

RCW 46.09.010 Application of chapter — Permission necessary to enter upon private lands.

The provisions of this chapter shall apply to all lands in this state. Nothing in this chapter, RCW 79A.35.040, 79A.35.070, 79A.35.090, 79A.35.110, and 79A.35.120 shall be deemed to grant to any person the right or authority to enter upon private property without permission of the property owner.

RCW 46.09.020

Definitions.

The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

- (1) "Advisory committee" means the nonhighway and off-road vehicle activities advisory committee established in RCW 46.09.280.
- (2) "Committee" means the interagency committee for outdoor recreation established in RCW 79A.25.110.
- (3) "Dealer" means a person, partnership, association, or corporation engaged in the business of selling off-road vehicles at wholesale or retail in this state.
- (4) "Department" means the department of licensing.
- (5) "Highway," for the purpose of this chapter only, means the entire width between the boundary lines of every roadway publicly maintained by the state department of transportation or any county or city with funding from the motor vehicle fund. A highway is generally capable of travel by a conventional two-wheel drive passenger automobile during most of the year and in use by such vehicles.
- (6) "Motorized vehicle" means a vehicle that derives motive power from an internal combustion engine.
- (7) "Nonhighway road" means any road owned or managed by a public agency or any private road for which the owner has granted an easement for public use for which appropriations from the motor vehicle fund were not used for (a) original construction or reconstruction in the last twenty-five years; or (b) maintenance in the last four years.
- (8) "Nonhighway road recreation facilities" means recreational facilities that are adjacent to, or accessed by, a nonhighway road and intended primarily for nonhighway road recreational users.
- (9) "Nonhighway road recreational user" means a person whose purpose for consuming fuel on a nonhighway road or off-road is primarily for nonhighway road

recreational purposes, including, but not limited to, hunting, fishing, camping, sightseeing, wildlife viewing, picnicking, driving for pleasure, kayaking/canoeing, and gathering berries, firewood, mushrooms, and other natural products.

(10) "Nonhighway vehicle" means any motorized vehicle including an ORV when used for recreational purposes on nonhighway roads, trails, or a variety of other natural terrain.

Nonhighway vehicle does not include:

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

(b) Snowmobiles or any military vehicles; or

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

(11) "Nonmotorized recreational facilities" means recreational trails and facilities that are adjacent to, or accessed by, a nonhighway road and intended primarily for nonmotorized recreational users.

(12) "Nonmotorized recreational user" means a person whose purpose for consuming fuel on a nonhighway road or off-road is primarily for nonmotorized recreational purposes including, but not limited to, walking, hiking, backpacking, climbing, cross-country skiing, snowshoeing, mountain biking, horseback riding, and pack animal activities.

(13) "Off-road vehicle" or "ORV" means any nonstreet licensed vehicle when used for recreational purposes on nonhighway roads, trails, or a variety of other natural terrain. Such vehicles include, but are not limited to, all-terrain vehicles, motorcycles, four-wheel drive vehicles, and dune buggies.

(14) "Operator" means each person who operates, or is in physical control of, any nonhighway vehicle.

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

(16) "ORV recreation facilities" include, but are not limited to, ORV trails, trailheads, campgrounds, ORV sports parks, and ORV use areas, designated for ORV use by the managing authority that are intended primarily for ORV recreational users.

(17) "ORV recreational user" means a person whose purpose for consuming fuel on nonhighway roads or off-road is primarily for ORV recreational purposes, including but not limited to riding an all-terrain vehicle, motorcycling, or driving a four-wheel drive vehicle or dune buggy.

(18) "ORV sport[s] park" means a facility designed to accommodate competitive ORV recreational uses including, but not limited to, motocross racing, four-wheel drive competitions, and flat track racing. Use of ORV sports parks can be competitive or noncompetitive in nature.

(19) "ORV trail" means a multiple-use corridor designated by the managing authority and maintained for recreational use by motorized vehicles.

(20) "ORV use permit" means a permit issued for operation of an off-road vehicle under this chapter.

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

(22) "Person" means any individual, firm, partnership, association, or corporation.

RCW 46.09.030 Use permits — Issuance — Fees.

The department shall provide for the issuance of use permits for off-road vehicles and may appoint agents for collecting fees and issuing permits. The department shall charge each applicant for registration the actual cost of the decal. The department shall make available replacement decals for a fee equivalent to the actual cost of the decals. The provisions of RCW 46.01.130 and 46.01.140 apply to the issuance of use permits for off-road vehicles as they do to the issuance of vehicle licenses, the appointment of agents and the collection of application fees.

