

**Fifty-ninth Legislative Assembly of North Dakota
In Regular Session Commencing Tuesday, January 4, 2005**

HOUSE BILL NO. 1342
(Representatives Weisz, Drovdal, Ruby)
(Senator Trenbeath)

AN ACT to amend and reenact subsection 59 of section 39-01-01 and sections 39-29-01, 39-29-01.1, 39-29-02, 39-29-03, 39-29-04, 39-29-05, 39-29-06, 39-29-07, 39-29-08, 39-29-09, 39-29-12, 51-20-01, and 57-40.3-01 of the North Dakota Century Code, relating to all-terrain vehicles; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 59 of section 39-01-01 of the North Dakota Century Code is amended and reenacted as follows:

59. "Recreational vehicle" means any motorcycle not qualified for registration, ~~all-terrain off-highway~~ vehicle, snowmobile, vessel, or personal watercraft.

SECTION 2. AMENDMENT. Section 39-29-01 of the North Dakota Century Code is amended and reenacted as follows:

39-29-01. Definitions. As used in this chapter, unless the context otherwise requires:

1. ~~"All-terrain vehicle" means any motorized off-highway vehicle fifty inches [1270.00 millimeters] or less in width, having a dry weight of one thousand pounds [453.59 kilograms] or less, traveling on three or more low-pressure tires, designed for operator use only with no passengers, having a seat or saddle designed to be straddled by the operator, and handlebars for steering control.~~
2. "Dealer" means any person engaged in the business of buying, selling, or exchanging ~~all-terrain off-highway~~ vehicles or who advertises, or holds out to the public as engaged in the buying, selling, or exchanging of ~~all-terrain off-highway~~ vehicles, or who engages in the buying of ~~all-terrain off-highway~~ vehicles for resale.
2. "Off-highway vehicle" means any wheeled motorized vehicle not designed for use on a highway and capable of cross-country travel on land, snow, ice, marsh, swampland, or other natural terrain. An off-highway vehicle must be classified into one of the following categories:
 - a. Class I off-highway vehicle is a vehicle that does not qualify as road capable under chapters 39-21 and 39-27, has a seat or a saddle designed to be straddled by the operator, and has handlebars for steering control of two wheels.
 - b. Class II off-highway vehicle is less than fifty inches [1270.00 millimeters] in width, travels on three or more low-pressure tires, has a saddle designed to be straddled by the operator, and has handlebars for steering control.
 - c. Class III off-highway vehicle weighs less than eight thousand pounds, travels on four or more tires, has a seat and a wheel for steering control, and is designated for or capable of cross-country on or over land, water, sand, snow, ice, marsh, swampland, or other natural terrain, unless registered by the department under chapter 39-04.
3. "Operate" means to ride in or on and control the operation of an ~~all-terrain off-highway~~ vehicle.

4. "Operator" means ~~a person~~ an individual who operates or is in actual physical control of an ~~all-terrain off-highway~~ vehicle.
5. "Owner" means a person, other than a lienholder, having the property in or title to an ~~all-terrain off-highway~~ vehicle and entitled to its use or possession.
6. "Register" means the act of assigning a registration number to an ~~all-terrain off-highway~~ vehicle.

SECTION 3. AMENDMENT. Section 39-29-01.1 of the North Dakota Century Code is amended and reenacted as follows:

39-29-01.1. Safety fee - Imposition - Collection by dealer - Payment to department - Use of fee. Upon the sale of ~~an all-terrain~~ a new or used off-highway vehicle, ~~each~~ a dealer shall collect a five dollar safety fee from the buyer. By the end of each calendar quarter, the dealer shall file a report with the parks and recreation department which discloses the number of ~~all-terrain off-highway~~ vehicles sold the previous months and includes the fees collected from the buyer. Fees imposed under this section must be deposited in the ~~all-terrain off-highway~~ vehicle fund established under ~~subsection 2 of~~ section 39-29-05. The fees may be used only by the parks and recreation department and only for ~~all-terrain off-highway~~ vehicle safety education and promotion.

