

1999 DRAFTING REQUEST

Bill

Received: **07/20/1999**

Received By: **gibsom**

Wanted: **As time permits**

Identical to LRB:

For: **Spencer Black (608) 266-7521**

By/Representing:

This file may be shown to any legislator: **NO**

Drafter: **gibsom**

May Contact:

Alt. Drafters: **nelsorp1**

Subject: **Nat. Res. - boats snomos ATVs**

Extra Copies:

Pre Topic:

No specific pre topic given

Topic:

Penalties for intoxicated motorboating

Instructions:

Section 61 of 97LRBs0343 plus anyone who has a license revoked due to CWI may not operate a motorboat while driver's license is revoked.

Drafting History:

| <u>Vers.</u> | <u>Drafted</u> | <u>Reviewed</u> | <u>Typed</u> | <u>Proofed</u> | <u>Submitted</u> | <u>Jacketed</u> | <u>Required</u> |
|--------------|--|------------------------|-----------------------|----------------|----------------------------|----------------------------|-----------------|
| /? | gibsom 07/22/1999 nelsorp1 08/13/1999 | | | _____ | | | S&L |
| /1 | gibsom 08/20/1999 | chanaman 08/26/1999 | kfollet 08/26/1999 | _____ | lrb_docadmin 08/26/1999 | lrb_docadmin 08/31/1999 | |

FE Sent For:
09-13-99

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|--------------|----------------|-----------------|--------------|-----------------|------------------|-----------------|-----------------|
| 1/? | gibsom | cmh 1 | kjf 8/26 | kjf/cmh 8/26 | | | |
| FE Sent For: | | 8/23 | | | | | |