RCW 46.09.040 Use permit prerequisite to operation.

Except as provided in this chapter, no person shall operate any off-road vehicle within this state after January 1, 1978, unless the off-road vehicle has been assigned an ORV use permit and displays a current ORV tag in accordance with the provisions of this chapter: PROVIDED, That registration and display of an unexpired ATV use permit shall be deemed to have complied with this section.

RCW 46.09.050 Vehicles exempted from ORV use permits and tags.

ORV use permits and ORV tags shall be required under the provisions of this chapter except for the following:

(1) Off-road vehicles owned and operated by the United States, another state, or a political subdivision thereof.

(2) Off-road vehicles owned and operated by this state, or by any municipality or political subdivision thereof.

(3) Off-road vehicles operated on agricultural lands owned or leased by the ORV owner or operator.

(4) Off-road vehicles owned by a resident of another state that have a valid ORV permit or vehicle license issued in accordance with the laws of the other state. This exemption shall apply only to the extent that a similar exemption or privilege is granted under the laws of that state.

(5) Off-road vehicles while being used for search and rescue purposes under the authority or direction of an appropriate search and rescue or law enforcement agency.

(6) Vehicles which are licensed pursuant to chapter 46.16 RCW or in the case of nonresidents, vehicles which are validly licensed for operation over public highways in the jurisdiction of the owner's residence.

RCW 46.09.070 Application for ORV use permit.

(1) Application for annual or temporary ORV use permits shall be made to the department or its authorized agent in such manner and upon such forms as the department shall prescribe and shall state the name and address of each owner of the off-road vehicle.

(2) An application for an annual permit shall be signed by at least one owner, and shall be accompanied by a fee of eighteen dollars. Upon receipt of the annual permit application and the application fee, the off-road vehicle shall be assigned a use permit number tag or decal, which shall be affixed to the off-road vehicle in a manner prescribed by the department. The annual permit is valid for a period of one year and is renewable each year in such manner as the department may prescribe for an additional period of one year upon payment of a renewal fee of eighteen dollars.

Any person acquiring an off-road vehicle for which an annual permit has been issued who desires to continue to use the permit must, within fifteen days of the acquisition of the off-road vehicle, make application to the department or its authorized agent for transfer of the permit, and the application shall be accompanied by a transfer fee of five dollars.

(3) A temporary use permit is valid for sixty days. Application for a temporary permit shall be accompanied by a fee of seven dollars. The permit shall be carried on the vehicle at all times during its operation in the state.

(4) Except as provided in RCW 46.09.050, any out-of-state operator of an off-road vehicle shall, when operating in this state, comply with this chapter, and if an ORV use permit is required under this chapter, the operator shall obtain an annual or temporary permit and tag.

RCW 46.09.080 ORV dealers — Permits — Fees — Number plates — Title application

— Violations.

(1) Each dealer of off-road vehicles in this state who does not have a current "dealer's plate" for vehicle use pursuant to chapter 46.70 RCW shall obtain an ORV dealer permit from the department in such manner and upon such forms as the department shall prescribe. Upon receipt of an application for an ORV dealer permit and the fee under subsection (2) of this section, the dealer shall be registered and an ORV dealer permit number assigned.

(2) The fee for ORV dealer permits shall be twenty-five dollars per year, which covers all of the off-road vehicles owned by a dealer and not rented. Off-road vehicles rented on a regular, commercial basis by a dealer shall have separate use permits.

(3) Upon the issuance of an ORV dealer permit each dealer may purchase, at a cost to be determined by the department, ORV dealer number plates of a size and color to be determined by the department, that contain the dealer ORV permit number assigned to the dealer. Each off-road vehicle operated by a dealer, dealer representative, or prospective customer for the purposes of testing or demonstration

shall display such number plates assigned pursuant to the dealer permit provisions in chapter 46.70 RCW or this section, in a manner prescribed by the department.

(4) No dealer, dealer representative, or prospective customer shall use such number plates for any purpose other than the purpose prescribed in subsection (3) of this section.

(5) ORV dealer permit numbers shall be nontransferable.

(6) It is unlawful for any dealer to sell any off-road vehicle at wholesale or retail or to test or demonstrate any off-road vehicle within the state unless he has a motor vehicle dealers' license pursuant to chapter 46.70 RCW or an ORV dealer permit number in accordance with this section.

(7) When an ORV is sold by a dealer, the dealer shall apply for title in the purchaser's name within fifteen days following the sale.

RCW 46.09.085 Selling ORV without use permit.