SECTION 4. AMENDMENT. Section 39-29-02 of the North Dakota Century Code is amended and reenacted as follows:

39-29-02. All-terrain Off-highway vehicle registration. Except as provided in this chapter, a ~~person~~ an individual may not operate an ~~all-terrain off-highway~~ vehicle unless it has been registered ~~in accordance with~~ under this chapter.

SECTION 5. AMENDMENT. Section 39-29-03 of the North Dakota Century Code is amended and reenacted as follows:

39-29-03. Registration - Application - Issuance - Fees - Renewal.

1. Application for registration must be made to the department of transportation in the form the department prescribes and furnishes. The registration must state the name and address of every owner of the ~~all-terrain off-highway~~ vehicle and be signed by at least one owner. A copy of the application is evidence of registration for the first thirty days after the date of application.
2. On receipt of an application and the appropriate fee, the department shall register the ~~all-terrain off-highway~~ vehicle and assign a registration number and a certificate of registration. The certificate of registration must include information regarding the make, year, serial number, and name and address of the owner.
3. The fee for registration of each ~~all-terrain off-highway~~ vehicle is five dollars for a registration period of two years. For a duplicate or replacement registration number or registration card which is lost, mutilated, or becomes illegible, the department may charge a fee of not more than five dollars. For each ~~all-terrain off-highway~~ vehicle registered under this chapter, there is an ~~all-terrain off-highway~~ vehicle trail tax of five dollars.
4. The owner of an ~~all-terrain off-highway~~ vehicle shall renew the registration in the manner the department prescribes and pay the registration fees and applicable tax provided in subsection 3.
5. On application for registration as prescribed in subsection 2, and on payment of the amounts prescribed in subsection 3, an ~~all-terrain off-highway~~ vehicle dealer is entitled to be issued registration numbers distinctively marked as dealer's registration numbers. The dealer's registration numbers may be used only on ~~all-terrain off-highway~~ vehicles owned by the dealership.

SECTION 6. AMENDMENT. Section 39-29-04 of the North Dakota Century Code is amended and reenacted as follows:

39-29-04. Exemption from registration - Exemption from fees.

1. Registration and payment of fees is not required of:
 - a. ~~All-terrain~~ Off-highway vehicles owned and used by the United States or another state or its political subdivisions.
 - b. ~~All-terrain~~ Off-highway vehicles registered in a foreign country and temporarily used in this state.
 - c. ~~All-terrain~~ Off-highway vehicles validly licensed in another state and which have not been within this state for more than thirty consecutive days.
 - d. ~~All-terrain~~ Off-highway vehicles used exclusively ~~for work~~ on private ~~agricultural~~ lands ~~or on industrial jobsites on private land~~.
 - e. ~~All-terrain~~ Off-highway vehicles used exclusively in organized track racing events.
2. ~~All-terrain~~ Off-highway vehicles owned by the state or any of its political subdivisions are exempt from the registration fees in section 39-29-03.

SECTION 7. AMENDMENT. Section 39-29-05 of the North Dakota Century Code is amended and reenacted as follows:

39-29-05. Disposition of registration fees and trail tax.

1. Fees from registration of ~~all-terrain~~ off-highway vehicles must be deposited with the state treasurer and credited to the motor vehicle registration fund.
2. The ~~all-terrain~~ off-highway vehicle trail tax must be deposited in a state off-highway vehicle fund in the state treasury. The parks and recreation department may, on appropriation by the legislative assembly, expend from that fund moneys for establishing ~~all-terrain~~ off-highway vehicle facilities, ~~all-terrain~~ off-highway vehicle use areas, and ~~all-terrain~~ off-highway vehicle safety and education programs, and enforcement of this chapter.

