LRB-2893

2001 DRAFTING REQUEST

Bill

Received: **03/19/2001**

Received By: **fasttn**

Wanted: **As time permits**

Identical to LRB:

For: **Legislative Council - JLC**

By/Representing: **Ron Sklansky**

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

Drafter: **fasttn**

May Contact:

Addl. Drafters:

Subject: **Nat. Res. - boats snomos ATVs**
Drunk Driving - penalties
Drunk Driving - procedures
Drunk Driving - refusals

Extra Copies: **MGG, RNK, PJH, ARG - 1**

Submit via email: **NO**

Pre Topic:

No specific pre topic given

Topic:

Intoxicated operation of sport recreational vehicles

Instructions:

See Attached (Companion to LRB-2892)

Drafting History:

Vers.	Drafted	Reviewed	Typed	Proofed	Submitted	Jacketed	Required
/?	fasttn 11/29/2001	gilfokm 11/29/2001		_____ _____			S&L
/1			jfrantze 11/29/2001	_____ _____	lrb_docadmin 11/29/2001	lrb_docadmin 11/30/2001	

FE Sent For:

At intro.

LRB-2893

2001 DRAFTING REQUEST

Bill

Received: **03/19/2001**

Received By: **fasttn**

Wanted: **As time permits**

Identical to LRB:

For: **Legislative Council - JLC**

By/Representing: **Ron Sklansky**

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

Drafter: **fasttn**

May Contact:

Addl. Drafters:

Subject: **Nat. Res. - boats snomos ATVs**
Drunk Driving - penalties
Drunk Driving - procedures
Drunk Driving - refusals

Extra Copies: **MGG, RNK, PJH, ARG - 1**

Submit via email: **NO**

Pre Topic:

No specific pre topic given

Topic:

Intoxicated operation of sport recreational vehicles

Instructions:

See Attached (Companion to LRB-2892)

Drafting History:

Vers.	Drafted	Reviewed	Typed	Proofed	Submitted	Jacketed *	Required
/?	fasttn	11/29 /1 kmg	11/29	Sel 11/29			

FE Sent For:

<END>

* Please jacket /1 for Senate. Thank you.

2893/1dn
LRB–2892/2dn
TNF:kmg:kjf

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

November 28, 2001

Under current law, if the motor vehicle operating privilege of a person holding a commercial driver license is suspended or revoked for operating a noncommercial motor vehicle while intoxicated, the person may apply for an occupational license to operate commercial motor vehicles. Under this bill, if a person's operating privilege is revoked for operating a sport recreational vehicle while intoxicated, the person may not operate sport recreational vehicles *or* commercial motorboats during the revocation period. Do you want to exclude operating privilege revocation for commercial motorboats in those cases involving operating a sport recreational vehicle while intoxicated? And exclude operating privilege revocation for sport recreational vehicles in those cases involving operating a commercial motorboat while intoxicated.

Timothy N. Fast
Senior Legislative Attorney
Phone: (608) 266–9739
E–mail: tim.fast@legis.state.wi.us

D-NOTE

2893/1

2001 – 2002 LEGISLATURE

LRB-~~2892/2~~

TNF:kg:kjf

WANTED TODAY 11/29/01

No changes from -2892/2

2001 BILL

AN ACT ***to repeal*** 23.33 (1) (am), (ar), (dm), (e) and (f), 23.33 (1) (i), (ic), (je), (jm) and (js), 23.33 (4c) to (4z), 23.33 (13) (c) and (cm) to (e), 30.50 (1e), (1g), (1m) and (3d), 30.50 (3g), (3h), (3r) and (4m), 30.50 (9g), (9x) and (13m), 30.681 to 30.687, 350.01 (1g), (1h) and (1i), 350.01 (2), (2d) and (3m), 350.01 (9), (9c), (10g) and (10r), 350.01 (21) and 350.101 to 350.108; ***to renumber and amend*** 350.99; ***to amend*** 20.370 (5) (es), 23.33 (5) (d), 23.33 (9) (c), 23.33 (13) (a), 23.50 (1), 23.53 (1), 23.56 (1), 23.57 (1) (intro.), 23.58, 23.62 (1) (intro.), 30.204 (5), 30.74 (1) (bn), 30.74 (3), 30.79 (1) (b) 1., 30.79 (2), 30.79 (3), 30.79 (4), 30.79 (5), 46.03 (18) (f), 59.54 (14) (g), 281.31 (9), 341.055, 345.11 (1m), 345.11 (1r), 349.03 (1) (intro.) and (a), 349.06 (1) (a), chapter 350 (title), 350.01 (intro.), 350.01 (16), 350.045, 350.055, 350.11 (1), 350.115 (1) (a), 350.12 (3) (b) and (4) (a) 4., 350.12 (4) (b) 3., 350.17 (1), 350.17 (3), 350.18 (2), 350.19, 800.001, 800.02 (2) (b), 885.235 (1m) and (4), 938.343 (9), 940.09 (1m) and (3), 940.25 (1m) and (3) and 967.055 (2) (b); ***to repeal and recreate*** 23.33 (12) (b), 23.33 (13) (b), 30.64 (3),

30.80 (6), 350.11 (3) and 350.17 (2); and ***to create*** 110.07 (7), subchapter I (title) of chapter 350 [precedes 350.01] and subchapter II of chapter 350 [precedes 350.50] of the statutes; **relating to:** the intoxicated operation of an all–terrain vehicle, motorboat, or snowmobile.

Analysis by the Legislative Reference Bureau

This bill is explained in the NOTES provided by the joint legislative council in the bill.

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

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

PREFATORY NOTE: This bill is recommended by the joint legislative council's special committee on recodification of operating while intoxicated and safety laws pertaining to motor vehicle, all–terrain vehicle, boat or snowmobile operation. The special committee was directed to study current statutes relating to operating a vehicle while under the influence of an intoxicant or drug and to reorganize, simplify, modernize and clarify these statutes and make minor substantive changes necessary to effect these goals. In addition, the special committee was directed to study, with respect to an all–terrain vehicle, a boat or a snowmobile, whether enforcement mechanisms need to be increased or created to ensure compliance with the law.

This bill consolidates statutory provisions regarding the intoxicated operation of all–terrain vehicles, motorboats and snowmobiles into one subchapter of the statutes. In general, a number of policies expressed in the motor vehicle code with respect to the issue of operating a motor vehicle while intoxicated are applied to the operation of all–terrain vehicles, motorboats and snowmobiles, which, except for commercial motorboats, are collectively referred to as sport recreational vehicles. The special committee explicitly intends that, unless expressly noted, the bill makes no substantive changes in the statutory provisions treated by the bill. Substantive changes in the bill are identified in notes to the provisions substantively affected. The notes also describe the derivation of the provisions contained in newly created subchapter II of chapter 350.

SECTION 1. 20.370 (5) (es) of the statutes is amended to read:

20.370 **(5)** (es) *Enforcement aids — snowmobiling enforcement.* The amounts in the schedule from the snowmobile account in the conservation fund to provide law enforcement aids to counties as authorized under s. 350.12 (4) (a) 4. to be used exclusively for the enforcement of subch. I of ch. 350 and of subch. II of ch. 350 as it relates to snowmobiles.

SECTION 2. 23.33 (1) (am), (ar), (dm), (e) and (f) of the statutes are repealed.

SECTION 3. 23.33 (1) (i), (ic), (je), (jm) and (js) of the statutes are repealed.

SECTION 4. 23.33 (4c) to (4z) of the statutes are repealed.

SECTION 5. 23.33 (5) (d) of the statutes is amended to read:

23.33 **(5)** (d) *Safety certification program established.* The department shall establish or supervise the establishment of a program of instruction on all–terrain vehicle laws, including the intoxicated operation of ~~an all–terrain~~ a sport recreational vehicle law, as defined in s. 350.50 (16), regulations, safety and related subjects. The department shall establish by rule an instruction fee for this program. An instructor conducting the program of instruction under this paragraph shall collect the fee from each person who receives instruction. The department may determine the portion of this fee, which may not exceed 50%, that the instructor may retain to defray expenses incurred by the instructor in conducting the program. The instructor shall remit the remainder of the fee or, if nothing is retained, the entire fee to the department.

SECTION 6. 23.33 (9) (c) of the statutes is amended to read:

23.33 **(9)** (c) *Signs.* In addition to the projects listed in par. (b), the department may provide aid under this subsection to a town, village, city or county for up to 100% of the cost of placing signs developed under ~~sub. (4z) (a) 2~~ s. 350.66 (1) (b).

SECTION 7. 23.33 (12) (b) of the statutes is repealed and recreated to read:

23.33 **(12)** (b) No operator of an all–terrain vehicle may do any of the following:

1. Fail or refuse to comply with any lawful order, signal, or direction of a law enforcement officer.

2. Disobey the instructions of any official traffic sign or signal unless otherwise directed by a law enforcement officer.

3. After having received a visual or audible signal to stop his or her all–terrain vehicle from a law enforcement officer, or marked police vehicle, knowingly resist the law enforcement officer by failing to stop the all–terrain vehicle as promptly as safety reasonably permits.

4. After having received a visual or audible signal from a law enforcement officer, or marked police vehicle, knowingly flee or attempt to elude any law enforcement officer by willful or wanton disregard of such signal so as to interfere with or endanger the operation of the police vehicle, or the law enforcement officer or other vehicles or pedestrians, nor may the operator increase the speed of the operator's all–terrain vehicle or extinguish the lights of the all–terrain vehicle in an attempt to elude or flee.

NOTE: Current law provides that no operator of an all–terrain vehicle, a boat or a snowmobile may refuse to stop after being requested or signaled to do so by a law enforcement officer. This SECTION and SECTION 9 specify that no operator of these vehicles may refuse to comply with orders or instructions of a law enforcement officer, resist a law enforcement by failing to stop or flee from a law enforcement officer. The penalties for these increasingly serious offenses range from a forfeiture not exceeding $40 for the first offense and not exceeding $100 for the second or subsequent conviction within a year to a fine of not less $1,100 nor more than $10,000 and imprisonment for not more than 7 years and 6 months. These provisions are taken directly from ss. 346.04 and 346.17, stats., relating to obedience to traffic officers, signs and signals and to fleeing from an officer. The provisions also are repeated as necessary in this bill in SECTIONS 21, 30, 52, and 57 and in ss. 350.68 (2) and 350.74 (5) as created in this bill.

SECTION 8. 23.33 (13) (a) of the statutes is amended to read:

23.33 **(13)** (a) *Generally.* Except as provided in pars. (am) ~~to (e)~~, (b), and (cg), any person who violates this section shall forfeit not more than $250.

SECTION 9. 23.33 (13) (b) of the statutes is repealed and recreated to read:

23.33 **(13)** (b) *Penalties for refusal to obey law enforcement officers, signs, and signals.* 1. A person who violates sub. (12) (b) 1. or 2. may be required to forfeit not less than $20 nor more than $40 for the first conviction and not less than $50 nor more than $100 for the 2nd or subsequent conviction within a year.

2. A person who violates sub. (12) (b) 3. may be fined not more than $10,000 or imprisoned for not more than 9 months or both.