<END>

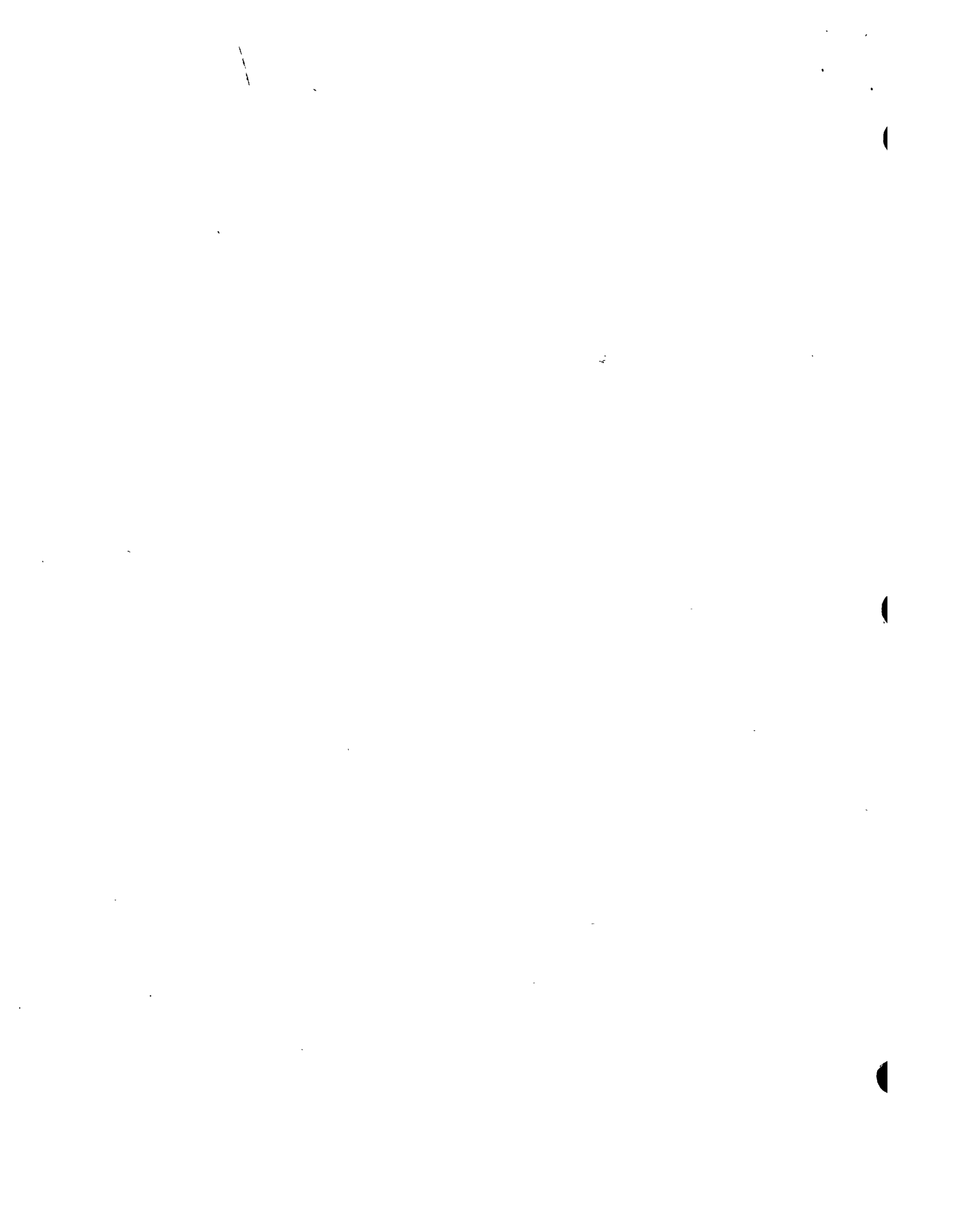


Drafting request

Spencer Black - 7-16-99

Wants draft that incorporates ^{only} SECTION 61
of '95 LRBs 0348/3 which prohibits person
who violates intoxicated boating law
from operating a motorboat for a period of
time - use same penalties also

Also - include a provision that prohibits
a person whose driver's license was
revoked for DUI from operating a
motor boat during the period of revocation



**ASSEMBLY AMENDMENT ,
TO ASSEMBLY SUBSTITUTE AMENDMENT 1,
TO 1997 ASSEMBLY BILL 768**

1 At the locations indicated, amend the substitute amendment as follows:

2 **1.** Page 15, line 19: after "parks;" insert "enforcement by conservation
3 wardens of prohibitions on killing or wounding confined animals;"

4 **2.** Page 56, line 6: after that line insert:

5 "SECTION 58s. 23.50 (1) of the statutes, as affected by 1997 Wisconsin Act 35,
6 is amended to read:

7 23.50 (1) The procedure in ss. 23.50 to 23.85 applies to all actions in circuit
8 court to recover forfeitures, penalty assessments, jail assessments, applicable
9 weapons assessments, applicable environmental assessments, applicable wild
10 animal protection assessments, applicable natural resources assessments,
11 applicable fishing shelter removal assessments, applicable snowmobile registration
12 restitution payments and applicable natural resources restitution payments for

1 violations of ss. 77.09, 134.60, 167.10 (3), 167.31 (2), 281.48 (2) to (5), 283.33, 285.57
2 (2), 285.59 (2), (3) (c) and (4), 287.07, 287.08, 287.81 and 299.64 (2), subch. VI of ch.
3 77, this chapter and chs. 26 to 31 and of ch. 350, and any administrative rules
4 promulgated thereunder, violations of s. 951.09 if the animal involved is an animal
5 normally found in the wild, violations of rules of the Kickapoo reserve management
6 board under s. 41.41 (7) (k) or violations of local ordinances enacted by any local
7 authority in accordance with s. 23.33 (11) (am) or 30.77.”.