SECTION 8. AMENDMENT. Section 39-29-06 of the North Dakota Century Code is amended and reenacted as follows:

39-29-06. Transfer or termination of ~~all-terrain~~ off-highway vehicle ownership - Change of address of owner. Within fifteen days after the transfer of any ownership interest in an ~~all-terrain~~ off-highway vehicle, other than a security interest, or the destruction or abandonment of any ~~all-terrain~~ off-highway vehicle, or a change of address of the owner as listed with the application for registration, written notice of the fact must be given by the new owner to the director in the form the director requires.

SECTION 9. AMENDMENT. Section 39-29-07 of the North Dakota Century Code is amended and reenacted as follows:

39-29-07. Licensing by political subdivisions. Political subdivisions of this state may not require licensing or registration of ~~all-terrain~~ off-highway vehicles.

SECTION 10. AMENDMENT. Section 39-29-08 of the North Dakota Century Code is amended and reenacted as follows:

39-29-08. Rules. ~~Rules for the regulation and use of all-terrain vehicles must be adopted as follows:~~

1. The department shall adopt rules for the registration of ~~all-terrain~~ off-highway vehicles and display of registration numbers.
2. The director ~~may~~, in the interest of public health, welfare, and safety, may regulate, by rule, the operation of ~~all-terrain~~ off-highway vehicles on state highways. The director's authority to prohibit the use of ~~all-terrain~~ off-highway vehicles is limited to the roadways, shoulders, inslopes, and medians within the right of way, except where such action is necessary to avoid an obstacle. Notwithstanding the racing prohibitions in section 39-08-03.1, the director may, on a case-by-case basis, permit organized and bona fide ~~all-terrain~~ off-highway vehicle races on the ditch bottoms, backslopes, and the top of the backslopes of the state highway rights of way. The planning, organization, route selection, and safety precautions of any ~~such~~ race are the sole responsibility of the person obtaining the permit. The director, the department, and the department's employees do not incur ~~no~~ any liability for permitting ~~such~~ races.
3. The director of the parks and recreation department shall adopt rules to regulate use of ~~all-terrain~~ off-highway vehicles in state parks and other state-owned land under the supervision of the director of the parks and recreation department.
4. The governing bodies of political subdivisions may adopt rules to regulate use of ~~all-terrain~~ off-highway vehicles in areas under their jurisdiction. The governing body of a city may, by ordinance, regulate, restrict, and prohibit the use of ~~all-terrain~~ off-highway vehicles operated in the city limits in areas under the exclusive jurisdiction of the city.

SECTION 11. AMENDMENT. Section 39-29-09 of the North Dakota Century Code is amended and reenacted as follows:

39-29-09. Operation of ~~all-terrain~~ off-highway vehicles.

1. ~~A person~~ An individual may not operate an ~~all-terrain~~ off-highway vehicle on the roadway, shoulder, or inside bank or slope of any road, street, or highway except as provided in this chapter. Except in emergencies, ~~a person~~ an individual may not operate an ~~all-terrain~~ off-highway vehicle within the right of way of any controlled-access highway. An individual may operate a registered off-highway vehicle on a gravel, dirt, or loose surface roadway. An individual may operate a registered off-highway vehicle on a paved county or township roadway if the off-highway vehicle is towing an implement of husbandry and does not exceed the speed of twenty-five miles [40.23 kilometers] per hour. An individual may operate a registered off-highway vehicle on a paved county or township roadway designated and posted at a speed not exceeding forty-five miles [72.42 kilometers] per hour.
2. The operator of an ~~all-terrain~~ off-highway vehicle may make a direct crossing of a street or highway only if:
 - a. The crossing is made at an angle of approximately ninety degrees to the direction of the highway and at a place where no obstruction prevents a quick and safe crossing;
 - b. The ~~all-terrain~~ off-highway vehicle is brought to a complete stop before crossing the shoulder or main traveled way of the highway;
 - c. The operator yields the right of way to all oncoming traffic which constitutes an immediate hazard; and
 - d. In crossing a divided highway, the crossing is made only at an intersection of the highway with another public street or highway.
3. ~~A person~~ Unless an individual is operating a class 1 off-highway vehicle, an individual may not operate an ~~all-terrain~~ off-highway vehicle unless it is equipped with at least one

headlamp, one taillamp, and brakes, all in working order, which conform to standards prescribed by rule of the director ~~of the department of transportation~~, except when under the direct supervision of an ~~all-terrain off-highway~~ vehicle instructor teaching a certified ~~all-terrain off-highway~~ vehicle safety training course, the requirement for a headlamp and taillamp may be waived.