3. a. Except as provided in subd. 3. b., c., or d., a person who violates sub. (12) (b) 4. shall be fined not less than $600 nor more than $10,000 and may be imprisoned for not more than 3 years.

b. If the violation results in bodily harm, as defined in s. 939.22 (4), to another, or causes damage to the property of another, as defined in s. 939.22 (28), the person shall be fined not less than $1,000 nor more than $10,000 and may be imprisoned for not more than 3 years.

c. If the violation results in great bodily harm, as defined in s. 939.22 (14), to another, the person shall be fined not less than $1,100 nor more than $10,000 and may be imprisoned for not more than 3 years.

d. If the violation results in the death of another, the person shall be fined not less than $1,100 nor more than $10,000 and may be imprisoned for not more than 7 years and 6 months.

NOTE: Current law provides that an operator of an all–terrain vehicle who refuses to stop after being requested or signaled to do so by a law enforcement officer must forfeit not more than $250. The violation and penalties are altered as described in the note to SECTION 7 of the bill.

SECTION 10. 23.33 (13) (c) and (cm) to (e) of the statutes are repealed.

SECTION 11. 23.50 (1) of the statutes is amended to read:

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

violations of ss. 77.09, 134.60, 167.10 (3), 167.31 (2), 281.48 (2) to (5), 283.33, 285.57 (2), 285.59 (2), (3) (c) and (4), 287.07, 287.08, 287.81 and 299.64 (2), subch. VI of ch. 77, this chapter and chs. 26 to 31 and of ch. 350, and any administrative rules promulgated thereunder, violations specified under s. 285.86, violations of rules of the Kickapoo reserve management board under s. 41.41 (7) (k) or violations of local ordinances enacted by any local authority in accordance with s. 23.33 (11) (am) ~~or~~, 30.77, or 350.72.

SECTION 12. 23.53 (1) of the statutes is amended to read:

23.53 **(1)** The citation created under this section shall, in all actions to recover forfeitures, penalty assessments, jail assessments, applicable weapons assessments, applicable environmental assessments, applicable wild animal protection assessments, applicable natural resources assessments, applicable fishing shelter removal assessments, applicable snowmobile registration restitution payments and applicable natural resources restitution payments for violations of those statutes enumerated in s. 23.50 (1), any administrative rules promulgated thereunder, and any rule of the Kickapoo reserve management board under s. 41.41 (7) (k) be used by any law enforcement officer with authority to enforce those laws, except that the uniform traffic citation created under s. 345.11 may be used by a traffic officer employed under s. 110.07 in enforcing s. 167.31 or by an officer of a law enforcement agency of a municipality or county or a traffic officer employed under s. 110.07 in enforcing s. 287.81. In accordance with s. 345.11 (1m), the citation shall not be used for violations of ch. 350 relating to highway use. The citation may be used for violations of local ordinances enacted by any local authority in accordance with s. 23.33 (11) (am) ~~or~~, 30.77, or 350.72.

SECTION 13. 23.56 (1) of the statutes is amended to read:

23.56 **(1)** A person may be arrested for a violation of those statutes enumerated in s. 23.50 (1), any administrative rules promulgated thereunder, any rule of the Kickapoo reserve management board under s. 41.41 (7) (k), or any local ordinances enacted by any local authority in accordance with s. 23.33 (11) (am) ~~or~~, 30.77, or 350.72 after a warrant that substantially complies with s. 968.04 has been issued. Except as provided in sub. (2), the person arrested shall be brought without unreasonable delay before a court having jurisdiction to try the action.

SECTION 14. 23.57 (1) (intro.) of the statutes is amended to read:

23.57 **(1)** (intro.) A person may be arrested without a warrant when the arresting officer has probable cause to believe that the person is committing or has committed a violation of those statutes enumerated in s. 23.50 (1), any administrative rules promulgated thereunder, any rule of the Kickapoo reserve management board under s. 41.41 (7) (k), or any local ordinances enacted by any local authority in accordance with s. 23.33 (11) (am) ~~or~~, 30.77, or 350.72; and:

SECTION 15. 23.58 of the statutes is amended to read:

23.58 Temporary questioning without arrest. After having identified himself or herself as an enforcing officer, an enforcing officer may stop a person in a public place for a reasonable period of time when the officer reasonably suspects that such person is committing, is about to commit or has committed a violation of those statutes enumerated in s. 23.50 (1), any administrative rules promulgated thereunder, any rule of the Kickapoo reserve management board under s. 41.41 (7) (k), or any local ordinances enacted by any local authority in accordance with s. 23.33 (11) (am) ~~or~~, 30.77, or 350.72. Such a stop may be made only where the enforcing officer has proper authority to make an arrest for such a violation. The officer may demand the name and address of the person and an explanation of the person's

conduct. Such detention and temporary questioning shall be conducted in the vicinity where the person was stopped.

SECTION 16. 23.62 (1) (intro.) of the statutes is amended to read:

23.62 **(1)** (intro.) Whenever an enforcing officer has probable cause to believe that a person subject to his or her authority is committing or has committed a violation of those statutes enumerated in s. 23.50 (1), any administrative rules promulgated thereunder, any rule of the Kickapoo reserve management board under s. 41.41 (7) (k), or any local ordinances enacted by any local authority in accordance with s. 23.33 (11) (am) ~~or~~, 30.77, or 350.72, the officer may proceed in the following manner:

SECTION 17. 30.204 (5) of the statutes is amended to read:

30.204 **(5)** EXEMPTION FROM CERTAIN STATUTES AND RULES. Activities of the department in conducting the lake acidification experiment are exempt from any prohibition, restriction, requirement, permit, license, approval, authorization, fee, notice, hearing, procedure or penalty specified under s. 29.601 (3), 30.01 to 30.03, 30.06 to 30.16, 30.18 to 30.29, 30.50 to 30.99, 59.692, 87.30, 287.81, 299.15 to 299.23, 299.91, 299.95, or 299.97 or chs. 281, 283, or 289 to 292, or subch. II of ch. 350 as it relates to any type of motorboat, or specified in any rule promulgated, order issued, or ordinance adopted under any of those sections or chapters.

SECTION 18. 30.50 (1e), (1g), (1m) and (3d) of the statutes are repealed.

SECTION 19. 30.50 (3g), (3h), (3r) and (4m) of the statutes are repealed.

SECTION 20. 30.50 (9g), (9x) and (13m) of the statutes are repealed.

SECTION 21. 30.64 (3) of the statutes is repealed and recreated to read:

30.64 **(3)** No operator of a boat may do any of the following:

(a) Fail or refuse to comply with any lawful order, signal, or direction of a law enforcement officer.

(b) Disobey the instructions of any official traffic sign or signal unless otherwise directed by a law enforcement officer.

(c) After having received a visual or audible signal to stop his or her boat from a law enforcement officer, or marked police vehicle, knowingly resist the law enforcement officer by failing to stop the boat as promptly as safety reasonably permits.

(d) After having received a visual or audible signal from a law enforcement officer, or marked police vehicle, knowingly flee or attempt to elude any law enforcement officer by willful or wanton disregard of such signal so as to interfere with or endanger the operation of the police vehicle, or the law enforcement officer or other vehicles or individuals, nor may the operator increase the speed of the operator's boat or extinguish the lights of the boat in an attempt to elude or flee.

NOTE: See the note to SECTION 7.

SECTION 22. 30.681 to 30.687 of the statutes are repealed.

SECTION 23. 30.74 (1) (bn) of the statutes is amended to read:

30.74 **(1)** (bn) A certificate issued to a person under this subsection is valid for life unless revoked by a court under s. 30.80 (2m) ~~or (6) (e)~~, 350.74 (10), or 938.343 (5).

SECTION 24. 30.74 (3) of the statutes is amended to read:

30.74 **(3)** ENFORCEMENT. The department shall assist in the enforcement of ss. 30.50 to 30.80 and of subch. II of ch. 350 as it relates to any type of motorboat, and in connection therewith maintain patrol boats and operate such patrol boats at such

times and places as the department deems necessary in the interest of boating safety and the effective enforcement of boating laws.

SECTION 25. 30.79 (1) (b) 1. of the statutes is amended to read:

30.79 **(1)** (b) 1. A unit within an existing municipal law enforcement agency or a separate municipal agency, created by a municipality or by a number of municipalities riparian to a single body of water for the purpose of enforcing ss. 30.50 to 30.80 and any rules promulgated and ordinances enacted under ss. 30.50 to 30.80, for the purpose of enforcing subch. II of ch. 350 and any ordinances enacted under s. 350.72 as the subchapter or ordinances relate to any type of motorboat, and for the purpose of conducting search and rescue operations.

SECTION 26. 30.79 (2) of the statutes is amended to read:

30.79 **(2)** STATE AID. In order to protect public rights in navigable waters and to promote public health, safety and welfare and the prudent and equitable use of the navigable waters of the state, a system of state aids for local enforcement of ss. 30.50 to 30.80 and ordinances enacted under ss. 30.50 to 30.80, for local enforcement of subch. II of ch. 350 and ordinances enacted under s. 350.72 as the subchapter and ordinances relate to any type of motorboat, and for conducting search and rescue operations is established.

SECTION 27. 30.79 (3) of the statutes is amended to read:

30.79 **(3)** ENFORCEMENT POWERS. Officers patrolling the waters as part of a water safety patrol unit may stop and board any boat for the purpose of enforcing ss. 30.50 to 30.80 or any rules promulgated or ordinances enacted under ss. 30.50 to 30.80, for the purpose of enforcing subch. II of ch. 350 or any ordinances enacted under s. 350.72 as the subchapter or ordinances relate to any type of motorboat, and for conducting search and rescue operations, if the officers have reasonable cause to

believe there is a violation of the sections, rules or ordinances or the stopping and boarding of any boat is essential to conduct a search and rescue operation.

SECTION 28. 30.79 (4) of the statutes is amended to read:

30.79 **(4)** JURISDICTION. Upon petition by any local governmental unit or group of local governmental units operating or intending to operate a water safety patrol unit, the department shall, if it finds that it is in the interest of efficient and effective enforcement to do so, by rule define the waters which may be patrolled by the unit, including waters lying within the territorial jurisdiction of some other town, village or city if the town, village or city consents to the patrol of its waters. Such consent is not required if the petitioner is a local governmental unit containing a population of 5,000 or more, bordering upon the waters to be affected by the rule in counties having a population of less than 500,000. Officers patrolling the waters as part of the water safety patrol unit shall have the powers of sheriff in enforcing ss. 30.50 to 30.80, or rules promulgated or ordinances enacted under ss. 30.50 to 30.80, in enforcing subch. II of ch. 350, or ordinances enacted under s. 350.72, as the subchapter or ordinances relate to any type of motorboat, and in conducting search and rescue operations, on any of the waters so defined, whether or not the waters are within the jurisdiction of the local governmental unit for other purposes.

SECTION 29. 30.79 (5) of the statutes is amended to read:

30.79 **(5)** PAYMENT OF AIDS. On or before January 31 of the year following the year in which a local governmental unit operated a water safety patrol unit, it shall file with the department on the forms prescribed by it a detailed statement of the costs incurred by the local governmental unit in the operation of the water safety patrol unit during the past calendar year and of the receipts resulting from fines or forfeitures imposed upon persons convicted of violations of ordinances enacted under

s. 30.77 or of ordinances enacted under s. 350.72 as they relate to any type of motorboat. The department shall audit the statement and determine the net costs that are directly attributable to the operation and maintenance of the water safety patrol unit, including a reasonable amount for depreciation of equipment. In calculating the net costs, the department shall deduct any fines or forfeitures imposed on persons convicted of violations of ordinances under s. 30.77 and any costs that do not comply with the rules promulgated under sub. (2m). The department shall compute the state aids on the basis of 75% of these net costs and shall cause the aids to be paid on or before April 1 of the year in which the statements are filed. If the state aids payable to local governmental units exceed the moneys available for such purpose, the department shall prorate the payments. No local governmental unit may receive state aid amounting to more than 20% of the funds available.

