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State of Wisconsin  
2013 - 2014 LEGISLATURE



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*STOYS*

**PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION**

*In 4/2*

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1     **AN ACT to amend** 20.370 (3) (at), 23.45 (1) (d), 23.50 (1), 23.50 (3), 23.53 (1), 23.56  
2           (1), 23.57 (1) (intro.), 23.58, 23.62 (1) (intro.), 30.26 (4) (a) (intro.), 30.26 (4) (b),  
3           30.29 (1) (b), 77.61 (1), 78.01 (2) (e), 78.01 (2m) (f), 78.40 (1), 78.75 (1m) (a) 2m.,  
4           78.75 (1m) (a) 3., 110.07 (1) (a) 1., 110.07 (3), 322.111, 345.11 (1r), 800.02 (2) (b),  
5           885.235 (1m), 895.043 (6), 895.049, 901.053, 938.17 (1) (intro.), 938.343 (9) and  
6           940.09 (3); and **to create** 15.347 (9), 20.370 (1) (ir), 23.37 and 341.059 of the  
7           statutes; **relating to:** regulation of off-highway vehicles, creating an  
8           off-highway vehicle council, granting rule-making authority, requiring the  
9           exercise of rule-making authority, making appropriations, and providing  
10          penalties.

***Analysis by the Legislative Reference Bureau***

Under current law, the Department of Natural Resources (DNR) administers the laws regulating the operation and registration of all-terrain vehicles (ATVs) and utility terrain vehicles (UTVs). This bill establishes requirements for the operation and registration of off-highway vehicles (OHVs) that are similar to the requirements that apply under current law to ATVs and UTVs. The bill defines an OHV as a four-wheel drive vehicle that is capable of cross-country travel on natural terrain

without the benefit of a road or trail. The bill excludes ATVs, UTVs, watercraft, and motorcycles from the definition of an OHV.

### ***OHV trails***

This bill requires DNR to encourage and supervise a system of OHV trails in the same manner that DNR is required under current law to encourage and supervise a system of ATV trails. The bill allows DNR to establish standards and procedures for certifying the designation of OHV trails. As under current law applicable to ATV trails, this bill allows a county, city, village, or town or DNR to designate corridors through land that it owns or controls for use as OHV trails. The bill also requires DNR to prepare maps that identify each OHV trail in this state.

### ***OHV registration***

This bill creates two classes of OHVs. Under the bill, a Class A OHV is an OHV that qualifies for registration by the Department of Transportation (DOT) under the laws that regulate the operation of vehicles on highways. A Class B OHV is generally one that may not be operated on a highway and that does not qualify for registration by DOT. With certain limited exceptions, the bill requires any person who operates an OHV on an OHV trail or other established public off-highway vehicle corridor to register the OHV with DNR and to pay an annual registration fee. The fee for registration of a Class A OHV is \$50 and the fee for registration of a Class B OHV is \$100. The bill also requires a person who is an OHV manufacturer, dealer, distributor, or renter to register with DNR and obtain a commercial OHV certificate. Any person who registers an OHV with DNR must include the name and address of every owner of the OHV.

This bill authorizes DNR to appoint an agent to accept OHV registration applications on behalf of DNR in the same manner as DNR is authorized to appoint agents to register ATVs and UTVs. As with ATV and UTV registration, the agent is entitled to collect, and retain a portion of, a service fee for providing registration services.

Current law establishes a registration program under which the Lac du Flambeau band of Lake Superior Chippewa may issue registration certificates for ATVs and UTVs that are equivalent to the registration certificates issued by DNR. This bill establishes a similar registration program for OHV registration under which the Mole Lake band of Lake Superior Chippewa, in addition to the Lac du Flambeau band, may issue registration certificates that are similar to the OHV registration certificates issued by DNR.

### ***Class B OHV equipment requirements***

This bill prohibits any person from operating a Class B OHV unless the Class B OHV meets certain requirements. Those requirements include having a minimum of four wheels, being propelled by an electric or internal combustion engine, having a frame-mounted roll cage, having a permanently affixed blaze orange safety flag, and having permanently mounted seats that are equipped with safety belts. The bill also prohibits a person from manufacturing, selling, renting, or operating an OHV in such a manner that it exceeds specified noise limits.

**OHV operation**

*on an OHV trail*

*The posted speed limit or, if no speed limit is posted, at a speed greater than*

The bill prohibits any person from operating a Class B OHV on public property unless the person operates the OHV on an OHV trail. To operate a Class B OHV on private property, the operator must obtain the consent of the property owner.

Under this bill, a person must obtain an operator's license from DOT to operate an OHV. Current law does not require a person to hold an operator's license to operate an ATV or UTV. The bill also prohibits a person from operating a Class B OHV at a speed greater than 20 miles per hour.

