

CHPATER 295

HB 748 - FINAL VERSION

26mar03... 0924h

06/05/03 1858s

06/05/03 1971s

24jun03... 2146CofC

2003 SESSION

03-0090

10/09

HOUSE BILL **748**

AN ACT making changes to the laws governing off highway recreational vehicles and the multi-use statewide trail system and allowing the department of safety to suspend or revoke a motor vehicle drivers' license for causing certain serious damage to property.

SPONSORS: Rep. Alger, Graf 14; Rep. DiFruscia, Rock 76; Rep. Royce, Ches 28; Sen. Flanders, Dist 7; Sen. Odell, Dist 8

COMMITTEE: Resources, Recreation and Development

AMENDED ANALYSIS

This bill makes various changes to the laws governing off highway recreational vehicles and the statewide trail system.

The bill also allows the department of safety to suspend or revoke a motor vehicle drivers' license for reckless or illegal operation which causes certain serious damage to property.

Explanation: Matter added to current law appears in ***bold italics***.

Matter removed from current law appears [~~in brackets and struck through.~~]

Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

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STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Three

AN ACT making changes to the laws governing off highway recreational vehicles and the multi-use statewide trail system and allowing the department of safety to suspend or revoke a motor vehicle drivers' license for causing certain serious damage to property.

295:1 Definition Clarified. Amend RSA 215-A:1, I to read as follows:

I. "Accompanied by," **or** "**accompany**" means when a person is within sight and when actual physical direction and control can be effected.

295:2 Sound Level Lowered; ATVs included. Amend RSA 215-A:12, IV to read as follows:

IV. No person shall operate in this state a trail bike **or all terrain vehicle** which produces a sound level in excess of [99] **96** decibels on the A scale, when measured in accordance with the provisions of the Society of Automotive Engineers Recommended Practice ANSI/SAE, J-1287, Mar 82, "Measurement of Exhaust Sound Levels of Stationary Motorcycles".

295:3 Registration Fees; Department of Resources and Economic Development Funds. Amend RSA 215-A:23, VI(b) to read as follows:

(b) Grants-in-aid shall be granted to OHRV clubs and political subdivisions for the construction and maintenance of **public use** OHRV trails and facilities. The bureau shall make grants on such terms as it deems necessary and shall determine what trails and facilities shall be eligible. Notwithstanding the provisions of this subparagraph, a landowner who grants permission for a grant-in-aid trail to be located on his or her property shall retain the right to establish the inclusive dates during which OHRV operation shall be permitted. Use of trails on private land shall extend only to the specific type of OHRV permitted by the landowner.

295:4 Accident Reports; Bureau of Trails. Amend RSA 215-A:28, IV to read as follows:

IV. Any person who is knowingly involved in any accident involving personal injury with an OHRV shall report said accident to the nearest police officer or police station. A report of said accident shall be filed forthwith by said police officer or police station with the department of safety, **the bureau of trails**, and the fish and game department in such form as the executive director may prescribe.

295:5 OHRV Operation. RSA 215-A:29, I-III are repealed and reenacted to read as follows:

I. No person shall operate an OHRV on land not owned or leased by such person or such person's parent, grandparent, or guardian unless such person:

(a) If under 14 years of age, is accompanied at all times by a person at least 18 years of age who has met the conditions of subparagraph (b); and

(b) If 12 years of age or older, has either:

(1) Successfully completed an OHRV training program, the recognition of which has not been suspended or otherwise disallowed by law; or

(2) Is licensed to drive a vehicle in accordance with RSA 263, or in accordance with the law of another state or a province of Canada, provided the person would be eligible for a driver's license in this state.

II.(a) Except as further specified in subparagraph (b), it shall be prima facie evidence that any person at least 18 years of age who travels with a person under 14 years of age shall be legally responsible for the OHRV operation of such person and shall be liable according to law for personal injury or property damage to others which may result from such person's operation.

(b) When more than one person at least 18 years of age is traveling with a person under 14 years of age, and if any of the following persons over 18 years of age are present, then only such persons shall be legally responsible and liable under this paragraph:

(1) Parents or guardians, or

(2) Any person who has otherwise been given or assumed the responsibility for supervising the person under 14 years of age at the time of OHRV operation.

(c) Any person legally responsible and liable under this paragraph shall accompany the person under 14 years of age at all times of OHRV operation.

(d) Except as provided in RSA 215-A:30, IV, an organizer of an event or contest shall be responsible for ensuring that each participant under 14 years of age is accompanied at all times.

III. A person 12 years of age or older operating an OHRV shall carry evidence of compliance with subparagraph I(b) in the form of a valid driver's license or evidence of successfully completing an OHRV training program. The person shall present such evidence to any law enforcement officer who is empowered to enforce this chapter, upon demand of such law enforcement officer.

III-a. The provisions of paragraphs I and III shall not apply to any person participating in an OHRV training program. The provisions of paragraph II shall not apply to any person teaching an OHRV training program.

295:6 Events; Exceptions. RSA 215-A:30, II is repealed and reenacted to read as follows:

II. Unregistered OHRVs may be operated as part of an organized, commercial OHRV event or contest that takes place on property owned by the organizer of such event or contest, without a permit being obtained under paragraph I.

III. The OHRV training and driver's license requirements of RSA 215-A:29, I(b) and III shall not apply to any person participating in an organized event or contest permitted under this section or in an event not requiring a permit as provided for in paragraph II.