Except as provided in RCW 46.09.050, it is unlawful for any dealer to sell at retail an off-road vehicle without an ORV use permit required in RCW 46.09.040.

RCW 46.09.110 Disposition of ORV moneys.

The moneys collected by the department under this chapter shall be distributed from time to time but at least once a year in the following manner:

The department shall retain enough money to cover expenses incurred in the administration of this chapter: PROVIDED, That such retention shall never exceed eighteen percent of fees collected.

The remaining moneys shall be distributed for ORV recreation facilities by the interagency committee for outdoor recreation in accordance with RCW 46.09.170(2)(d)(ii)(A).

RCW 46.09.115 Nonhighway use.

(1) Except as otherwise provided in this section, it is lawful to operate an off-road vehicle upon a non-highway nonhighway road and in parking areas serving designated off- road vehicle areas if the state, federal, local, or private authority responsible for the management of the nonhighway road authorizes the use of off-road vehicles; and 19

CERTIFICATION OF ENROLLMENT

HOUSE BILL 2617
Chapter 212, Laws of 2006

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

6 **Sec. 1.** RCW 46.16.010 and 2005 c 350 s 1, 2005 c 323 s 2, and 2005

7 c 213 s 6 are each reenacted and amended to read as follows:

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

9 along a public highway of this state without first having obtained and
10 having in full force and effect a current and proper vehicle license
11 and display vehicle license number plates therefor as by this chapter
12 provided.

13 (2) Failure to make initial registration before operation on the
14 highways of this state is a traffic infraction, and any person
15 committing this infraction shall pay a penalty of five hundred twenty
16 nine dollars, no part of which may be suspended or deferred.

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

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

(a) For a first offense, up to one year in the county jail and payment of a fine of five hundred twenty-nine dollars plus twice the amount of delinquent taxes and fees, no part of which may be suspended or deferred;

(b) For a second or subsequent offense, up to one year in the county jail and payment of a fine of five hundred twenty-nine dollars plus four times the amount of delinquent taxes and fees, no part of which may be suspended or deferred;

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

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

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

(a) Motorized foot scooters;

(b) Electric-assisted bicycles;

(c) Off-road vehicles operating on nonhighway roads under RCW 46.09.115;

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

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

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

(g) "Trams" used for transporting persons to and from facilities related to the horse racing industry as regulated in chapter 67.16 RCW, as long as the public right-of-way routes over which the trams operate are not more than one mile from end to end, the public rights-of-way over which the tram operates have an average daily traffic of not more than 15,000 vehicles per day, and the activity is in conformity with federal law. The operator must be a licensed driver and at least eighteen years old. For the purposes of this section, "tram" also means a vehicle, or combination of vehicles linked together with a single mode of propulsion, used to transport persons from one location to another;

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

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

Exclusions:

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

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

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

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

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

(c) An off-road vehicle operated on a street, road, or highway as authorized under RCW 46.09.180.

(7)(a) A motor vehicle subject to initial or renewal registration under this section shall not be registered to a natural person unless the person at time of application:

- (i) Presents an unexpired Washington state driver's license; or
- (ii) Certifies that he or she is:

(A) A Washington resident who does not operate a motor vehicle on public roads; or

(B) Exempt from the requirement to obtain a Washington state driver's license under RCW 46.20.025.

(b) For shared or joint ownership, the department will set up

2 subsection.

3 (c) A person falsifying residency is guilty of a gross misdemeanor
4 punishable only by a fine of five hundred twenty-nine dollars.

(d) The department may adopt rules necessary to implement this 6
subsection, including rules under which a natural person applying for 7 registration
may be exempt from the requirements of this subsection 8 where the person
provides evidence satisfactory to the department that 9 he or she has a valid and
compelling reason for not being able to meet
the requirements of this subsection.

11 **Sec. 2.** RCW 46.09.115 and 2005 c 213 s 4 are each amended to read
12 as follows:

13 (1) Except as otherwise provided in this section, it is lawful to
14 operate an off-road vehicle upon:

(a) A nonhighway road and in parking areas serving designated off16 road
vehicle areas if the state, federal, local, or private authority 17 responsible for the
management of the nonhighway road authorizes the 18 use of off-road vehicles; and
19 (b) A street, road, or highway as authorized under RCW 46.09.180.