SECTION 30. 30.80 (6) of the statutes is repealed and recreated to read:

30.80 **(6)** (a) A person who violates s. 30.64 (3) (a) or (b) may be required to forfeit not less than $20 nor more than $40 for the first conviction and not less than $50 nor more than $100 for the 2nd or subsequent conviction within a year.

(b) A person who violates s. 30.64 (3) (c) may be fined not more than $10,000 or imprisoned for not more than 9 months or both.

(c) 1. Except as provided in subd. 2., 3., or 4., a person who violates s. 30.64 (3) (d) shall be fined not less than $600 nor more than $10,000 and may be imprisoned for not more than 3 years.

2. If the violation results in bodily harm, as defined in s. 939.22 (4), to another, or causes damage to the property of another, as defined in s. 939.22 (28), the person shall be fined not less than $1,000 nor more than $10,000 and may be imprisoned for not more than 3 years.

3. If the violation results in great bodily harm, as defined in s. 939.22 (14), to another, the person shall be fined not less than $1,100 nor more than $10,000 and may be imprisoned for not more than 3 years.

4. If the violation results in the death of another, the person shall be fined not less than $1,100 nor more than $10,000 and may be imprisoned for not more than 7 years and 6 months.

NOTE: Current law provides that an operator of a boat who refuses to stop after being requested or signaled to do so by a law enforcement officer must forfeit not more than $50 for the first offense and must forfeit not more than $100 upon conviction of the same offense a second or subsequent time within one year. The violation and penalties are altered as described in SECTION 7 of the bill. See also SECTION 21.

SECTION 31. 46.03 (18) (f) of the statutes is amended to read:

46.03 **(18)** (f) Notwithstanding par. (a), any person who submits to an assessment or driver safety plan under s. ~~23.33 (13) (e), 30.80 (6) (d),~~ 343.16 (5) (a), 343.30 (1q), 343.305 (10) ~~or 350.11 (3) (d),~~ or 350.74 (9) shall pay a reasonable fee therefor to the appropriate county department under s. 51.42 or traffic safety school under s. 345.60. A county may allow the person to pay the assessment fee in 1, 2, 3, or 4 equal instalments. The fee for the driver safety plan may be reduced or waived if the person is unable to pay the complete fee, but no fee for assessment or attendance at a traffic safety school under s. 345.60 may be reduced or waived. Nonpayment of the assessment fee is noncompliance with the court order that required completion of an assessment and driver safety plan. Upon a finding that the person has the ability to pay, nonpayment of the driver safety plan fee is noncompliance with the court order that required completion of an assessment and driver safety plan.

SECTION 32. 59.54 (14) (g) of the statutes is amended to read:

59.54 **(14)** (g) A county may establish extensions of the jail, which need not be at the county seat, to serve as places of temporary confinement. No person may be detained in such an extension for more than 24 consecutive hours, except that a court may order that a person subject to imprisonment under s. ~~23.33 (13) (b) 2. or 3. or (c) or 350.11 (3) (a) 2. or 3. or (b)~~ 350.74 (1) (b) to (e) or (3) be imprisoned for more than 24 consecutive hours in such an extension. Jail extensions shall be subject to plans and specifications approval by the department of corrections and shall conform to other requirements imposed by law on jails, except that cells may be designed and used for multiple occupancy.

SECTION 33. 110.07 (7) of the statutes is created to read:

110.07 **(7)** This section does not apply to subch. II of ch. 350 as it relates to any type of motorboat.

SECTION 34. 281.31 (9) of the statutes is amended to read:

281.31 **(9)** Sections 30.50 to 30.80 and subch. II of ch. 350 are not affected or superseded by this section.

SECTION 35. 341.055 of the statutes is amended to read:

341.055 Snowmobiles. Snowmobiles shall not be registered under this chapter but shall be registered under subch. I of ch. 350.

SECTION 36. 345.11 (1m) of the statutes is amended to read:

345.11 **(1m)** ~~The~~ With respect to snowmobiles, the uniform traffic citation or the citation form under s. 23.54 shall be used for violations of ch. 350 relating to highway use or ordinances in conformity therewith when committed on the highway, but no points may be assessed against the driving record of the operator of a snowmobile. When the uniform traffic citation is used, the report of conviction shall

be forwarded to the department. When the citation form under s. 23.54 is used, the procedure in ss. 23.50 to 23.85 applies.

SECTION 37. 345.11 (1r) of the statutes is amended to read:

345.11 **(1r)** ~~The~~ With respect to all–terrain vehicles, the uniform traffic citation or the citation form under s. 23.54 shall be used for violations of s. 23.33 relating to highway use or ordinances in conformity with that section if the violation is committed on a highway, but no points may be assessed against the driving record of the operator of an all–terrain vehicle. When the uniform traffic citation is used, the report of conviction shall be forwarded to the department. When the citation form under s. 23.54 is used, the procedure in ss. 23.50 to 23.85 applies.

SECTION 38. 349.03 (1) (intro.) and (a) of the statutes are amended to read:

349.03 **(1)** (intro.) Chapters 341 to 348 and subch. I of ch. 350 shall be uniform in operation throughout the state. No local authority may enact or enforce any traffic regulation unless such regulation:

(a) Is not contrary to or inconsistent with chs. 341 to 348 and subch. I of ch. 350; or

SECTION 39. 349.06 (1) (a) of the statutes is amended to read:

349.06 **(1)** (a) Except for the suspension or revocation of motor vehicle operator's licenses or except as provided in par. (b), any local authority may enact and enforce any traffic regulation which is in strict conformity with one or more provisions of chs. 341 to 348 and subch. I of ch. 350 for which the penalty for violation thereof is a forfeiture.

SECTION 40. Chapter 350 (title) of the statutes is amended to read:

CHAPTER 350

SNOWMOBILES AND INTOXICATED

OPERATION OF SPORT

RECREATIONAL VEHICLES AND

COMMERCIAL MOTORBOATS

SECTION 41. Subchapter I (title) of chapter 350 [precedes 350.01] of the statutes is created to read:

CHAPTER 350

SUBCHAPTER I

REGULATION OF SNOWMOBILES

SECTION 42. 350.01 (intro.) of the statutes is amended to read:

350.01 Definitions. (intro.) In this ~~chapter~~ subchapter:

SECTION 43. 350.01 (1g), (1h) and (1i) of the statutes are repealed.

SECTION 44. 350.01 (2), (2d) and (3m) of the statutes are repealed.

SECTION 45. 350.01 (9), (9c), (10g) and (10r) of the statutes are repealed.

SECTION 46. 350.01 (16) of the statutes is amended to read:

350.01 **(16)** "Snowmobile route" means a highway or sidewalk designated for use by snowmobile operators by the governmental agency having jurisdiction as authorized under this ~~chapter~~ subchapter.

SECTION 47. 350.01 (21) of the statutes is repealed.

SECTION 48. 350.045 of the statutes is amended to read:

350.045 Public utility exemption. So that public utilities may effectively carry out their obligations to the public, the restrictions imposed by this ~~chapter~~ subchapter relating to use on, near or adjacent to highways shall not apply to snowmobiles operated to fulfill the corporate function of the public utility in those cases where safety does not require strict adherence to the regulations related to

snowmobiles in general. However, snowmobiles operated by public utilities must be operated in a safe manner at all times.

SECTION 49. 350.055 of the statutes is amended to read:

350.055 Safety certification program established. The department shall establish a program of instruction on snowmobile laws, including the intoxicated ~~snowmobiling law~~ operation of a sport recreational vehicle law, as defined in s. 350.50 (16), regulations, safety, and related subjects. The program shall be conducted by instructors certified by the department. The department may procure liability insurance coverage for certified instructors for work within the scope of their duties under this section. Each person satisfactorily completing this program shall receive a snowmobile safety certificate from the department. The department shall establish by rule an instruction fee for this program. An instructor conducting a program of instruction under this section shall collect the instruction fee from each person who receives instruction. The department may determine the portion of this fee, which may not exceed 50%, that the instructor may retain to defray expenses incurred by the instructor in conducting the program. The instructor shall remit the remainder of the fee or, if nothing is retained, the entire fee to the department. A person who is required to hold a valid snowmobile safety certificate may operate a snowmobile in this state if the person holds a valid snowmobile safety certificate issued by another state or province of the Dominion of Canada and if the course content of the program in such other state or province substantially meets that established by the department under this section.

SECTION 50. 350.101 to 350.108 of the statutes are repealed.

SECTION 51. 350.11 (1) of the statutes is amended to read:

350.11 **(1)** (a) Except as provided in par. (b) and subs. (2g), (2m), and (3), any person who violates any provision of this ~~chapter~~ subchapter shall forfeit not more than $250.

(b) Except as provided in subs. (2g), (2m), and (3), any person who violates any provision of this ~~chapter~~ subchapter and who, within the last 3 years prior to the conviction for the current violation, was 2 or more times previously convicted for violating the same provision of this ~~chapter~~ subchapter shall forfeit not more than $500.

SECTION 52. 350.11 (3) of the statutes is repealed and recreated to read:

350.11 **(3)** (a) A person who violates s. 350.17 (2) (a) or (b) may be required to forfeit not less than $20 nor more than $40 for the first conviction and not less than $50 nor more than $100 for the 2nd or subsequent conviction within a year.

(b) A person who violates s. 350.17 (2) (c) may be fined not more than $10,000 or imprisoned for not more than 9 months or both.

(c) 1. Except as provided in subds. 2., 3., or 4., a person who violates s. 350.17 (2) (d) shall be fined not less than $600 nor more than $10,000 and may be imprisoned for not more than 3 years.

2. If the violation results in bodily harm, as defined in s. 939.22 (4), to another, or causes damage to the property of another, as defined in s. 939.22 (28), the person shall be fined not less than $1,000 nor more than $10,000 and may be imprisoned for not more than 3 years.

3. If the violation results in great bodily harm, as defined in s. 939.22 (14), to another, the person shall be fined not less than $1,100 nor more than $10,000 and may be imprisoned for not more than 3 years.

4. If the violation results in the death of another, the person shall be fined not less than $1,100 nor more than $10,000 and may be imprisoned for not more than 7 years and 6 months.

NOTE: Current law provides that a snowmobile operator who refuses to stop after being requested or signaled to do so by a law enforcement officer must be fined not less than $300 nor more than $2,000 and may be imprisoned for not less than 30 days nor more than one year in the county jail. The violation and penalties are altered as described in SECTION 7 of the bill. See also SECTION 57.

SECTION 53. 350.115 (1) (a) of the statutes is amended to read:

350.115 **(1)** (a) If a court imposes a forfeiture for a violation of a provision of this ~~chapter~~ subchapter where the payment of a registration fee is required, the court shall impose a snowmobile registration restitution payment equal to the amount of the fee that was required and should have been obtained.