8 **3.** Page 58, line 6: after that line insert:

9 “**SECTION 63x.** 29.05 (8) (a) of the statutes is amended to read:

10 29.05 (8) (a) The department and its wardens shall seize and hold subject to
11 the order of the court for the county in which the alleged offense was committed, any
12 apparatus, appliance, equipment, vehicle or device, declared by this chapter to be a
13 public nuisance, which they have probable cause to believe is being used in violation
14 of this chapter, an administrative rule promulgated under this chapter or s. 167.31,
15 287.81, 940.24, 941.20, 948.60, 948.605 or 948.61 or is being used in the commission
16 of a crime relating to a submerged cultural resource in violation of s. 44.47. If it is
17 proven that within 6 months previous to the seizure the apparatus, appliance,
18 equipment, vehicle or device was used in violation of this chapter or an
19 administrative rule promulgated under this chapter or s. 167.31, 287.81, 940.24,
20 941.20, 948.60, 948.605 or 948.61, is being used in the commission of a crime
21 involving an animal normally found in the wild in violation of s. 951.09 or was used
22 in the commission of a crime relating to a submerged cultural resource in violation
23 of s. 44.47, it shall be confiscated if the court directs in its order for judgment.”.

24 **4.** Page 497, line 12: after that line insert:

1 “**SECTION 722nL.** 951.01 (1m) of the statutes is created to read:

2 951.01 (1m) “Conservation warden” means a warden appointed under s. 23.10.

3 **SECTION 722nm.** 951.15 (5) of the statutes is created to read:

4 951.15 (5) For purposes of enforcing s. 951.09 as to an animal normally found
5 in the wild, a conservation warden has the same powers and duties as a law
6 enforcement officer has under this section.

7 **SECTION 722np.** 951.16 of the statutes is amended to read:

8 **951.16 Investigation of cruelty complaints.** A person may apply for a
9 search warrant under s. 968.12 if there is reason to believe that a violation of this
10 chapter has taken place or is taking place. If the court is satisfied that probable cause
11 exists, it shall issue a search warrant directing a law enforcement officer in the
12 county to proceed immediately to the location of the alleged violation with a doctor
13 of veterinary medicine, if the court determines that a veterinarian is necessary for
14 purposes of the search, and directing the law enforcement officer to search the place
15 designated in the warrant, retaining in his or her custody subject to the order of the
16 court such property or things as are specified in the warrant, including any animal.
17 For purposes of enforcing s. 951.09 as to an animal normally found in the wild, the
18 warrant may direct a conservation warden to act as provided in this section. The
19 warrant shall be executed and returned to the court which issued the warrant in
20 accordance with ss. 968.15 and 968.17. This section shall not affect other powers and
21 duties of law enforcement officers or conservation wardens.

22 **SECTION 722nq.** 951.18 (4) (a) 2. of the statutes is amended to read:

23 951.18 (4) (a) 2. A sentencing court shall require a criminal violator to pay
24 restitution to a person, including any local humane society or county or municipal
25 pound or a law enforcement officer or conservation warden, for any pecuniary loss

1 suffered by the person as a result of the crime, including expenses in keeping any
2 animal that is involved in the crime. This requirement applies regardless of whether
3 the criminal violator is placed on probation under s. 973.09. If restitution is ordered,
4 the court shall consider the financial resources and future ability of the criminal
5 violator to pay and shall determine the method of payment. Upon the application of
6 any interested party, the court shall schedule and hold an evidentiary hearing to
7 determine the value of any pecuniary loss under this paragraph.

8 **SECTION 722nr.** 951.18 (4) (b) 1. of the statutes is amended to read:

9 951.18 (4) (b) 1. A sentencing court may order that an animal be delivered to
10 the local humane society or the county or municipal pound or to a law enforcement
11 officer if a person commits a crime under this chapter, the person is the owner of the
12 animal that is involved in the crime and the court considers the order to be
13 reasonable and appropriate. If the crime involves a violation of s. 951.09, a
14 sentencing court may order that an animal be delivered to the department of natural
15 resources, if the animal is normally found in the wild and the court considers the
16 order to be reasonable and appropriate. The society, pound or officer shall release
17 the animal to a person other than the owner or dispose of the animal in a proper and
18 humane manner. If the animal is a dog, the release or disposal shall be in accordance
19 with s. 174.046 (8) or (9), except s. 174.046 (8) (a) does not apply and the fees under
20 s. 174.046 (8) (d) do not apply if the expenses are covered under s. 951.17. If the
21 animal is not a dog, the society, pound or officer may charge a fee for the release of
22 the animal.”.