(2) Operations of an off-road vehicle on a nonhighway road, or on 21 a street,
road, or highway as authorized under RCW 46.09.180, under 22 this section is exempt
from licensing requirements of RCW 46.16.010 and 23 vehicle lighting and
equipment requirements of chapter 46.37 RCW. 24 (3) It is unlawful to operate an
off-road vehicle upon a private

nonhighway road if the road owner has not authorized the use of off26 road
vehicles. 27 (4) Nothing in this section authorizes trespass on private 28 property. 29

(5) The provisions of RCW 4.24.210(5) shall apply to public

landowners who allow members of the public to use public facilities 31
accessed by a highway, street, or nonhighway road for recreational off32 road vehicle
use.

33 **Sec. 3.** RCW 46.09.120 and 2005 c 213 s 3 are each amended to read 34 as
follows:

(1) Except as provided in subsection (4) of this section, it is a 36 traffic
infraction for any person to operate any nonhighway vehicle:

- (a) In such a manner as to endanger the property of another;
- (b) On lands not owned by the operator or owner of the nonhighway vehicle without a lighted headlight and taillight between the hours of dusk and dawn, or when otherwise required for the safety of others regardless of ownership;
- (c) On lands not owned by the operator or owner of the nonhighway vehicle without an adequate braking device or when otherwise required for the safety of others regardless of ownership;
- (d) Without a spark arrester approved by the department of natural resources;
- (e) Without an adequate, and operating, muffling device which effectively limits vehicle noise to no more than eighty-six decibels on the "A" scale at fifty feet as measured by the Society of Automotive Engineers (SAE) test procedure J 331a, except that a maximum noise level of one hundred and five decibels on the "A" scale at a distance of twenty inches from the exhaust outlet shall be an acceptable substitute in lieu of the Society of Automotive Engineers test procedure J 331a when measured:
 - (i) At a forty-five degree angle at a distance of twenty inches from the exhaust outlet;
 - (ii) With the vehicle stationary and the engine running at a steady speed equal to one-half of the manufacturer's maximum allowable ("red line") engine speed or where the manufacturer's maximum allowable engine speed is not known the test speed in revolutions per minute calculated as sixty percent of the speed at which maximum horsepower is developed; and
 - (iii) With the microphone placed ten inches from the side of the vehicle, one-half way between the lowest part of the vehicle body and the ground plane, and in the same lateral plane as the rearmost exhaust outlet where the outlet of the exhaust pipe is under the vehicle;
- (f) On lands not owned by the operator or owner of the nonhighway vehicle upon the shoulder or inside bank or slope of any nonhighway road or highway, or upon the median of any divided highway;
- (g) On lands not owned by the operator or owner of the nonhighway vehicle in any area or in such a manner so as to unreasonably expose the underlying soil, or to create an erosion condition, or to injure, damage, or destroy trees, growing crops, or other vegetation;

HB 2617.SL p. 6 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; 4 (i) On any public lands in violation of rules and regulations of 5 the agency administering such lands; and 6 (j) On a private nonhighway road in violation of RCW 46.09.115(3). 7 (2) It is a misdemeanor for any person to operate any nonhighway 8 vehicle while under the influence of intoxicating liquor or a 9 controlled substance.

10 (3)(a) Except for an off-road vehicle equipped with seat belts and 11 roll bars or an

enclosed passenger compartment, it is a traffic 12 infraction for any person to operate or ride an off-road vehicle on a 13 nonhighway road without wearing upon his or her head a motorcycle 14 helmet fastened securely while in motion. For purposes of this 15 section, "motorcycle helmet" has the same meaning as provided in RCW 16 46.37.530. 17 (b) Subsection (3)(a) of this section does not apply to an off-road 18 vehicle operator operating on his or her own land. 19 (c) Subsection (3)(a) of this section does not apply to an off-road 20 vehicle operator operating on agricultural lands owned or leased by the 21 off-road vehicle operator or the operator's employer. 22 (4) It is not a traffic infraction to operate an off-road vehicle 23 on a street, road, or highway as authorized under RCW 46.09.180.

24 **Sec. 4.** RCW 46.09.180 and 1977 ex.s. c 220 s 15 are each amended 25 to read as follows: 26 Notwithstanding any of the provisions of this chapter, any city, 27 county, or other political subdivision of this state, or any state 28 agency, may regulate the operation of nonhighway vehicles on public 29 lands, waters, and other properties under its jurisdiction, and on 30 streets, roads, or highways within its boundaries by adopting 31 regulations or ordinances of its governing body, provided such 32 regulations are not less stringent than the provisions of this chapter. 33 However, the legislative body of a city with a population of less than 34 three thousand persons may, by ordinance, designate a street or highway 35 within its boundaries to be suitable for use by off-road vehicles. The 36 legislative body of a county may, by ordinance, designate a road or 37 highway within its boundaries to be suitable for use by off-road

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1 vehicles if the road or highway is a direct connection between a city 2 with a population of less than three thousand persons and an off-road 3 vehicle recreation facility.