SECTION 54. 350.12 (3) (b) and (4) (a) 4. of the statutes are amended to read:

350.12 **(3)** (b) Any person who is a resident of this state and the owner of a snowmobile which has a model year of 1966 or earlier may, upon application, register the snowmobile as an antique snowmobile. Upon payment of a fee of $20, the applicant shall be furnished a registration certificate and decals of a distinctive design, in lieu of the design on the decals issued under par. (d). The design shall show that the snowmobile is an antique. The registration shall be valid without payment of any additional registration fee while the snowmobile is owned by the applicant. Unless inconsistent with this paragraph, the provisions of this ~~chapter~~ subchapter applicable to other snowmobiles shall apply to antique snowmobiles.

(4) (a) 4. An amount necessary to pay the cost of law enforcement aids to counties as appropriated under s. 20.370 (5) (es). On or before June 1, a county shall file with the department on forms prescribed by the department a detailed statement of the costs incurred by the county in the enforcement of this ~~chapter~~ subchapter

during the preceding May 1 to April 30. The department shall audit the statements and determine the county's net costs for enforcement of this ~~chapter~~ subchapter. The department shall compute the state aids on the basis of 100% of these net costs and shall pay these aids on or before October 1. If the state aids payable to counties exceed the moneys available for such purpose, the department shall prorate the payments.

SECTION 55. 350.12 (4) (b) 3. of the statutes is amended to read:

350.12 **(4)** (b) 3. Not more than $30,000 for a route signing program of aids to cities, villages, towns or counties of up to 100% of the cost of initial signing of snowmobile routes which connect authorized trails or which offer entrance to or exit from trails leading to such municipalities. Aid may be provided under this subdivision to cities, villages, towns and counties for up to 100% of the cost of placing signs developed under s. ~~350.108~~ 350.66 (1) (b) which briefly explain the intoxicated ~~snowmobiling~~ operation of a sport recreational vehicle law along snowmobile routes. Applications and documentation shall be submitted to the department by April 15 of each year on forms prescribed by departmental rule.

SECTION 56. 350.17 (1) of the statutes is amended to read:

350.17 **(1)** Any officer of the state traffic patrol under s. 110.07 (1), inspector under s. 110.07 (3), warden of the department under s. 23.10, county sheriff, or municipal peace officer may enforce the provisions of this ~~chapter~~ subchapter.

SECTION 57. 350.17 (2) of the statutes is repealed and recreated to read:

350.17 **(2)** No operator of a snowmobile may do any of the following:

(a) Fail or refuse to comply with any lawful order, signal, or direction of a law enforcement officer.

(b) Disobey the instructions of any official traffic sign or signal unless otherwise directed by a law enforcement officer.

(c) After having received a visual or audible signal to stop his or her snowmobile from a law enforcement officer, or marked police vehicle, knowingly resist the law enforcement officer by failing to stop the snowmobile as promptly as safety reasonably permits.

(d) After having received a visual or audible signal from a law enforcement officer, or marked police vehicle, knowingly flee or attempt to elude any law enforcement officer by willful or wanton disregard of such signal so as to interfere with or endanger the operation of the police vehicle, or the law enforcement officer or other vehicles or pedestrians, nor may the operator increase the speed of the operator's snowmobile or extinguish the lights of the snowmobile in an attempt to elude or flee.

NOTE: See the note to SECTION 7.

SECTION 58. 350.17 (3) of the statutes is amended to read:

350.17 **(3)** Notwithstanding subs. (1) and (2), no law enforcement officer may stop a snowmobile operator for a violation of a statutory provision under this ~~chapter~~ subchapter or a rule promulgated or an ordinance adopted under this ~~chapter~~ subchapter unless the law enforcement officer has reasonable cause to believe the snowmobile operator has committed such a violation.

SECTION 59. 350.18 (2) of the statutes is amended to read:

350.18 **(2)** Any county, town, city or village may enact an ordinance that is in strict conformity with ss. 350.02 to 350.05, 350.07 to ~~350.107,~~ 350.11, 350.12, 350.13, 350.135, 350.15 to 350.17, 350.19, and ~~350.99~~ 350.21.

SECTION 60. 350.19 of the statutes is amended to read:

350.19 Liability of landowners. Section 895.52 applies to this ~~chapter~~ subchapter.

SECTION 61. Subchapter II of chapter 350 [precedes 350.50] of the statutes is created to read:

CHAPTER 350

SUBCHAPTER II

INTOXICATED OPERATION OF SPORT RECREATIONAL VEHICLES AND COMMERCIAL MOTORBOATS

350.50 Definitions. In this subchapter:

(1) "Alcohol" has the meaning given in s. 340.01 (1q).

(2) "Alcohol concentration" has the meaning given in s. 340.01 (1v).

(3) "All–terrain vehicle" has the meaning given in s. 340.01 (2g).

(4) "All–terrain vehicle trail" has the meaning given in s. 23.33 (1) (d).

(5) "Approved public treatment facility" has the meaning given in s. 51.45 (2) (c).

(6) "Boat" means every description of watercraft used or capable of being used as a means of transportation on water, except a seaplane on the water and a fishing raft.

(7) "Bodily harm" means physical pain or injury, illness, or any impairment of physical condition.

(8) "Commercial motorboat" means a motorboat while it is being operated to transport property or passengers for hire or while it is being used by its operator or owner to earn a livelihood or to gain a profit or both.

(9) "Controlled substance" has the meaning given in s. 961.01 (4).

(10) "Controlled substance analog" has the meaning given in s. 961.01 (4m).

(11) "Department" means the department of natural resources.

(12) "Drug" has the meaning given in s. 450.01 (10).

(13) "Highway" has the meaning given in s. 340.01 (22).

(14) "Intoxicant" means any of the following:

(a) Alcohol, a controlled substance, a controlled substance analog, any other drug, or a vapor–releasing substance.

(b) Any combination of alcohol, a controlled substance, a controlled substance analog, any other drug, or a vapor–releasing substance.

(15) "Intoxicated operation of a commercial motorboat law" means, if the operation of a commercial motorboat is involved, s. 350.52 or a local ordinance in conformity with that section or s. 940.09 or 940.25.

(16) "Intoxicated operation of a sport recreational vehicle law" means, if the operation of a sport recreational vehicle is involved, s. 350.52 or a local ordinance in conformity with that section or s. 940.09 or 940.25.

(17) "Law enforcement officer" has the meaning given in s. 165.85 (2) (c).

(18) "Motorboat" means any boat equipped with propulsion machinery, whether or not the machinery is the principal source of propulsion, but does not include a commercial motorboat.

(19) "Operate" means to exercise physical control over the speed or direction of a sport recreational vehicle or commercial motorboat, or to physically manipulate or activate any of the controls of a sport recreational vehicle or commercial motorboat necessary to put it in motion.

(20) "Operation" means the exercise of physical control over the speed or direction of a sport recreational vehicle or commercial motorboat, or the physical

manipulation or activation of any of the controls of a sport recreational vehicle or commercial motorboat necessary to put it in motion. "Operation," with respect to a motorboat, does not include a sailboat operating under sail alone.

(21) "Operator" means a person who operates a sport recreational vehicle or commercial motorboat, who is responsible for the operation of a sport recreational vehicle or commercial motorboat or who is supervising the operation of a sport recreational vehicle or commercial motorboat.

(22) (a) "Prohibited alcohol concentration" means, with respect to convictions under laws listed in par. (b), one of the following:

1. If the person has one or no prior convictions within 10 years prior to the arrest for the current violation, an alcohol concentration of 0.1 or more.

2. If the person has 2 prior convictions within 10 years prior to the arrest for the current violation, an alcohol concentration of 0.08 or more.

3. If the person has 3 or more prior convictions within 10 years prior to the arrest for the current violation, an alcohol concentration of more than 0.02.

(b) The laws covered under par. (a) are the intoxicated operation of an all–terrain vehicle law and refusal law, as defined in s. 23.33 (1) (ic) and (jm), 1999 stats.; the intoxicated boating law and refusal law, as defined in s. 30.50 (4m) and (9x), 1999 stats.; the intoxicated snowmobiling law and refusal law, as defined in s. 350.01 (9c) and (10r), 1999 stats.; the intoxicated operation of a sport recreational vehicle law; and the intoxicated operation of a commercial motorboat law.

(23) "Purpose of authorized analysis" means for the purpose of determining or obtaining evidence of the presence, quantity, or concentration of any intoxicant in a person's breath, blood, or urine.

(24) "Refusal law" means s. 350.58 (5) or a local ordinance in conformity with that subsection.

(25) "Sport recreational vehicle" means an all–terrain vehicle, a motorboat, or a snowmobile.

(26) "Snowmobile" has the meaning given in s. 340.01 (58a).

(27) "Snowmobile trail" has the meaning given in s. 350.01 (17).

(28) "Test facility" means a test facility or agency prepared to administer tests under s. 343.305 (2).

(29) "Under the influence of an intoxicant" means a condition in which a person's ability to operate a sport recreational vehicle or commercial motorboat, because of the consumption or use of an intoxicant, is impaired to the extent that the person is less able to exercise the clear judgment and steady hand necessary to handle and control a sport recreational vehicle or commercial motorboat.

(30) "Waters of this state" has the meaning given in s. 30.50 (14).

NOTE: This section restates definitions from ss. 23.33 (1), 30.50 and 350.01, stats. For purposes of consolidated treatment, the term "sport recreational vehicle" is created to mean an all–terrain vehicle, a motorboat or a snowmobile. The term does not include a commercial motorboat. See, also, with respect to the definition of the term "prohibited alcohol concentration", the note following s. 350.52.

Also, this section creates a definition for the term "under the influence of an intoxicant". The term is defined to mean a condition in which a person's ability to operate a sport recreational vehicle or commercial motorboat, because of the consumption or use of an intoxicant, is impaired to the extent that the person is less able to exercise the clear judgment and steady hand necessary to handle and control a sport recreational vehicle. This definition codifies language contained in Wisconsin criminal jury instructions, s. 2663, with respect to a person operating a motor vehicle while under the influence of an intoxicant. The new standard replaces the phrase "incapable of safe operation" that currently applies to all–terrain vehicles, motorboats and snowmobiles. In addition, the bill adds to the definition of the term "intoxicant" by including the term "a vapor–releasing substance".

350.52 Intoxicated operation of a sport recreational vehicle or commercial motorboat. (1) OPERATION. (a) *Operating while under the influence*

of an intoxicant. No person may operate a sport recreational vehicle or commercial motorboat while under the influence of an intoxicant.

(b) *Operating with alcohol concentrations at or above specified levels.* 1. No person may operate a sport recreational vehicle while the person has a prohibited alcohol concentration.

2. No person may operate a commercial motorboat while the person has an alcohol concentration of 0.04 or more.

(c) *Operating with alcohol concentrations at specified levels; under age 21.* If a person has not attained the age of 21, the person may not operate a sport recreational vehicle or commercial motorboat while he or she has an alcohol concentration of more than 0.0 but not more than 0.1.

(d) *Related charges.* A person may be charged with and a prosecutor may proceed upon a complaint based upon a violation of par. (a) or (b) or both for acts arising out of the same incident or occurrence. If the person is charged with violating both pars. (a) and (b), the offenses shall be joined. If the person is found guilty of violating both pars. (a) and (b) for acts arising out of the same incident or occurrence, there shall be a single conviction for purposes of sentencing and for purposes of counting convictions under s. 350.74 (1) (b) to (e). Paragraphs (a) and (b) each require proof of a fact for conviction which the other does not require.