23 (END)



State of Wisconsin
1999 - 2000 LEGISLATURE

RMR
LRB-3305A-1
MGU+RPN.....
CmH

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

on the operating prohibition due to a drunk driving violation

The bill also prohibits a person from operating a motorboat during the period of time that his or her motor vehicle driver's license is revoked or suspended for

violating either

1 AN ACT relating to: violations of the intoxicated boating law and providing
2 penalties.

Analysis by the Legislative Reference Bureau

This bill makes various changes to the intoxicated boating law, which applies to the operation of motorboats, including personal watercraft. The bill requires a court to order a person whom the court has convicted of a violation of the intoxicated boating not to operate a motorboat for a certain period of time. The time ranges from a minimum of 6 months for the first conviction to a maximum of 36 months for a third or subsequent conviction that occurs within 5 years of the first conviction.

The bill establishes penalties for violations of these court orders. The penalties range from a minimum forfeiture of \$150 for the first violation to a maximum fine of \$2,500 and a one-year jail term for a fifth or subsequent violation that occurs within 5 years of the first violation. The bill also authorizes the impoundment of motorboats that are used in the violation of these court orders.

For further information see the state and local fiscal estimate, which will be printed as an appendix to this bill.

or the operating prohibition due to a drunk driving violation

law

Six

fifth

five

third

five

either

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

INS1-3A

INS1-3C

1 30:80-(6)(c) *Calculation of previous convictions.* In determining the number
2 of previous convictions under par. (a) 2. and 3. to 5., convictions arising out of the
3 same incident or occurrence shall be counted as one previous conviction.

4 SECTION 60. 30.80 (6) (e) of the statutes is amended to read:

5 30.80 (6) (e) *Certificate of satisfactory completion of safety course.* In addition
6 to any other penalty or order, a person who violates s. 30.681 (1) or (2) or 30.684 (5)
7 or who violates s. 940.09 or 940.25 if the violation involves the operation of a
8 motorboat, shall be ordered by the court to ~~obtain a certificate of satisfactory~~
9 ~~completion of a complete satisfactorily the boating safety course~~ under s. 30.74 (1)
10 regardless of whether the person has a valid boating safety certificate. If the person
11 is a resident of another state or a province of Canada, the court may order that the
12 person satisfactorily complete a boating safety course in the state or in the province
13 of Canada in which the person resides if the department has determined that the
14 course has standards that substantially meet the standards established under s.
15 30.74 (1).

16 SECTION 61. 30.80 ^(6m) ~~(6)~~ to (9) of the statutes are created to read:

17 30.80 (7) (a) Except as provided in pars. (b) and (c), a person who violates the
18 intoxicated boating law or the refusal law shall be ordered by the court not to engage
19 in the operation of a motorboat in this state for a period of not less than 6 months nor
20 more than 9 months.

21 (b) A person who violates the intoxicated boating law or the refusal law and
22 who, within 5 years prior to the arrest for the current violation, was convicted one
23 time previously under the intoxicated boating law or the refusal law shall be ordered
24 by the court not to engage in the operation of a motorboat in this state for a period
25 of not less than 12 months nor more than 18 months.

INSERT 1-3A
(19-17)

INS
19-16



INS
1-3A

for a violation
(a) *In this subsection, "conviction" means a conviction of sub. (6m) or a violation of a court order under sub. (7).*

(c) A person who violates the intoxicated boating law or the refusal law and who, within 5 years prior to the arrest for the current violation, was convicted 2 or more times previously under the intoxicated boating law or the refusal law shall be ordered by the court not to engage in the operation of a motorboat in this state for a period of not less than 24 months nor more than 36 months.

(d) In determining the number of previous convictions under pars. (b) and (c), convictions arising out of the same incident or occurrence shall be counted as one previous conviction.

(e) For purposes of pars. (a) to (c), the court, in its order, shall schedule the period during which the person may not engage in the operation of a motorboat in this state to occur in one or more periods beginning on April 1 and ending on September 30 of one or more years.