4 **Sec. 5.** RCW 46.37.010 and 2005 c 213 s 7 are each amended to read

as follows: 6 (1) It is a traffic infraction for any person to drive or move or 7 for the owner to cause or knowingly permit to be driven or moved on any 8 highway any vehicle or combination of vehicles which is in such unsafe 9 condition as to endanger any person, or which does not contain those

parts or is not at all times equipped with such lamps and other 11 equipment in

proper condition and adjustment as required in this chapter or in regulations issued by the chief of the Washington state patrol, or which is equipped in any manner in violation of this chapter or the state patrol's regulations, or for any person to do any act

forbidden or fail to perform any act required under this chapter or the state patrol's regulations. (2) Nothing contained in this chapter or the state patrol's regulations shall be construed to prohibit the use of additional parts and accessories on any vehicle not inconsistent with the provisions of

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

(4) No owner or operator of a farm tractor, self-propelled unit of farm equipment, or implement of husbandry shall be guilty of a crime or subject to penalty for violation of RCW 46.37.160 as now or hereafter amended unless such violation occurs on a public highway. (5) It is a traffic infraction for any person to sell or offer for

sale vehicle equipment which is required to be approved by the state patrol as prescribed in RCW 46.37.005 unless it has been approved by the state patrol. (6) The provisions of this chapter with respect to equipment required on vehicles shall not apply to motorcycles or motor-driven

cycles except as herein made applicable. (7) This chapter does not apply to off-road vehicles used on

HB 2617.SL p. 8 1 nonhighway roads or used on streets, roads, or highways as authorized 2 under RCW 46.09.180. (8) This chapter does not apply to vehicles used by the state parks and recreation commission exclusively for park maintenance and operations upon public highways within state parks. (9) Notices of traffic infraction issued to commercial drivers under the provisions of this chapter with respect to equipment required on commercial motor vehicles shall not be considered for driver improvement purposes under chapter 46.20 RCW.

(10) Whenever a traffic infraction is chargeable to the owner or lessee of a vehicle under subsection (1) of this section, the driver shall not be arrested or issued a notice of traffic infraction unless the vehicle is registered in a jurisdiction

other than Washington 14 state, or unless the infraction is for an offense that is clearly 15 within the responsibility of the driver. 16 (11) Whenever the owner or lessee is issued a notice of traffic 17 infraction under this section the court may, on the request of the 18 owner or lessee, take appropriate steps to make the driver of the 19 vehicle, or any other person who directs the loading, maintenance, or 20 operation of the vehicle, a codefendant. If the codefendant is held 21 solely responsible and is found to have committed the traffic 22 infraction, the court may dismiss the notice against the owner or 23 lessee.

24 **Sec. 6.** RCW 4.24.210 and 2003 c 39 s 2 and 2003 c 16 s 2 are each 25 reenacted and amended to read as follows: 26 (1) Except as otherwise provided in subsection (3) or (4) of this 27 section, any public or private landowners or others in lawful 28 possession and control of any lands whether designated resource, rural, 29 or urban, or water areas or channels and lands adjacent to such areas 30 or channels, who allow members of the public to use them for the 31 purposes of outdoor recreation, which term includes, but is not limited 32 to, the cutting, gathering, and removing of firewood by private persons 33 for their personal use without purchasing the firewood from the 34 landowner, hunting, fishing, camping, picnicking, swimming, hiking, 35 bicycling, skateboarding or other nonmotorized wheel-based activities, 36 hanggliding, paragliding, rock climbing, the riding of horses or other 37 animals, clam digging, pleasure driving of off-road vehicles,

1 snowmobiles, and other vehicles, boating, nature study, winter or water

2 sports, viewing or enjoying historical, archaeological, scenic, or
3 scientific sites, without charging a fee of any kind therefor, shall
4 not be liable for unintentional injuries to such users.

5 (2) Except as otherwise provided in subsection (3) or (4) of this
6 section, any public or private landowner or others in lawful possession
7 and control of any lands whether rural or urban, or water areas or
8 channels and lands adjacent to such areas or channels, who offer or
9 allow such land to be used for purposes of a fish or wildlife
10 cooperative project, or allow access to such land for cleanup of litter

11 or other solid waste, shall not be liable for unintentional injuries to
12 any volunteer group or to any other users.

13 (3) Any public or private landowner, or others in lawful possession
14 and control of the land, may charge an administrative fee of up to
15 twenty-five dollars for the cutting, gathering, and removing of
16 firewood from the land.