(2) CAUSING BODILY HARM. (a) *Causing bodily harm while under the influence of an intoxicant.* No person while under the influence of an intoxicant may cause bodily harm to another person by the operation of a sport recreational vehicle or commercial motorboat.

(b) *Causing bodily harm with alcohol concentrations at or above specified levels.* 1. No person who has a prohibited alcohol concentration may cause bodily harm to another person by the operation of a sport recreational vehicle.

2. No person who has an alcohol concentration of 0.04 or more may cause bodily harm to another person by the operation of a commercial motorboat.

(c) *Related charges.* A person may be charged with and a prosecutor may proceed upon a complaint based upon a violation of par. (a) or (b) or both for acts arising out of the same incident or occurrence. If the person is charged with violating both pars. (a) and (b) in the complaint, the crimes shall be joined under s. 971.12. If the person is found guilty of violating both pars. (a) and (b) for acts arising out of the same incident or occurrence, there shall be a single conviction for purposes of sentencing and for purposes of counting convictions under s. 350.74 (1) (b) to (e). Paragraphs (a) and (b) each require proof of a fact for conviction which the other does not require.

(d) *Defenses.* 1. Except as provided in subd. 2., in an action under this subsection, the defendant has a defense if he or she proves by a preponderance of the evidence that the bodily harm would have occurred even if he or she had been exercising due care and he or she had not been under the influence of an intoxicant or did not have a prohibited alcohol concentration.

2. In an action under this subsection for a violation of the intoxicated operation of a commercial motorboat law, the defendant has a defense if he or she proves by a preponderance of the evidence that the bodily harm would have occurred even if he or she had been exercising due care and he or she had not been under the influence of an intoxicant or did not have an alcohol concentration of 0.04 or more.

NOTE: This SECTION restates ss. 23.33 (4c), 30.681 and 350.101, stats., with the following exceptions:

1. Under current law, a person under the age of 19 may not operate an all–terrain vehicle or a snowmobile if the person has alcohol in his or her system. Also, under current law, a person under the age of 21 may not operate a motorboat if the person has alcohol in his or her system. This bill uniformly provides that persons under the age of 21 must maintain absolute sobriety when operating any type of sport recreational vehicle or commercial motorboat.

2. Current law generally provides that a person may not operate a sport recreational vehicle, or cause injury to another by operation of a sport recreational vehicle, when the person has an alcohol concentration of 0.1 or more. This bill makes use of the definition of the term "prohibited alcohol concentration" as used in the motor vehicle code. Thus, in general, no person may operate a sport recreational vehicle, or cause injury to another person by operation of a sport recreational vehicle, with alcohol concentrations listed below:

a. If the person has one or no prior convictions within 10 years prior to the arrest for the current violation, an alcohol concentration of 0.1 or more.

b. If the person has 2 prior convictions within 10 years prior to the arrest for the current violation, an alcohol concentration of 0.08 or more.

c. If the person has 3 or more prior convictions within 10 years prior to the arrest for the current violation, an alcohol concentration of more than 0.02.

3. Instead of using the term "injury", this bill refers to "bodily harm". The term "bodily harm" is defined in s. 350.50 (7) to mean physical pain or injury, illness or any impairment of physical condition. The definition is adopted from s. 939.22 (4), stats.

350.54 Preliminary breath screening test. **(1)** REQUIREMENT. A person shall provide a sample of his or her breath for a preliminary breath screening test if a law enforcement officer has reasonable suspicion that the person is violating or has violated the intoxicated operation of a sport recreational vehicle law or the intoxicated operation of a commercial motorboat law, and if, prior to an arrest, the law enforcement officer requested the person to provide this sample.

(2) USE OF TEST RESULTS. A law enforcement officer may use the results of a preliminary breath screening test for the purpose of deciding whether or not to arrest a person for a violation of the intoxicated operation of a sport recreational vehicle law or the intoxicated operation of a commercial motorboat law, or for the purpose of deciding whether or not to request a chemical test under s. 350.60. Following the preliminary breath screening test, chemical tests may be required of the person under s. 350.60.

(3) ADMISSIBILITY. The result of a preliminary breath screening test is not admissible in any action or proceeding except to show probable cause for an arrest, if the arrest is challenged, to show the presence of an intoxicant in a person, or to show that a chemical test was properly required of a person under s. 350.60.

(4) REFUSAL. There is no penalty for a violation of sub. (1). The general penalty provision under s. 939.61 does not apply to that violation.

NOTE: This section restates ss. 23.33 (4g), 30.682 and 350.102, stats., except that in sub. (1) a law enforcement officer may require a preliminary breath screening test if there is a reasonable suspicion, rather than probable cause to believe, that a violation has occurred. This change codifies the decision of the Wisconsin Supreme Court in *County of Jefferson v. Renz*, 231 Wis. 2d 293 (1999).

In addition, current law provides that a preliminary breath screening test is not admissible in any action or proceeding except to show probable cause for an arrest, if the arrest is challenged, or to prove that a chemical test was properly required or requested. This SECTION provides that the result of the preliminary breath screening test also may be used as evidence of the presence of an intoxicant in a person.

350.56 Application of intoxicated operation of a sport recreational vehicle or commercial motorboat law. (1) MOTORBOATS. The intoxicated operation of a sport recreational vehicle law is applicable to the operation of a motorboat upon the waters of this state.

(2) COMMERCIAL MOTORBOATS. The intoxicated operation of a commercial motorboat law is applicable to the operation of a commercial motorboat upon the waters of this state.

(3) ALL-TERRAIN VEHICLES AND SNOWMOBILES. Except as provided in this subsection, the intoxicated operation of a sport recreational vehicle law is applicable to the operation of an all–terrain vehicle and a snowmobile upon frozen waters and upon all property, whether the property is publicly or privately owned and whether or not a fee is charged for the use of that property. The intoxicated operation of a sport recreational vehicle law does not apply to the operation of an all–terrain vehicle or a snowmobile on private land that is not designated as an all–terrain vehicle trail

or a snowmobile trail unless an accident involving personal injury occurs as the result of the operation of the all–terrain vehicle or snowmobile or the all–terrain vehicle or snowmobile was operated on the private land without the consent of the owner of that land.

NOTE: Current law provides that the intoxicated operation of an all–terrain vehicle law is applicable upon all premises held out to the public for use of their all–terrain vehicles, whether the premises are publicly or privately owned and whether or not a fee is charged for use of the premises. The law also provides that the intoxicated snowmobiling law applies to all property, whether the property is publicly or privately owned and whether or not a fee is charged for the use of that property. However, the snowmobiling law does not apply to the operation of a snowmobile on private land not designated as a snowmobile trail unless an accident involving personal injury occurs *and* the snowmobile was operated on the private land without the owner's consent.

The bill makes the following changes:

1. The bill specifically incorporates the phrase "upon the waters of this state" from s. 30.683, stats., for the purpose of stating the place of application of the intoxicated operation of a sport recreational vehicle law to motorboats and the place of application of the intoxicated operation of a commercial motorboat law.

2. The provisions describing the applicability of the intoxicated operation of a sport recreational vehicle law are combined with respect to all–terrain vehicles and snowmobiles. The law will be applicable upon frozen waters and upon all property, whether the property is publicly or privately owned and whether or not a fee is charged for the use of that property. The factual question of whether property is held out to the public for use of an all–terrain vehicle is eliminated. The law will not apply to the operation of an all–terrain vehicle or a snowmobile on private land not designated as an all–terrain vehicle trail or as a snowmobile trail unless an accident involving personal injury occurs as the result of the operation of the all–terrain vehicle or snowmobile *or* the all–terrain vehicle or the snowmobile was operated on the private land without the consent of the owner of that land.

350.58 Implied consent. A person who engages in the operation of a sport recreational vehicle or commercial motorboat in or on those areas enumerated in s. 350.56 is considered to have given consent to provide one or more samples of his or her breath, blood, or urine for the purpose of authorized analysis as required under s. 350.60. A person who engages in the operation of a sport recreational vehicle or commercial motorboat within this state is considered to have given consent to submit to one or more chemical tests of his or her breath, blood, or urine for the purpose of authorized analysis as required under s. 350.60.

NOTE: This section restates ss. 23.33 (4L), 30.683 and 350.103, stats.

350.60 Chemical tests. (1) REQUIREMENT. (a) *Samples; submission to tests.* A person shall provide one or more samples of his or her breath, blood, or urine for the purpose of authorized analysis if he or she is arrested for a violation of the intoxicated operation of a sport recreational vehicle law or the intoxicated operation of a commercial motorboat law, and if he or she is requested to provide the sample by a law enforcement officer. A person shall submit to one or more chemical tests of his or her breath, blood, or urine for the purpose of authorized analysis if he or she is arrested for a violation of the intoxicated operation of a sport recreational vehicle law or the intoxicated operation of a commercial motorboat law, and if he or she is requested to submit to the test by a law enforcement officer.

(b) *Information.* 1. Except as provided in subd. 2., a law enforcement officer requesting a person to provide a sample or to submit to a chemical test under par. (a) shall inform the person of all of the following at the time of the request and prior to obtaining the sample or administering the test:

"a. You have either been arrested for an offense that involves driving or operating a sport recreational vehicle while under the influence of an intoxicant.

b. This law enforcement agency now wants to test one or more samples of your breath, blood, or urine to determine the concentration of an intoxicant in your system. If any test shows more alcohol in your system than the law permits while operating, your operating privilege will be suspended. If you refuse to take any test that this agency requests, your operating privilege will be revoked and you will be subject to other penalties. The test results or the fact that you refused testing can be used against you in court. The law does not provide you with a right to contact an attorney before submitting to a chemical test.

c. If you take all of the requested tests, you may choose to take further tests. You may take the alternative test that this law enforcement agency provides free of charge. You also may have a test conducted by a qualified person of your choice at your expense. You, however, will have to make your own arrangements for that test."

2. If the person being informed under subd. 1. was arrested for a violation of the intoxicated operation of a commercial motorboat law, the law enforcement officer shall, in lieu of the first paragraph of the information provided under subd. 1., inform the person of the following:

"a. You have been arrested for an offense that involves operating a commercial motorboat while under the influence of an intoxicant."

(c) *Unconscious person.* A person who is unconscious or otherwise not capable of withdrawing consent is presumed not to have withdrawn consent under this subsection, and if a law enforcement officer has probable cause to believe that the person violated the intoxicated operation of a sport recreational vehicle law or the intoxicated operation of a commercial motorboat law, one or more chemical tests may be administered to the person without a request under par. (a) and without providing information under par. (b).

(2) CHEMICAL TESTS. (a) *Test facility.* Upon the request of a law enforcement officer, a test facility shall administer a chemical test of breath, blood, or urine for the purpose of authorized analysis. A test facility shall be prepared to administer 2 of the 3 chemical tests of breath, blood, or urine for the purpose of authorized analysis. The department may enter into agreements for the cooperative use of test facilities.

(b) *Designated chemical test.* A test facility shall designate one chemical test of breath, blood, or urine which it is prepared to administer first for the purpose of authorized analysis.