(8) Any person operating a motorboat in violation of a court order under sub. (7) shall be subject to the following penalties:

1. Except as provided in ^{subs. 2. to 5.} pars. (b) to (e), a forfeiture of not less than \$150 nor more than \$600.

2. ~~If within 5 years prior to the arrest for the current violation the person was convicted one previous time for violation of an order under sub. (7), a fine of not less than \$300 nor more than \$1,000 and imprisonment for not less than 10 days nor more than 6 months.~~

3. ~~(c) If within 5 years prior to the arrest for the current violation the person was convicted 2 previous times for a violation of an order under sub. (7), a fine of not less than \$1,000 nor more than \$2,000 and imprisonment for not less than 30 days nor more than 9 months.~~

if the person has 2 prior convictions within 5 years before the arrest for the current violation.

INSERT 20-20



1 4. (d) If within 5 years prior to the arrest for the current violation the person was
 2 convicted ~~3 previous times for a violation of an order under sub. (7)~~ *of violations totaling 3 or of sub. (7)* a fine of not less
 3 than \$1,500 nor more than \$2,000 and imprisonment for not less than 60 days nor
 4 more than one year in the county jail *INSERT 21-3*

5 5. (e) If within 5 years prior to the arrest for the current violation the person was
 6 convicted ~~4 or more previous times for a violation of an order under sub. (7)~~ *of violations totaling 4 or more or of sub. (7)* a fine
 7 of not less than \$2,000 nor more than \$2,500 and imprisonment for not less than 6
 8 months nor more than one year in the county jail *INSERT 21-8*

9 (9) (a) In addition *of sub. (6m) or* to other penalties for engaging in the operation of a
 10 motorboat in violation *an in violation* of an order under sub. (7), the court may order the
 11 impoundment of the motorboat in which the violation occurred, if owned by the
 12 violator. The court may determine the manner and period of impoundment. The cost
 13 of impoundment and storage of the motorboat constitutes a lien on the motorboat.

14 (b) If a motorboat impounded under par. (a) is subject to a security agreement
 15 or lease contract, the motorboat shall be released by the court to the lessor or secured
 16 creditor upon the filing of an affidavit by the lessor or secured creditor that the
 17 security agreement or lease contract is in default, and the motorboat shall be
 18 delivered to the lessor or secured creditor upon payment of the accrued cost of
 19 keeping the motorboat. *end of insert 1-3A*

20 **SECTION 62.** 48.343 (5) of the statutes is amended to read:

21 48.343 (5) If the violation is related to unsafe use of a boat, order the child to
 22 attend a the boating safety course under s. 30.74(1) regardless of whether the child
 23 has a valid boating safety certificate. If the child is a resident of another state or a
 24 province of Canada, the court may order that the child attend a boating safety course
 25 in the state or in the province of Canada in which the child resides if the department

1 of natural resources has determined that the course has standards that substantially
2 meet the standards established under s. 30.74 (1).

3 **SECTION 63.** 885.235 (1m) and (4) of the statutes are amended to read:

4 885.235 (1m) In any action under s. 23.33 (4c) (a) 3., 30.681 (1) (bn), 346.63 (2m)
5 or (7) or 350.101 (1) (c), evidence of the amount of alcohol in the person's blood at the
6 time in question, as shown by chemical analysis of a sample of the person's blood or
7 urine or evidence of the amount of alcohol in the person's breath, is admissible on the
8 issue of whether he or she had a blood alcohol concentration in the range specified
9 in s. 23.33 (4c) (a) 3., 30.681 (1) (bn), 346.63 (2m) or 350.101 (1) (c) or a measured
10 alcohol concentration under s. 346.63 (7) if the sample was taken within 3 hours after
11 the event to be proved. The fact that the analysis shows that there was more than
12 0.0% but not more than 0.1% by weight of alcohol in the person's blood or more than
13 0.0 grams but not more than 0.1 grams of alcohol in 210 liters of the person's breath
14 is prima facie evidence that the person had a blood alcohol concentration in the range
15 specified in s. 23.33 (4c) (a) 3., 30.681 (1) (bn), 346.63 (2m) or 350.101 (1) (c) or a
16 measured alcohol concentration under s. 346.63 (7).