17 (4) Nothing in this section shall prevent the liability of a
18 landowner or others in lawful possession and control for injuries
19 sustained to users by reason of a known dangerous artificial latent
20 condition for which warning signs have not been conspicuously posted.
21 A fixed anchor used in rock climbing and put in place by someone other
22 than a landowner is not a known dangerous artificial latent condition
23 and a landowner under subsection (1) of this section shall not be
24 liable for unintentional injuries resulting from the condition or use
25 of such an anchor. Nothing in RCW 4.24.200 and ~~((4.24.210))~~ this
26 section limits or expands in any way the doctrine of attractive
27 nuisance. Usage by members of the public, volunteer groups, or other
28 users is permissive and does not support any claim of adverse
29 possession.

30 (5) For purposes of this section, the following are not fees:

31 (a) A license or permit issued for statewide use under authority of
32 chapter 79A.05 RCW or Title 77 RCW ~~((is not a fee))~~; and

33 (b) A daily charge not to exceed twenty dollars per person, per
34 day, for access to a publicly owned ORV sports park, as defined in RCW
35 46.09.020, or other public facility accessed by a highway, street, or
36 nonhighway road for the purposes of off-road vehicle use.

Passed by the House March 4, 2006.

Passed by the Senate March 1, 2006.

Approved by the Governor March 24, 2006.

Filed in Office of Secretary of State March 24, 2006.

(2) Operations of an off-road vehicle on a nonhighway road, under this section is exempt from licensing requirements of RCW 46.16.010 and vehicle lighting and

equipment requirements of chapter 46.37 RCW.

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

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

RCW 46.09.117 Operation by persons under thirteen.

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

(2) Persons under thirteen years of age may operate an off-road vehicle on a nonhighway road designated for off-road vehicle use under the direct supervision of a person eighteen years of age or older possessing a valid license to operate a motor vehicle under chapter 46.20 RCW. [2005 c 213 § 5.] Notes:

RCW 46.09.120 Operating violations.

(1) Except as provided in subsection (4) of this section, it is a 36 traffic infraction for any person to operate any nonhighway vehicle:

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

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

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

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

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

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

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

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

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

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

HB 2617.SL p. 6 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; 4 (i) On any public lands in violation of rules and regulations of 5 the agency administering such lands; and 6 (j) On a private nonhighway road in violation of RCW 46.09.115(3). 7 (2) It is a misdemeanor for any person to operate any nonhighway 8 vehicle while under the influence of intoxicating liquor or a 9 controlled substance.

10 (3)(a) Except for an off-road vehicle equipped with seat belts and 11 roll bars or an enclosed passenger compartment, it is a traffic 12 infraction for any person to operate or ride an off-road vehicle on a 13 nonhighway road without wearing upon his or her head a motorcycle 14 helmet fastened securely while in motion. For purposes of this 15 section, "motorcycle helmet" has the same meaning as provided in RCW 16 46.37.530. 17 (b) Subsection (3)(a) of this section does not apply to an off-road 18 vehicle operator operating on his or her own land. 19 (c) Subsection (3)(a) of this section does not apply to an off-road 20 vehicle operator operating on agricultural lands owned or leased by the 21 off-road vehicle operator or the operator's employer.

RCW 46.09.130 Additional violations — Penalty.

(1) No person may operate a nonhighway vehicle in such a way as to endanger human life.

(2) No person shall operate a nonhighway vehicle in such a way as to run down or harass any wildlife or animal, nor carry, transport, or convey any loaded weapon in or upon, nor hunt from, any nonhighway vehicle except by permit issued by the director of fish and wildlife under RCW 77.32.237: PROVIDED, That it shall not be unlawful to carry, transport, or convey a loaded pistol in or upon a nonhighway vehicle if the person complies with the terms and conditions of chapter 9.41 RCW.

(3) For the purposes of this section, "hunt" means any effort to kill, injure, capture, or purposely disturb a wild animal or bird.

(4) Violation of this section is a gross misdemeanor.

RCW 46.09.140
Accident
reports.

The operator of any nonhighway vehicle involved in any accident resulting in injury to or death of any person, or property damage to another to an apparent extent equal to or greater than the minimum amount established by rule adopted by the chief of the Washington state patrol in accordance with chapter 46.52 RCW, or a person acting for the operator shall submit such reports as are required under chapter 46.52 RCW, and the provisions of chapter 46.52 RCW applies to the reports when submitted.