(c) *Additional chemical test.* A test facility shall specify one chemical test of breath, blood, or urine, other than the test designated under par. (b), which it is prepared to administer for the purpose of authorized analysis as an additional chemical test.

(d) *Validity; procedure.* A chemical test of blood or urine conducted for the purpose of authorized analysis is valid as provided under s. 343.305 (6). The duties and responsibilities of the laboratory of hygiene, department of health and family services, and department of transportation under s. 343.305 (6) apply to a chemical test of blood or urine conducted for the purpose of authorized analysis under this section. Blood may be withdrawn from a person arrested for a violation of the intoxicated operation of a sport recreational vehicle law or the intoxicated operation of a commercial motorboat law only by a physician, registered nurse, medical technologist, physician assistant, or person acting under the direction of a physician, and the person who withdraws the blood, the employer of that person, and any hospital where blood is withdrawn have immunity from civil or criminal liability as provided under s. 895.53.

(e) *Report.* A test facility that administers a chemical test of breath, blood, or urine for the purpose of authorized analysis under this section shall prepare a written report which shall include the findings of the chemical test, the identification of the law enforcement officer or the person who requested a chemical test, and the identification of the person who provided the sample or submitted to the chemical

test. The test facility shall transmit a copy of the report to the law enforcement officer and the person who provided the sample or submitted to the chemical test.

(3) ADDITIONAL AND OPTIONAL CHEMICAL TESTS. (a) *Additional chemical test.* If a person is arrested for a violation of the intoxicated operation of a sport recreational vehicle law or the intoxicated operation of a commercial motorboat law, or is the operator of a sport recreational vehicle or commercial motorboat involved in an accident resulting in great bodily harm to or the death of someone, and if the person is requested to provide a sample or to submit to a test under sub. (1) (a), the person may request the test facility to administer the additional chemical test specified under sub. (2) (c) or, at his or her own expense, reasonable opportunity to have any qualified person administer a chemical test of his or her breath, blood, or urine for the purpose of authorized analysis.

(b) *Optional test.* If a person is arrested for a violation of the intoxicated operation of a sport recreational vehicle law or the intoxicated operation of a commercial motorboat law and if the person is not requested to provide a sample or to submit to a test under sub. (1) (a), the person may request the test facility to administer a chemical test of his or her breath or, at his or her own expense, reasonable opportunity to have any qualified person administer a chemical test of his or her breath, blood, or urine for the purpose of authorized analysis. If a test facility is unable to perform a chemical test of breath, the person may request the test facility to administer the designated chemical test under sub. (2) (b) or the additional chemical test under sub. (2) (c).

(c) *Compliance with request.* A test facility shall comply with a request under this subsection to administer any chemical test that it is able to perform.

(d) *Inability to obtain chemical test.* The failure or inability of a person to obtain a chemical test at his or her own expense does not preclude the admission of evidence of the results of a chemical test required and administered under subs. (1) and (2).

(4) ADMISSIBILITY; EFFECT OF TEST RESULTS; OTHER EVIDENCE. The results of a chemical test required or administered under sub. (1), (2), or (3) are admissible in any civil or criminal action or proceeding arising out of the acts committed by a person alleged to have violated the intoxicated operation of a sport recreational vehicle law or the intoxicated operation of a commercial motorboat law on the issue of whether the person was under the influence of an intoxicant or the issue of whether the person had alcohol concentrations at or above specified levels. Results of these chemical tests shall be given the effect required under s. 885.235. This section does not limit the right of a law enforcement officer to obtain evidence by any other lawful means.

(5) REFUSAL. No person may refuse a lawful request to provide one or more samples of his or her breath, blood, or urine or to submit to one or more chemical tests under sub. (1). A person shall not be considered to refuse to provide a sample or to submit to a chemical test if it is shown by a preponderance of the evidence that the refusal was due to a physical inability to provide the sample or to submit to the test due to a physical disability or disease unrelated to the use of an intoxicant. Issues in any action for which the penalties under s. 350.74 (1) may be imposed for a violation of sub. (1) or this subsection are limited to:

(a) Whether the law enforcement officer had probable cause to believe that the person was violating or had violated the intoxicated operation of a sport recreational vehicle law or the intoxicated operation of a commercial motorboat law.

(b) Whether the person was lawfully placed under arrest for violating the intoxicated operation of a sport recreational vehicle law or the intoxicated operation of a commercial motorboat law.

(c) Whether the law enforcement officer requested the person to provide a sample or to submit to a chemical test and provided the information required under sub. (1) (b) or whether the request and information were unnecessary under sub. (1) (c).

(d) Whether the person refused to provide a sample or to submit to a chemical test.

(6) ISSUES RAISED BY MOTION. An issue raised under sub. (5) (a) or (b) shall be raised by the defendant as a motion before trial contesting the validity of the arrest in the same manner as motions in misdemeanor actions filed under s. 971.31.

NOTE: This section restates ss. 23.33 (4p), 30.684 and 350.104, stats. Subsection (6) is added to clarify that issues surrounding the lawful arrest of a person are matters to be determined by the court and not a jury.

350.62 Report arrest to department. If a law enforcement officer arrests a person for a violation of the intoxicated operation of a sport recreational vehicle law, the intoxicated operation of a commercial motorboat law, or the refusal law, the law enforcement officer shall notify the department of the arrest as soon as practicable.

NOTE: This section restates ss. 23.33 (4t), 30.686 and 350.106, stats.

350.64 Officer's action after arrest for operating a sport recreational vehicle or commercial motorboat while under influence of intoxicant. A person arrested for a violation of s. 350.52 (1) (a) or (b) or a local ordinance in conformity with those paragraphs or s. 350.52 (2) (a) or (b) may not be released until 12 hours have elapsed from the time of his or her arrest or unless a chemical test administered under s. 350.60 (1) (a) shows that the person has an alcohol

concentration of less than 0.02, but the person may be released to his or her attorney, spouse, relative, or other responsible adult at any time after arrest.

NOTE: This section restates ss. 23.33 (4x), 30.687 and 350.107, stats., except that the alcohol concentration level that will authorize immediate release after arrest is reduced from the current level of 0.05 or less to less than 0.02.

350.66 Public education program. (1) The department shall promulgate rules to provide for a public education program to:

(a) Inform sport recreational vehicle operators of the prohibitions and penalties included in the intoxicated operation of a sport recreational vehicle law. The snowmobile recreational council may assist the department in developing the public education program.

(b) Provide for the development of signs briefly explaining the intoxicated operation of a sport recreational vehicle law.

(2) The department shall develop and issue an educational pamphlet on the intoxicated operation of a sport recreational vehicle law to be distributed to persons issued registration certificates or cards under s. 23.33 (2) or (2g), 30.52 (5) (b), 350.12, or 350.122.

NOTE: This section restates ss. 23.33 (4z) and 350.108, stats. A similar provision is not found in ch. 30, stats., relating to motorboats; however, s. 30.74 (1), stats., requires the department of natural resources (DNR) to create comprehensive courses on boating safety and operation. The bill additionally requires DNR to distribute to a motorboat registrant an educational pamphlet on the intoxicated operation of a sport recreational vehicle law.

350.68 Enforcement. (1) A law enforcement officer may enforce the provisions of this subchapter.

(2) No operator of a sport recreational vehicle or a commercial motorboat may do any of the following:

(a) Fail or refuse to comply with any unlawful order, signal, or direction of a law enforcement officer.

(b) Disobey the instructions of any official traffic sign or signal unless otherwise directed by a law enforcement officer.

(c) After having received a visual or audible signal to stop his or her sport recreational vehicle or commercial motorboat from a law enforcement officer, or marked police vehicle, knowingly resist the law enforcement officer by failing to stop the sport recreational vehicle or commercial motorboat as promptly as safety reasonably permits.

(d) After having received a visual or audible signal from a law enforcement officer, or marked police vehicle, knowingly flee or attempt to elude any law enforcement officer by willful or wanton disregard of such signal so as to interfere with or endanger the operation of the police vehicle, or the law enforcement officer or other vehicles or individuals, nor may the operator increase the speed of the operator's sport recreational vehicle or commercial motorboat, or extinguish the lights of the sport recreational vehicle in an attempt to elude or flee.

(3) Notwithstanding subs. (1) and (2), no law enforcement officer may stop a snowmobile operator for a violation of a statutory provision under this subchapter or a rule promulgated or an ordinance adopted under this subchapter unless the law enforcement officer has reasonable cause to believe that the operator has committed the violation.

NOTE: This section is derived from ss. 23.33 (12), 30.64 (3) and 350.17, stats., except that the provision explicitly provides that a law enforcement officer may enforce the provisions of subch. II of ch. 350, stats. The current list of individuals who may enforce the law is included in the defined term "law enforcement officer" in s. 350.50 (14). See, also, the note to SECTION 7 and see s. 350.74 (4) with respect to the issue of refusing to stop after being requested or signaled to do so by a law enforcement officer.

350.70 Liability of landowners. Section 895.52 applies to this subchapter.

NOTE: This section restates ss. 23.33 (10) and 350.19, stats.

350.72 Local ordinances. A county, town, city, or village may enact an ordinance that is imposed, in strict conformity with one or more provisions of this subchapter for which the penalty for a violation is a forfeiture.

NOTE: This section restates portions of ss. 23.33 (11) (am), 30.77 (2) and 350.18 (2), stats.

350.74 Penalties. (1) PENALTIES RELATED TO PROHIBITED OPERATION OF A SPORT RECREATIONAL VEHICLE OR COMMERCIAL MOTORBOAT; INTOXICANTS; REFUSAL. (a) Except as provided under pars. (b) to (f), a person who violates s. 350.52 (1) (a) or (b) or the refusal law shall forfeit not less than $150 nor more than $300 and shall have his or her privilege to operate a sport recreational vehicle or commercial motorboat revoked for one year.

(b) Except as provided in par. (f) and subject to sub. (7), a person who violates s. 350.52 (1) (a) or (b) and who, within 10 years prior to the arrest for the current violation, was convicted previously under the intoxicated operation of a sport recreational vehicle law, the intoxicated operation of a commercial motorboat law, or the refusal law shall be fined not less than $300 nor more than $1,100, shall be imprisoned for not less than 5 days nor more than 6 months, and shall have his or her privilege to operate a sport recreational vehicle or commercial motorboat revoked for 2 years.

(c) Except as provided in pars. (f) and (g) and subject to sub. (7), a person who violates s. 350.52 (1) (a) or (b) and who, within 10 years prior to the arrest for the current violation, was convicted 2 times previously under the intoxicated operation of a sport recreational vehicle law, the intoxicated operation of a commercial motorboat law, or the refusal law shall be fined not less than $600 nor more than $2,000, shall be imprisoned for not less than 30 days nor more than one year in the

county jail, and shall have his or her privilege to operate a sport recreational vehicle or commercial motorboat revoked for 3 years.

(d) Except as provided in pars. (f) and (g) and subject to sub. (7), a person who violates s. 350.52 (1) (a) or (b) and who, within 10 years prior to the arrest for the current violation, was convicted 3 times previously under the intoxicated operation of a sport recreational vehicle law, the intoxicated operation of a commercial motorboat law, or the refusal law shall be fined not less than $600 nor more than $2,000, shall be imprisoned for not less than 60 days nor more than one year in the county jail, and shall have his or her privilege to operate a sport recreational vehicle or commercial motorboat revoked for 4 years.