4. The emergency conditions under which an ~~all-terrain off-highway~~ vehicle may be operated other than as provided by this chapter are only those that render the use of an automobile impractical under the conditions and at the time and location in question.
5. ~~A person~~ An individual may not operate an ~~all-terrain off-highway~~ vehicle in the following ways, which are declared to be unsafe and a public nuisance:
 - a. At a rate of speed greater than reasonable or proper under all the surrounding circumstances.
 - b. In a careless, reckless, or negligent manner so as to endanger the person or property of another or to cause injury or damage to ~~such another person or the property of another person~~.
 - c. While under the influence of intoxicating liquor or a controlled substance.
 - d. Without a lighted headlamp and taillamp except when used by an ~~all-terrain off-highway~~ vehicle instructor during a certified ~~all-terrain off-highway~~ vehicle safety training course.
 - e. In any tree nursery or planting in a manner ~~which that~~ damages growing stock.
 - f. Without a manufacturer-installed or equivalent muffler in good working order and connected to the ~~all-terrain off-highway~~ vehicle's exhaust system.
 - g. On any private land where the private land is posted prohibiting trespassing. The name and address of the person posting the land and the date of posting must appear on each sign in legible characters. The posted signs must be readable from outside the land and be placed conspicuously at a distance of not more than eight hundred eighty yards [804.68 meters] apart. Land entirely enclosed by a fence or other enclosure is sufficiently posted by posting of ~~such these~~ signs; at or on all gates through the fence or enclosure.
6. Except as provided in section 39-29-10, ~~a person~~ an individual may not operate an ~~all-terrain off-highway~~ vehicle without having in possession a valid driver's license or permit.
7. When an ~~all-terrain off-highway~~ vehicle is operated within the right of way of any road, street, or highway, during times or conditions that warrant the use of lights by other motor vehicles, the ~~all-terrain off-highway~~ vehicle must be operated in the same direction as the direction of other motor vehicles traveling on the side of the roadway immediately adjacent to the side of the right of way traveled by the ~~all-terrain off-highway~~ vehicle.
8. ~~A person~~ An individual may not operate an ~~all-terrain off-highway~~ vehicle within the right of way of any highway while towing a sled, skid, or other vehicle, unless the object towed is connected to the ~~all-terrain off-highway~~ vehicle by a hinged swivel and secure hitch.
9. ~~Helmet required. No person~~ An individual under the age of eighteen years may not operate, ride, or otherwise be propelled on an ~~all-terrain off-highway~~ vehicle unless the person wears a safety helmet meeting United States department of transportation standards.

10. ~~Passenger restrictions. No~~ An operator of an ~~all-terrain off-highway~~ vehicle may not carry a passenger while operating the vehicle unless the off-highway vehicle is equipped and recommended by the manufacturer to carry a passenger and the passenger is carried as recommended by the manufacturer.
11. Unless otherwise provided by law, an off-highway vehicle may be operated on an aggregate road surface only when designated as part of an active off-highway vehicle trail by the managing entity.

SECTION 12. AMENDMENT. Section 39-29-12 of the North Dakota Century Code is amended and reenacted as follows:

39-29-12. Penalties. Violation of subdivision b, c, or g of subsection 5 of section 39-29-09 is a class B misdemeanor. Violation of any other provision of section 39-29-09 is an infraction for which a fee of twenty dollars must be assessed. Violation of section 39-29-02 is an infraction, for which a fee of fifty dollars must be assessed. If the ~~person~~ individual provides proof of registration since the violation, the fee may be reduced by one-half. Violation of any other provision of this chapter is an infraction, for which a fee of ten dollars must be assessed.