RCW 46.09.150 Motor vehicle fuel excise taxes on fuel for nonhighway vehicles not refundable.

Motor vehicle fuel excise taxes paid on fuel used and purchased for providing the motive power for nonhighway vehicles shall not be refundable in accordance with the provisions of RCW 82.36.280 as it now exists or is hereafter amended.

RCW 46.09.165

Nonhighway and off-road vehicle activities program account.

The nonhighway and off-road vehicle activities program account is created in the state treasury. Moneys in this account are subject to legislative appropriation. The interagency committee for outdoor recreation shall administer the account for purposes specified in this chapter and shall hold it separate and apart from all other money, funds, and accounts of the interagency committee for outdoor recreation. Grants, gifts, or other financial assistance, proceeds received from public bodies as administrative cost contributions, and any moneys made available to the state of Washington by the federal government for outdoor recreation may be deposited into the account.

RCW 46.09.170 Refunds from motor vehicle fund — Distribution — Use.

(1) From time to time, but at least once each year, the state treasurer shall refund from the motor vehicle fund one percent of the motor vehicle fuel tax revenues collected under chapter 82.36 RCW, based on a tax rate of: (a) Nineteen cents per gallon of motor vehicle fuel from July 1, 2003, through June 30, 2005; (b) twenty cents per gallon of motor vehicle fuel from July 1, 2005, through June 30, 2007; (c) twenty-one cents per gallon of motor vehicle fuel from July 1, 2007, through June 30, 2009; (d) twenty-two cents per gallon of motor vehicle fuel from July 1, 2009, through June 30, 2011; and (e) twenty-three cents per gallon of motor vehicle fuel beginning July 1, 2011, and thereafter, less proper deductions for

refunds and costs of collection as provided in RCW 46.68.090.

(2) The treasurer shall place these funds in the general fund as follows:

(a) Thirty-six percent shall be credited to the ORV and nonhighway vehicle account and administered by the department of natural resources solely for acquisition, planning, development, maintenance, and management of ORV, nonmotorized, and nonhighway road recreation facilities, and information programs and maintenance of nonhighway roads;

(b) Three and one-half percent shall be credited to the ORV and nonhighway vehicle account and administered by the department of fish and wildlife solely for the acquisition, planning, development, maintenance, and management of ORV, nonmotorized, and nonhighway road recreation facilities and the maintenance of nonhighway roads;

(c) Two percent shall be credited to the ORV and nonhighway vehicle account and administered by the parks and recreation commission solely for the acquisition, planning, development, maintenance, and management of ORV, nonmotorized, and nonhighway road recreation facilities; and

(d) Fifty-eight and one-half percent shall be credited to the nonhighway and off-road vehicle activities program account to be administered by the committee for planning, acquisition, development, maintenance, and management of ORV, nonmotorized, and nonhighway road recreation facilities and for education, information, and law enforcement programs. The funds under this subsection shall be expended in accordance with the following limitations:

(i) Not more than thirty percent may be expended for education, information, and law enforcement programs under this chapter;

(ii) Not less than seventy percent may be expended for ORV, nonmotorized, and nonhighway road recreation facilities. Except as provided in (d)(iii) of this subsection, of this amount:

(A) Not less than thirty percent, together with the funds the committee receives under RCW 46.09.110, may be expended for ORV recreation facilities;

(B) Not less than thirty percent may be expended for nonmotorized recreation facilities. Funds expended under this subsection (2)(d)(ii)(B) shall be known as Ira Spring outdoor recreation facilities funds; and

(C) Not less than thirty percent may be expended for nonhighway road recreation facilities;

(iii) The committee may waive the minimum percentage cited in (d)(ii) of this subsection due to insufficient requests for funds or projects that score low in the committee's project evaluation. Funds remaining after such a waiver must be allocated in accordance with committee policy.

(3) On a yearly basis an agency may not, except as provided in RCW 46.09.110, expend more than ten percent of the funds it receives under this chapter for general administration expenses incurred in carrying out this chapter.

(4) During the 2003-05 fiscal biennium, the legislature may appropriate such amounts as reflect the excess fund balance in the NOVA account to the interagency committee

for outdoor recreation, the department of natural resources, the department of fish and wildlife, and the state parks and recreation commission. This appropriation is not required to follow the specific distribution specified in subsection (2) of this section.

RCW 46.09.180 Regulation by local political subdivisions or state agencies.