(e) Except as provided in pars. (f) and (g) and subject to sub. (7), a person who violates s. 350.52 (1) (a) or (b) and who, within 10 years prior to the arrest for the current violation, was convicted 4 or more times previously under the intoxicated operation of a sport recreational vehicle law, the intoxicated operation of a commercial motorboat law, or the refusal law shall be fined not less than $600 nor more than $2,000, shall be imprisoned for not less than 6 months nor more than 7 years and 6 months, and shall have his or her privilege to operate a sport recreational vehicle or commercial motorboat revoked for 5 years.

(f) If there was a minor passenger under 16 years of age in or on the vehicle at the time of the violation that gave rise to the conviction under s. 350.52 (1) (a) or (b), the applicable minimum and maximum forfeitures, fines, or imprisonment under par. (a), (b), (c), (d), or (e) for the conviction are doubled. An offense under s. 350.52 (1) (a) or (b) that subjects a person to a penalty under par. (c), (d), or (e) when there is a minor passenger under 16 years of age in the sport recreational vehicle or

commercial motorboat is a felony and the place of imprisonment shall be determined under s. 973.02.

(g) 1. If a person convicted under s. 350.52 (1) (a) or (b) had an alcohol concentration of 0.17 to 0.199, the applicable minimum and maximum fines under pars. (c) to (e) are doubled.

2. If a person convicted under s. 350.52 (1) (a) or (b) had an alcohol concentration of 0.20 to 0.249, the applicable minimum and maximum fines under pars. (c) to (e) are tripled.

3. If a person convicted under s. 350.52 (1) (a) or (b) had an alcohol concentration of 0.25 or above, the applicable minimum and maximum fines under pars. (c) to (e) are quadrupled.

4. The increased fines provided in this paragraph do not apply if a person convicted under s. 350.52 (1) (a) or (b) is subject to par. (f).

(h) A person who violates s. 350.52 (1) (c) shall forfeit not more than $50.

(2) OPERATION DURING REVOCATION OR SUSPENSION. No person whose operating privilege has been revoked under sub. (1) (a) to (f) or suspended under s. 350.76 (4) may operate a sport recreational vehicle or commercial motorboat during the period of revocation. Any person who violates this subsection shall be fined not more than $2,500 and imprisoned for not more than one year in the county jail.

(3) CAUSING BODILY HARM OR PROPERTY DAMAGE; INTOXICANTS. A person who violates s. 350.52 (2) by causing bodily harm shall be fined not less than $300 nor more than $2,000 and may be imprisoned for not less than 30 days nor more than one year in the county jail.

(4) PROPERTY DAMAGE. When sentencing a person convicted for a violation of s. 350.52 (1) or (2), a court may order the payment of restitution, using the applicable

procedures under s. 800.093 or 973.20, if the violation resulted in damage to the property of a person other than the defendant.

(5) PENALTIES FOR REFUSAL TO OBEY LAW ENFORCEMENT OFFICERS, SIGNS, AND SIGNALS. (a) A person who violates s. 350.68 (2) (a) or (b) may be required to forfeit not less than $20 nor more than $40 for the first conviction and not less than $50 nor more than $100 for the 2nd or subsequent conviction within a year.

(b) A person who violates s. 350.68 (2) (c) may be fined not more than $10,000 or imprisoned for not more than 9 months or both.

(c) 1. Except as provided in subd. 2., 3., or 4., a person who violates s. 350.68 (3) (d) shall be fined not less than $600 nor more than $10,000 and may be imprisoned for not more than 3 years.

2. If the violation results in bodily harm to another, or causes damage to the property of another, as defined in s. 939.22 (28), the person shall be fined not less than $1,000 nor more than $10,000 and may be imprisoned for not more than 3 years.

3. If the violation results in great bodily harm, as defined in s. 939.22 (14), to another, the person shall be fined not less than $1,100 nor more than $10,000 and may be imprisoned for not more than 3 years.

4. If the violation results in the death of another, the person shall be fined not less than $1,100 nor more than $10,000 and may be imprisoned for not more than 7 years and 6 months.

(6) SENTENCE OF DETENTION. The legislature intends that courts use the sentencing option under s. 973.03 (4) whenever appropriate for persons subject to par. (a) 2. or 3. or (b). The use of this option can result in significant cost savings for the state and local governments.

(7) CALCULATION OF PREVIOUS CONVICTIONS. (a) The court shall include the following convictions in determining the number of previous convictions under sub. (1) (b) to (e):

1. The intoxicated operation of an all–terrain vehicle law and refusal law, as defined in s. 23.33 (1) (ic) and (jm), 1999 stats.

2. The intoxicated boating law and refusal law, as defined in s. 30.50 (4m) and (9x), 1999 stats.

3. The intoxicated snowmobiling law and refusal law, as defined in s. 350.01 (9c) and (10r), 1999 stats.

(b) Previous convictions under par. (a) apply only to convictions occurring on or after January 1, 1998.

(c) In determining the number of previous convictions under sub. (1) (b) to (e), convictions arising out of the same incident or occurrence shall be counted as one previous conviction.

(8) REPORTING CONVICTIONS TO THE DEPARTMENT. Whenever a person is convicted of a violation of the intoxicated operation of a sport recreational vehicle law or the intoxicated operation of a commercial motorboat law, the clerk of the court in which the conviction occurred, or the justice, judge, or magistrate of a court not having a clerk, shall forward to the department the record of such conviction. The record of conviction shall state whether the offender was involved in an accident at the time of the offense.

(9) INTOXICANTS; ASSESSMENT. In addition to any other penalty or order, a person who violates s. 350.52 (1) or (2) or 350.60 (5), or who violates s. 940.09 or 940.25 if the violation involves the operation of a sport recreational vehicle or commercial motorboat, shall be ordered by the court to submit to and comply with an assessment

by an approved public treatment facility for an examination of the person's use of intoxicants. The assessment order shall comply with s. 343.30 (1q) (c) 1. a. to c. Intentional failure to comply with an assessment ordered under this subsection constitutes contempt of court and is punishable under ch. 785.

(10) CERTIFICATE OF SATISFACTORY COMPLETION OF SAFETY COURSE. In addition to any other penalty or order, a person who violates s. 350.52 (1) or (2), 350.60 (5), 940.09, or 940.25, and the violation involves the operation of a motorboat or a commercial motorboat, shall be ordered by the court to obtain a certificate of satisfactory completion of a safety course under s. 30.74 (1) (a). If the person has a valid certificate at the time that the court imposes sentence, the court shall permanently revoke the certificate and order the person to obtain a certificate of satisfactory completion of a safety course under s. 30.74 (1) (a).

(11) RESTORATION OR REPLACEMENT OF SIGNS AND STANDARDS. In addition to any other penalty, a court may order a defendant to restore or replace any uniform all–terrain vehicle or snowmobile route or trail sign or standard that the defendant removed, damaged, defaced, moved, or obstructed.

NOTE: This section, in most respects, restates ss. 23.33 (13) (b) to (f), 30.80 (6) and 350.11 (3) and (4), stats. The following differences between the bill and current law are noted:

1. Under current law, a conviction for the intoxicated use of one vehicle is not counted as a prior conviction when considering the application of repeat offender penalties to a person convicted of the intoxicated use of a different type of vehicle. The bill consolidates the statutory intoxicated use provisions for all–terrain vehicles, motorboats, commercial motorboats, and snowmobiles and, therefore, a conviction for the intoxicated use of one vehicle will count as a prior conviction when repeat offender penalties are applied to a person convicted of the intoxicated use of another type of vehicle.

2. The definition of the term "intoxicated operation of an all–terrain vehicle law" includes a local ordinance in conformity with the provisions prohibiting intoxicated operation and the causing of injury while under the influence of an intoxicant. The definitions of the similar terms relating to motorboats and snowmobiles do not include a local ordinance in conformity with the prohibition against causing injury. The bill follows the format of the current statutory definition of "intoxicated operation of an all–terrain vehicle law" by including a local ordinance in conformity with the prohibitions against both intoxicated operation and the causing of injury. Under proposed s. 350.72,

a county, town, city or village may enact an ordinance, for which a forfeiture may be imposed, in strict conformity with subch. II of ch. 350. The effect of this definitional format is that if a person is found guilty of causing injury by intoxicated use under a local ordinance, that conviction will count as a repeat offense for purposes of determining the penalty imposed on a repeat offender.

3. Under current law, a person who illegally operates an all–terrain vehicle or snowmobile while intoxicated, contrary to statutory provisions, will be subject to a range of penalties. The intoxicated boating law provides that a similar range of penalties will be applicable to a person who violates either the statutory provisions regarding intoxicated operation or a local ordinance in conformity with statutory provisions. The bill applies the all–terrain vehicle and snowmobile provisions to all sport recreational vehicles and commercial motorboats.

4. Under current law, a first offense while operating an all–terrain vehicle or a motorboat will result in a forfeiture of not less than $150 nor more than $300. However, current law provides that a first offense involving the intoxicated operation of a snowmobile will result in a forfeiture of not less than $400 nor more than $550. The bill applies the former penalty to all sport recreational vehicles and commercial motorboats, consistent with provisions applicable to motor vehicles under s. 346.65 (2) (a), stats. In addition, the bill incorporates provisions from 1999 senate bill 485 providing that a violator will have his or her operating privilege revoked for a period of one to 5 years depending on the repeater status of the violator. Operation during revocation, or during suspension for failure to pay the operator improvement surcharge created in this bill, will result in a fine of not more than $2,500 and imprisonment for not more than one year. Along with this change, current law is amended to provide that a violation of the refusal law will result in the application of a civil penalty, but not the application of a criminal penalty.

5. Under current law, with respect to all–terrain vehicles and snowmobiles, a second offense within 5 years and third or subsequent offenses within 5 years will result in additional penalties. However, the intoxicated boating law adds 2 additional categories of increased penalties for a person who has been convicted 4 times within 5 years or 5 or more times within 5 years. The bill applies the intoxicated boating law provisions to all sport recreational vehicles and commercial motorboats and increases the maximum period of imprisonment to a period of 7 years and 6 months in accordance with similar provisions in 1997 Wisconsin Act 283. In addition, the 5–year look–back period in current law is increased to 10 years for the purpose of reviewing prior convictions. However, the increased look–back period will be phased in so that convictions occurring prior to January 1, 1997 will not be counted. See SECTION 70 of the bill relating to the initial applicability of the provisions of the bill.

6. This bill authorizes a court to use statutory restitution procedures to impose a restitution requirement upon a person who causes property damage due to the intoxicated operation of a sport recreational vehicle or a commercial motorboat. Section 973.20, stats., currently may be used for this purpose with respect to ss. 940.09 and 940.25 regarding homicide or injury by intoxicated use of a vehicle.

7. The bill incorporates statutory provisions applicable to the operation of a motor vehicle under s. 346.65 (1) (f) and (g), stats., to the operation of sport recreational vehicles and commercial motorboats. First, if a minor passenger under 16 years of age is in or on a vehicle at the time of a violation, the applicable minimum and maximum forfeitures, fines or imprisonment for the convictions are doubled. Second, the applicable minimum and maximum fines will be doubled, tripled or quadrupled if the operator of the sport recreational vehicle or the commercial motorboat had an alcohol concentration of 0.17 to 0.199, 0.20 to 0.249, or 0.25 or above, respectively. This bill clarifies that the increased fines for increasing alcohol concentration may not be applied if the penalty relating to a minor passenger under the age of 16 years is applicable to the offense.