SECTION 13. AMENDMENT. Section 51-20-01 of the North Dakota Century Code is amended and reenacted as follows:

51-20-01. Definitions. As used in this chapter, unless the context requires otherwise:

1. "Contractual arrangement" means a written franchise or other written agreement, by whatever name such agreement may be called, between a distributor and a dealer whereby the dealer agrees to sell at retail and service the distributor's recreation vehicles in a given location or locations, whether or not exclusively with respect to a given geographic area, and the distributor authorizes the dealer to sell, or sell and service, and agrees to supply an inventory of recreation vehicles, and, if the dealer is to perform service, an inventory of parts for those vehicles.
2. "Dealer" means a person, partnership, corporation, limited liability company, or other business entity which sells at retail and services new recreation vehicles.
3. "Distributor" means any manufacturer, wholesaler, or distributor of recreation vehicles who has a contractual arrangement with a dealer in such vehicles.
4. "Recreation vehicle" includes snowmobiles as defined in section 39-24-01, plus trailers for transporting same when those trailers are furnished by the same distributor who furnishes the snowmobiles; ~~all-terrain off-highway~~ vehicles as defined in section 39-29-01; motorcycles as defined in subsection 39 of section 39-01-01; travel trailers, which term means vehicles without motive power designed for recreational use as living or sleeping quarters for people and which do not exceed forty feet [12.19 meters] in length; and motorboats, whether propelled by an inboard or outboard marine engine, plus any outboard marine engines and boat trailers.
5. "Repair parts" includes accessories.

SECTION 14. AMENDMENT. Section 57-40.3-01 of the North Dakota Century Code is amended and reenacted as follows:

57-40.3-01. Definitions. As used in this chapter, except when the context clearly indicates a different meaning:

1. ~~"All terrain vehicle" means any motorized off-highway vehicle fifty inches [1270 millimeters] or less in width, having a dry weight of one thousand pounds [453.59 kilograms] or less, traveling on three or more low-pressure tires, designed for operator use only with no~~

~~passengers, having a seat or saddle designed to be straddled by the operator, and handlebars for steering control.~~