Notwithstanding any of the provisions of this chapter, any city, 27 county, or other political subdivision of this state, or any state 28 agency, may regulate the operation of nonhighway vehicles on public 29 lands, waters, and other properties under its jurisdiction, and on 30 streets, roads, or highways within its boundaries by adopting 31 regulations or ordinances of its governing body, provided such 32 regulations are not less stringent than the provisions of this chapter. 33 However, the legislative body of a city with a population of less than 34 three thousand persons may, by ordinance, designate a street or highway 35 within its boundaries to be suitable for use by off-road vehicles. The 36 legislative body of a county may, by ordinance, designate a road or 37 highway within its boundaries to be suitable for use by off-road vehicles if the road or highway is a direct connection between a city 2 with a population of less than three thousand persons and an off-road 3 vehicle recreation facility

RCW 46.09.190 General penalty — Civil liability.

(1) Except as provided in RCW 46.09.120(2) and 46.09.130 as now or hereafter amended, violation of the provisions of this chapter is a traffic infraction for which a penalty of not less than twenty-five dollars may be imposed.

(2) In addition to the penalties provided in subsection (1) of this section, the owner and/or the operator of any nonhighway vehicle shall be liable for any damage to property including damage to trees, shrubs, or growing crops injured as the result of travel by the nonhighway vehicle. The owner of such property may recover from the person responsible three times the amount of damage.

**RCW 46.09.200
Enforcement.**

The provisions of this chapter shall be enforced by all persons having the authority to enforce any of the laws of this state, including, without limitation, officers of the state patrol, county sheriffs and their deputies, all municipal law enforcement officers within their respective jurisdictions, fish and wildlife officers, state park rangers, and those employees of the department of natural resources designated by the commissioner of public lands under RCW *43.30.310, 76.04.035, and 76.04.045.

RCW 46.09.240 Administration and distribution of ORV moneys.

(1) After deducting administrative expenses and the expense of any programs conducted under this chapter, the interagency committee for outdoor recreation shall, at least once each year, distribute the funds it receives under RCW 46.09.110 and 46.09.170 to state agencies, counties, municipalities, federal agencies, nonprofit ORV organizations, and Indian tribes. Funds distributed under this section to nonprofit ORV organizations may be spent only on projects or activities that benefit ORV recreation on lands once publicly owned that come into private ownership in a federally approved land exchange completed between January 1, 1998, and January 1, 2005.

(2) The committee shall adopt rules governing applications for funds administered by the agency under this chapter and shall determine the amount of money distributed to each applicant. Agencies receiving funds under this chapter for capital purposes shall consider the possibility of contracting with the state parks and recreation commission, the department of natural resources, or other federal, state, and local agencies to employ the youth development and conservation corps or other youth crews in completing the project.

(3) The interagency committee for outdoor recreation shall require each applicant for acquisition or development funds under this section to comply with the requirements of either the state environmental policy act, chapter 43.21C RCW, or the national environmental policy act (42 U.S.C. Sec. 4321 et seq.).

RCW 46.09.250
Statewide plan.

The interagency committee for outdoor recreation shall maintain a statewide plan which shall be updated at least once every third biennium and shall be used by all participating agencies to guide distribution and expenditure of funds under this chapter.

RCW 46.09.280 Nonhighway and off-road vehicle activities advisory committee.

(1) The interagency committee for outdoor recreation shall establish the nonhighway and off-road vehicle activities advisory committee to provide advice regarding the administration of this chapter. The committee consists of governmental representatives, land managers, and a proportional representation of persons with recreational experience in areas identified in the most recent fuel use study, including but not limited to people with ORV, hiking, equestrian, mountain biking, hunting, fishing, and wildlife viewing experience.

(2) After the advisory committee has made recommendations regarding the expenditure of the fuel tax revenue portion of the nonhighway and off-road vehicle account moneys, the advisory committee's ORV and mountain biking recreationists, governmental representatives, and land managers will make recommendations regarding the expenditure of funds received under RCW 46.09.110.

(3) At least once a year, the interagency committee for outdoor recreation, the department of natural resources, the department of fish and wildlife, and the state parks and recreation commission shall report to the nonhighway and off-road vehicle activities advisory committee on the expenditures of funds received under RCW 46.09.110 and 46.09.170 and must proactively seek the advisory committee's advice regarding proposed expenditures.

(4) The advisory committee shall advise these agencies regarding the allocation of funds received under RCW 46.09.170 to ensure that overall expenditures reflect consideration of the results of the most recent fuel use study.

RCW 46.09.900 Severability — 1971 ex.s. c 47.

If any provision of this 1971 amendatory act, or its application to any person or circumstance is held invalid, the remainder of this 1971 amendatory act, or the application of the provision to other persons or circumstances is not affected.