8. See the note to SECTION 7 of the bill for a description of the penalties applicable to an operator of a sport recreational vehicle or a commercial motorboat who refuses to obey law enforcement officers, signs and signals.

9. Under current law, a conviction relating to the use of an all–terrain vehicle or a snowmobile must be reported to DNR. The bill applies this requirement to a conviction relating to the use of a motorboat or a commercial motorboat.

350.76 Operator improvement surcharge. (1) If a court imposes a fine or a forfeiture for a violation of the intoxicated operation of a sport recreational vehicle law or the intoxicated operation of a commercial motorboat law, it shall impose an operator improvement surcharge in an amount of $355 in addition to the fine or forfeiture, penalty assessment, jail assessment, and crime laboratories and drug law enforcement assessment.

(2) (a) Except as provided in par. (b), the clerk of court shall collect and transmit the amount under sub. (1) to the county treasurer as provided in s. 59.40 (2) (m). The county treasurer shall then make payment of 38.5% of the amount to the state treasurer as provided in s. 59.25 (3) (f) 2.

(b) If the forfeiture is imposed by a municipal court, the court shall transmit the amount to the treasurer of the county, city, town, or village, and that treasurer shall make payment of 38.5% of the amount to the state treasurer as provided in s. 66.0114 (1) (bm). The treasurer of the city, town, or village shall transmit the remaining 61.5% of the amount to the treasurer of the county.

(3) All moneys collected from the operator improvement surcharge that are transmitted to the county treasurer under sub. (2) (a) or (b), except the amounts that the county treasurer is required to transmit to the state treasurer under sub. (2) (a) or (b), shall be retained by the county treasurer and disbursed to the county department under s. 51.42 for services under s. 51.42 for operators referred through assessment.

(4) If a court imposes an operator improvement surcharge under sub. (1) and the person fails to pay the surcharge within 60 days after the date by which the court ordered the surcharge to be paid, the court may suspend the person's operating privilege until the person pays the surcharge, except that the suspension period may not exceed 2 years.

NOTE: Current law provides that an operator of a motor vehicle who violates various operating while intoxicated statutory provisions must pay an operator improvement surcharge in an amount of $355 in addition to the fine or forfeiture, penalty assessment, jail assessment and crime laboratories and drug law enforcement assessment. This SECTION applies the surcharge provisions found in s. 346.655, stats., to a person who violates the intoxicated operation of a sport recreational vehicle law or the intoxicated operation of a commercial motorboat law.

SECTION 62. 350.99 of the statutes is renumbered 350.21, and 350.21 (1), as renumbered, is amended to read:

350.21 **(1)** Whoever is concerned in the commission of a violation of this ~~chapter~~ subchapter for which a forfeiture is imposed is a principal and may be charged with and convicted of the violation although he or she did not directly commit it and although the person who directly committed it has not been convicted of the violation.

SECTION 63. 800.001 of the statutes is amended to read:

800.001 Definition. In this chapter, "general statutory counterpart ordinance" means an ordinance which prohibits conduct which is the same as or similar to conduct prohibited by state statute, but does not include an ordinance enacted by a local authority in accordance with s. 30.77 ~~or,~~ 349.06, or 350.72.

SECTION 64. 800.02 (2) (b) of the statutes is amended to read:

800.02 **(2)** (b) Except for parking violations, in traffic regulation actions in municipal court, the uniform traffic citation specified in s. 345.11 shall be used in lieu of the citation form specified in par. (a). In actions for violations of local ordinances

enacted in accordance with s. 23.33 (11) (am) ~~or~~, 30.77, or 350.72, the citation form specified in s. 23.54 shall be used in lieu of the citation form specified in par. (a).

SECTION 65. 885.235 (1m) and (4) of the statutes are amended to read:

885.235 **(1m)** In any action under s. ~~23.33 (4c) (a) 3., 30.681 (1) (bn),~~ 346.63 (2m) or (7) or ~~350.101~~ 350.52 (1) (c), evidence of the amount of alcohol in the person's blood at the time in question, as shown by chemical analysis of a sample of the person's blood or urine or evidence of the amount of alcohol in the person's breath, is admissible on the issue of whether he or she had an alcohol concentration in the range specified in s. ~~23.33 (4c) (a) 3., 30.681 (1) (bn),~~ 346.63 (2m) or ~~350.101~~ 350.52 (1) (c) or an alcohol concentration above 0.0 under s. 346.63 (7) if the sample was taken within 3 hours after the event to be proved. The fact that the analysis shows that the person had an alcohol concentration of more than 0.0 but not more than 0.1 is prima facie evidence that the person had an alcohol concentration in the range specified in s. ~~23.33 (4c) (a) 3., 30.681 (1) (bn),~~ 346.63 (2m) or ~~350.101~~ 350.52 (1) (c) or an alcohol concentration above 0.0 under s. 346.63 (7).

(4) The provisions of this section relating to the admissibility of chemical tests for alcohol concentration or intoxication shall not be construed as limiting the introduction of any other competent evidence bearing on the question of whether or not a person was under the influence of an intoxicant, had a specified alcohol concentration, or had an alcohol concentration in the range specified in s. ~~23.33 (4c) (a) 3., 30.681 (1) (bn),~~ 346.63 (2m) or ~~350.101~~ 350.52 (1) (c).

SECTION 66. 938.343 (9) of the statutes is amended to read:

938.343 **(9)** If the violation is one under s. 23.33 or subch. II of ch. 350, or under an ordinance enacted in conformity with s. 23.33 or enacted under s. 350.72,

concerning the use of all–terrain vehicles, order the juvenile to enroll and participate in an all–terrain vehicle safety course.

SECTION 67. 940.09 (1m) and (3) of the statutes are amended to read:

940.09 **(1m)** A person may be charged with and a prosecutor may proceed upon an information based upon a violation of sub. (1) (a) or (b) or both, sub. (1) (a) or (bm) or both, sub. (1) (c) or (d) or both, sub. (1) (c) or (e) or both, sub. (1g) (a) or (b) or both, or sub. (1g) (c) or (d) or both for acts arising out of the same incident or occurrence. If the person is charged with violating both sub. (1) (a) and (b), both sub. (1) (a) and (bm), both sub. (1) (c) and (d), both sub. (1) (c) and (e), both sub. (1g) (a) and (b), or both sub. (1g) (c) and (d) in the information, the crimes shall be joined under s. 971.12. If the person is found guilty of both sub. (1) (a) and (b), both sub. (1) (a) and (bm), both sub. (1) (c) and (d), both sub. (1) (c) and (e), both sub. (1g) (a) and (b), or both sub. (1g) (c) and (d) for acts arising out of the same incident or occurrence, there shall be a single conviction for purposes of sentencing and for purposes of counting convictions under s. ~~23.33 (13) (b) 2. and 3., under s. 30.80 (6) (a) 2. and 3., under s.~~ 343.307 (1) or under s. ~~350.11 (3) (a) 2. and 3~~ 350.74 (1) (b) to (c). Subsection (1) (a), (b), (bm), (c), (d), and (e), and sub. (1g) (a), (b), (c), and (d), each require proof of a fact for conviction which the other does not require.

(3) An officer who makes an arrest for a violation of this section shall make a report as required under s. ~~23.33 (4t), 30.686,~~ 346.635 or ~~350.106~~ 350.62.

SECTION 68. 940.25 (1m) and (3) of the statutes are amended to read:

940.25 **(1m)** A person may be charged with and a prosecutor may proceed upon an information based upon a violation of sub. (1) (a) or (b) or both, sub. (1) (a) or (bm) or both, sub. (1) (c) or (d) or both, or sub. (1) (c) or (e) or both for acts arising out of the same incident or occurrence. If the person is charged with violating both sub. (1)

(a) and (b), both sub. (1) (a) and (bm), both sub. (1) (c) and (d), or both sub. (1) (c) and (e) in the information, the crimes shall be joined under s. 971.12. If the person is found guilty of both sub. (1) (a) and (b), both sub. (1) (a) and (bm), both sub. (1) (c) and (d), or both sub. (1) (c) and (e) for acts arising out of the same incident or occurrence, there shall be a single conviction for purposes of sentencing and for purposes of counting convictions under ~~s. 23.33 (13) (b) 2. and 3., under s. 30.80 (6) (a) 2. or 3., under~~ ss. 343.30 (1q) and 343.305 or under s. ~~350.11 (3) (a) 2. and 3~~ 350.74 (1) (b) to (e). Subsection (1) (a), (b), (bm), (c), (d), and (e) each require proof of a fact for conviction which the other does not require.

(3) An officer who makes an arrest for a violation of this section shall make a report as required under s. ~~23.33 (4t), 30.686,~~ 346.635 or ~~350.106~~ 350.62.

SECTION 69. 967.055 (2) (b) of the statutes is amended to read:

967.055 **(2)** (b) Notwithstanding s. 971.29, if the prosecutor seeks to dismiss or amend a charge regarding the operation of any type of motorboat under s. ~~30.681 (1)~~ 350.52 (1) or a local ordinance in conformity therewith, a charge under s. ~~30.681 (2)~~ 350.52 (2), a charge under s. ~~30.684 (5)~~ 350.60 (5) or a local ordinance in conformity therewith or a charge under s. 940.09 or 940.25 if the offense involved the use of ~~a~~ any type of motorboat, except a sailboat operating under sail alone, the prosecutor shall apply to the court. The application shall state the reasons for the proposed amendment or dismissal. The court may approve the application only if the court finds that the proposed amendment or dismissal is consistent with the public's interest in deterring the operation of motorboats by persons who are under the influence of an intoxicant, a controlled substance, a controlled substance analog or any combination of an intoxicant, controlled substance and controlled substance analog, under the influence of any other drug to a degree which renders him or her

incapable of operating a motorboat safely, or under the combined influence of an intoxicant and any other drug to a degree which renders him or her incapable of operating ~~a~~ any type of motorboat safely.

SECTION 70. Initial applicability.

(1) This act first applies to violations committed or refusals occurring on the effective date of this subsection, but does not preclude the counting of other convictions that occurred after December 31, 1998, as prior convictions for purposes of sentencing by a court or revocation or suspension of the privileges to operate a sport recreational vehicle or commercial motorboat.

SECTION 71. Effective date. This act takes effect on January 1, 2003.

(END)

D-NOTE

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB–2893/1dn
TNF:kg:jf

November 29, 2001

Under current law, if the motor vehicle operating privilege of a person holding a commercial driver license is suspended or revoked for operating a noncommercial motor vehicle while intoxicated, the person may apply for an occupational license to operate commercial motor vehicles. Under this bill, if a person's operating privilege is revoked for operating a sport recreational vehicle while intoxicated, the person may not operate sport recreational vehicles *or* commercial motorboats during the revocation period. Do you want to exclude operating privilege revocation for commercial motorboats in those cases involving operating a sport recreational vehicle while intoxicated? And exclude operating privilege revocation for sport recreational vehicles in those cases involving operating a commercial motorboat while intoxicated.

Timothy N. Fast
Senior Legislative Attorney
Phone: (608) 266–9739
E–mail: tim.fast@legis.state.wi.us