IV. The provisions of RSA 215-A:29, I(a) and II shall not apply relative to any person under 14 years of age participating in an organized event or contest, where the organizer of the event or contest has obtained landowner permission and procured a permit from the executive director for such type of activity in the same manner and under the same terms as provided in paragraph I. The organizer of the permitted event or contest shall be responsible for maintaining conditions that have the effect of ensuring actual physical direction and control over participants under 14 years of age.

295:7 Closing or Zoning of Trail. Amend RSA 215-A:42, III to read as follows:

III. The bureau may not permanently close a trail under paragraph II to ATV or trail bike use *except upon a request made to the commissioner of resources and economic development to act under RSA 216-F:2, III, and not* without first holding a public hearing in the local area in which the trail is located. Such hearing shall be *noticed to the requesting party and the governing body of the affected municipalities and* advertised at least 14 days prior to the hearing in a newspaper of statewide circulation and also in any local newspapers to the cities and towns in which the state property is located.

295:8 New Trail Screening Process. Amend RSA 215-A:43, II, (d) - (f) to read as follows:

- (d) The ~~[proposal is compatible with]~~ **bureau has given due consideration to** local planning and zoning ordinances.
- (e) The proposed trail does not pass through a parcel with deed restrictions.
- (f) The ~~[proposal is compatible with]~~ **bureau has given due consideration to local** noise and obnoxious use ordinances.

295:9 Bureau of Trails; Internet Reference. Amend RSA 215-A:43, III to read as follows:

III. The bureau shall hold at least one meeting to inform the public and local cities and towns of the plan and layout for a proposed ATV or trail bike trail, consistent with the fine filter criteria in paragraph II, and to provide an opportunity for the public to comment. Information on the plan and layout shall be made available to the public at a place in the local area in which the proposed trail is to be located, at the bureau's office in Concord, and on ~~[the]~~ **a public accessible** Internet ~~site maintained by the bureau~~. The meeting and the places to obtain the information on the plan and layout shall be advertised at least 14 days prior to the meeting in a newspaper of statewide circulation and also in any local newspapers to the cities and towns in which the state property is located.

295:10 New Paragraph; State Rail Trails Use Exempted. Amend RSA 215-A:43 by inserting after paragraph IV the following new paragraph:

V. This section shall not apply to the change in use designation of rail trails to include ATV and trail bike use.

295:11 Statewide Trail System; Advisory Committee; Membership Changed. Amend RSA 216-F:5, I to read as follows:

I. The commissioner shall appoint a New Hampshire statewide trail system advisory committee, for the purposes of advising the director of parks and recreation on matters related to the New Hampshire statewide trail system. The members shall equally represent the different trail interests involved and the general public. This committee shall include, but not be limited to, representation from the following: the bureau of trails; department of fish and game; office of state planning; department of transportation; governor's commission on disability; New Hampshire Snowmobile Association; a representative of ~~[wheel-vehicle-users]~~ **Granite State ATV Association**; Appalachian Mountain Club; New Hampshire Municipal Association; Society for the Protection of New Hampshire Forests; the New Hampshire Heritage Trail; **the New Hampshire Farm Bureau Federation; the New Hampshire Horse Council, Inc.;** a representative of landowners; and the bicycle trail coordinator from the department of transportation.

295:12 New Section; Statewide Trail System; Best Management Practices; Limit on Expenditures. Amend RSA 216-F by inserting after section 5 the following new section:

216-F:6 Best Management Practices; Limit on Expenditures. The commissioner of the department of resources and economic development shall identify and publish best management practices for erosion control during trail maintenance and construction. The practices shall be based on the type of activity that is occurring or may occur on a trail, site conditions such as terrain, soil type, and water presence and flow. State funds shall only be expended for work on wheeled OHRV trails that are constructed and maintained in accordance with the best management practices.

295:13 Municipal Noise Ordinances Encouraged. In recognition of the fact that a large portion of the complaints that are raised against wheeled OHRVs operating in the state is associated with unacceptable noise levels experienced by persons on lands abutting the area of operation, the general court hereby encourages municipalities to enact noise ordinances under existing statutory authority of RSA 31:39 and RSA 47:17.

295:14 New Paragraph; Definition Added; Youth Model Trail Bike. Amend RSA 215-A:1 by inserting after paragraph XIX the following new paragraph:

XX. "Youth model trail bike" means a trail bike that is equipped with an internal combustion engine with a maximum piston displacement of 95 cubic centimeters.

295:15 New Paragraph; Registration; Youth Model Trail Bike. Amend RSA 215-A:21 by inserting after paragraph II-b the following new paragraph:

II-c. Notwithstanding RSA 215-A:21, II, no registration shall be required for a youth model trail bike when the operator is under 12 years of age and accompanied by a person 18 years of age or older who holds a valid license to operate an OHRV.

295:16 Registration Fees; Department of Resources and Economic Development Funds; Land Purchase Account Amend RSA 215-A:23, VII(c) to read as follows:

(c) Land purchases, easements, ~~and~~ rights-of-way, **and new construction of trails**. A separate account shall be established into which \$2 of each resident trail bike and other OHRV registration fee appropriated for administration of the bureau under RSA 215-A:23, I(b) and \$2 of each nonresident trail bike and other OHRV registration fee appropriated for administration of the bureau under RSA 215-A:23, III(b) shall be deposited to be used only for land purchases, easements, ~~and~~ rights-of-way ~~for~~, **and direct costs attributed to the physical construction of** ATV or trail bike ~~[trail and facility development]~~ **trails or parking facilities**.

295:17 Repeal. RSA 215-A:19, VIII, relative to the refund of OHRV fines after completing a training program, is repealed.

295:18 Effective Date. This act shall take effect July 1, 2003.

(Approved: July 18, 2003)

(Effective Date: July 1, 2003)