17 (4) The provisions of this section relating to the admissibility of chemical tests
18 for alcohol concentration, intoxication or blood alcohol concentration shall not be
19 construed as limiting the introduction of any other competent evidence bearing on
20 the question of whether or not a person was under the influence of an intoxicant, had
21 a specified alcohol concentration or had a blood alcohol concentration in the range
22 specified in s. 23.33 (4c) (a) 3., 30.681 (1) (bn), 346.63 (2m) or 350.101 (1) (e).

23 **SECTION 64. Initial applicability.**

24 (1) The treatment of section 30.80 (6) (a) and (7) of the statutes ~~and the~~
25 ~~creation of section 30.80 (6) (a) 4 and 5 of the statutes~~ first ~~apply~~ ^{applies} to violations

(6m) and

INS 1-3C



1 committed on the effective date of this subsection, but do not preclude the counting
2 of previous convictions for sentencing a person.

3 **SECTION 65. Effective dates.** This act takes effect on the day after
4 publication, except as follows:

5 (1) The treatment of section 30.68 (3) (cg), (cr) and (e) 2. of the statutes and the
6 repeal and recreation of section 30.68 (3) (b) and (d) of the statutes take effect on
7 January 1, 1997.

8 (END)

1999-2000 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-3305/ins

.....

INSERT 19-1b

~~insert 21-90-19~~
not bold
under
operate
of time
revoked

(8) (A) person whose operating privilege, as defined in s. 340.01 (40), is suspended or revoked under s. 343.30 (1q) (b) or (f) or s. 343.305 (10) may not engage in the operation of a motorboat in this state for the period that his or her operating privilege is suspended or ~~revoked~~.

Q 30.80 (6m)
B

(END OF INSERT)

Insert 20-20

19
20
if the person has one prior conviction within 5 years
before the arrest for the current violation.

Insert 21-3

19
20
if the person has 3 prior convictions within 5 years
before the arrest for the current violation.

Insert 21-8

19
20
if the person has 4 or more prior convictions within 5 y
before the arrest for the current violation.

(END OF INSERT)

**SUBMITTAL
FORM**

**LEGISLATIVE REFERENCE BUREAU
Legal Section Telephone: 266-3561
5th Floor, 100 N. Hamilton Street**

The attached draft is submitted for your inspection. Please check each part carefully, proofread each word, and sign on the appropriate line(s) below.

Date: 08/26/1999

To: Representative Black

Relating to LRB drafting number: LRB-3305

Topic

Penalties for intoxicated motorboating

Subject(s)

Nat. Res. - boats snomos ATVs

1. **JACKET** the draft for introduction _____

in the **Senate** _____ or the **Assembly** _____ (check only one). Only the requester under whose name the drafting request is entered in the LRB's drafting records may authorize the draft to be submitted. Please allow one day for the preparation of the required copies.

2. **REDRAFT.** See the changes indicated or attached _____.

A revised draft will be submitted for your approval with changes incorporated.

3. Obtain **FISCAL ESTIMATE NOW**, prior to introduction _____.

If the analysis indicates that a fiscal estimate is required because the proposal makes an appropriation or increases or decreases existing appropriations or state or general local government fiscal liability or revenues, you have the option to request the fiscal estimate prior to introduction. If you choose to introduce the proposal without the fiscal estimate, the fiscal estimate will be requested automatically upon introduction. It takes about 10 days to obtain a fiscal estimate. Requesting the fiscal estimate prior to introduction retains your flexibility for possible redrafting of the proposal.

If you have any questions regarding the above procedures, please call 266-3561. If you have any questions relating to the attached draft, please feel free to call me.

Mary Gibson-Glass, Senior Legislative Attorney
Telephone: (608) 267-3215