2. "Low-speed vehicle" means a four-wheeled vehicle that is able to attain a speed, upon a paved surface, of twenty miles per hour [32 kilometers per hour] in one mile [1.6 kilometers per hour] and not more than twenty-five miles per hour [40 kilometers per hour] in one mile [1.6 kilometers per hour] and may not exceed one thousand five hundred pounds [680.39 kilograms] in unloaded weight.
3. 2. "Motor vehicle" includes every vehicle that is self-propelled and every vehicle that is propelled by electric power obtained from overhead trolley wires, but not operated upon rails, every trailer, semitrailer, park model trailer as defined in subsection 2 of section 57-55-10, ~~all-terrain~~ off-highway vehicle, snowmobile, low-speed vehicle, and travel trailer for which a certificate of title is required to be obtained under chapter 39-05, but not including housetrailer or mobile homes.
3. "Off-highway vehicle" means off-highway vehicle as defined in section 39-29-01.
4. "Person" includes any individual, firm, partnership, joint venture, association, corporation, limited liability company, estate, business trust, receiver, or any other group or combination acting as a unit and the plural as well as the singular number.
5. "Purchase price" means the total amount paid for the motor vehicle whether received in money or otherwise; provided, however, that when a motor vehicle or other tangible personal property that will be subject to a sales or use tax imposed by chapter 57-39.2 or 57-40.2 when sold or used is taken in trade as a credit or as part payment on a motor vehicle taxable under this chapter, the credit or trade-in value allowed by the person selling the motor vehicle shall be deducted from the total selling price to establish the purchase price of the vehicle being sold and the trade-in allowance allowed by the seller on a motor vehicle accepted as a trade-in shall constitute the purchase price of a motor vehicle accepted as a trade-in. If a motor vehicle is purchased by an owner who has had a motor vehicle stolen or totally destroyed, a credit or trade-in credit shall be allowed in an amount not to exceed the total amount the purchaser has been compensated by an insurance company for the loss but not to exceed the total amount of motor vehicle excise tax paid. The purchaser must provide the director of the department of transportation with a notarized statement from the insurance company verifying the fact that the original vehicle was a total loss and stating the amount compensated by the insurance company for the loss. The statement from the insurance company must accompany the purchaser's application for a certificate of title for the replacement vehicle. In instances in which a licensed motor vehicle dealer places into the dealer's service a new vehicle for the purpose of renting, leasing, or dealership utility service, the reasonable value of the vehicle replaced shall be included as trade-in value provided the vehicle replaced has been subject to motor vehicle excise tax under section 57-40.3-02 and if the new vehicle is properly registered and licensed. "Purchase price" when the motor vehicle is acquired by gift or by any other transfer for a nominal or no monetary consideration also includes the average value of similar motor vehicles, established by standards and guides as determined by the director of the department of transportation. "Purchase price" when a motor vehicle is manufactured by a person who registers it under the laws of this state means the manufactured cost of such motor vehicle and manufactured cost means the amount expended for materials, labor, and other properly allocable costs of manufacture except that, in the absence of actual expenditures for the manufacture of a part or all of the motor vehicle, manufactured cost means the reasonable value of the completed motor vehicle.
6. "Purchaser" means any person owning or in possession of a motor vehicle who makes application to the director of the department of transportation for registration plates or a certificate of title for such vehicle.

7. "Registrar" means the director of the department of transportation of this state as provided by section 24-02-01.3, and who shall act as the agent of the state tax commissioner in administering this chapter.
8. "Sale", "sells", "selling", "purchase", "purchased", or "acquired" includes any transfer of title or ownership of a motor vehicle by way of gift, exchange or barter, or by any other manner or by any other means whatsoever for or without consideration.
9. "Semitrailer" includes every vehicle of the trailer type so designed and used in conjunction with a motor vehicle that some part of its own weight and that of its own load rests upon or is carried by another motor vehicle and for which a certificate of title is required to be obtained pursuant to the provisions of chapter 39-05, except that it does not include a "housetrailer" or "mobile home".
10. "Snowmobile" means a self-propelled vehicle designed for travel on snow, ice, or a natural terrain and steered by skis or runners.
11. "Trailer" includes every vehicle without motive power designed to carry property or passengers wholly on its own structure and to be drawn by a motor vehicle and for which a certificate of title is required to be obtained pursuant to the provisions of chapter 39-05, except that it does not include a "housetrailer" or "mobile home".
12. "Travel trailer" means a mobile home or housetrailer designed to be towed behind a motor vehicle for recreational purposes and providing temporary sleeping quarters for people.
13. "Use" means the exercise by any person of any right or power over a motor vehicle incident to the ownership or possession of such a vehicle, except that it shall not include the sale or holding for sale of such a vehicle in the regular course of business.
14. "Vehicle" includes every device in, upon, or by which any person or property may be transported or drawn upon a public highway, except devices moved by human power or animal power or used exclusively upon stationary rails or tracks.

Speaker of the House

President of the Senate

Chief Clerk of the House

Secretary of the Senate

This certifies that the within bill originated in the House of Representatives of the Fifty-ninth Legislative Assembly of North Dakota and is known on the records of that body as House Bill No. 1342.

House Vote: Yeas 90 Nays 2 Absent 2

Senate Vote: Yeas 39 Nays 3 Absent 5

Chief Clerk of the House

Received by the Governor at _____ M. on _____, 2005.

Approved at _____ M. on _____, 2005.

Governor

Filed in this office this _____ day of _____, 2005,

at _____ o'clock _____ M.

Secretary of State