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Under this bill, only a person who is at least 16 years old may operate an OHV on an OHV trail. The bill provides that if the operator is 16 or 17 years old, he or she may not operate an OHV on an OHV trail unless he or she wears protective headgear ~~and~~ is accompanied by another person who is at least 18 years old operating an OHV. Finally, if the operator is a person born on or after December 31, 1993, he or she must hold a valid safety certificate to operate the OHV on an OHV trail. This bill requires DNR to establish a program of instruction on OHV laws and to issue certificates to persons who successfully complete the program. These requirements are similar to the requirements that apply under current law concerning programs of instruction on ATV and UTV laws.

This bill prohibits a person from operating an OHV while under the influence of an intoxicant and requires an OHV operator to submit to certain screening tests if a law enforcement officer has probable cause to believe that the operator is violating or has violated the law prohibiting the intoxicated operation of an OHV. These provisions are similar to the provisions in current law relating to the operation of an ATV or UTV while under the influence of an intoxicant.

**OHV council**

This bill creates an OHV council (council) consisting of five members who are knowledgeable in the recreational use of OHVs. The bill requires DNR to distribute any rule that it proposes that affects the operation of OHVs to each member of the council for review and comment. The bill also requires DNR to consult with the council on proposed changes for the succeeding biennium in the appropriations and laws that affect OHVs and requires the council to meet to review the provisions affecting OHVs that are included in each executive budget bill.

**OHV grant program and damage claim program**

This bill also requires DNR to establish a program to award grants to organizations that promote the operation of OHV vehicles in a manner that is safe and responsible and that does not harm the environment. An organization that receives a grant under this program must use the grant moneys to promote and provide support to the program of instruction on OHV laws. ~~Under the bill, the grant program is funded by OHV registration fees~~

Under this bill, DNR must also promulgate rules to establish a damage claim program to pay claims to owners of property damaged by the unauthorized operation of OHVs.

*INS. Analysis*

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:*

1           **SECTION 1.** 15.347 (9) of the statutes is created to read:

2           15.347 (9) OFF-HIGHWAY VEHICLE COUNCIL. There is created in the department  
3 of natural resources an off-highway vehicle council consisting of 5 members  
4 appointed for 3-year terms who are knowledgeable in the various recreational uses  
5 of off-highway vehicles.

6           **SECTION 2.** 20.370 (1) (ir) of the statutes is created to read:

7           ~~20.370 (1) (ir) Off-highway vehicle fees. All moneys received under s. 23.37 (2)~~  
8 ~~(m) for state off-highway vehicle trails, for state law enforcement operations related~~  
9 ~~to off-highway vehicles, for grants under s. 23.37 (10), and for the payment of claims~~  
10 ~~under s. 23.37 (11).~~

11           **SECTION 3.** 20.370 (3) (at) of the statutes is amended to read:

12           ~~20.370 (3) (at) Education and safety programs. For programs or courses of~~  
13 ~~instruction under ss. 23.33 (5) (d), 29.591, 30.74 (1) (a) and 350.055 (1). All moneys~~  
14 ~~remitted to or collected by the department under ss. 23.33 (5) (d), 23.37 (9) (d), 29.563~~  
15 ~~(12) (c) 2., 29.591 (3), 30.74 (1) (b), and 350.055 (1) shall be credited to this~~  
16 ~~appropriation for programs or courses of instruction under ss. 23.33 (5) (d), 23.37 (9)~~  
17 ~~(d), 29.591, 30.74 (1) (a), and 350.055 (1).~~

18           **SECTION 4.** 23.37 of the statutes is created to read:

19           **23.37 Off-highway vehicles. (1) DEFINITIONS.** In this section:

20           (ag) "Alcohol beverage" has the meaning given in s. 125.02 (1).

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

INS.  
4-17

1 (ar) "All-terrain vehicle" has the meaning given in s. 340.01 (2g).

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

3 (c).

\*\*\*\*NOTE: Editing note. This definition is a placeholder for future penalty provisions.

4 (b) "Class A off-highway vehicle" means an off-highway vehicle that is eligible  
5 for registration under ch. 341.

6 (c) "Class B off-highway vehicle" means an off-highway vehicle that is not  
7 eligible for registration under ch. 341 as provided for the reasons specified under s. 341.10 (6).

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

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

10 (cm) "Intoxicant" means any alcohol beverage, controlled substance, controlled  
11 substance analog, or other drug or any combination thereof.

12 (cp) "Intoxicated operation of an off-highway vehicle law" means sub. (4c) or  
13 a local ordinance in conformity therewith or, if the operation of an off-highway  
14 vehicle is involved, s. 940.09 or 940.25.

15 (ct) "Lac du Flambeau band" has the meaning given in s. 23.33 (1) (id).

16 (d) "Law enforcement officer" has the meaning given in s. 165.85 (2) (c) and  
17 includes a person appointed as a conservation warden by the department under s.  
18 23.10 (1).

19 (dm) "Mole Lake band" means the Mole Lake band of Lake Superior Chippewa.

20 (e) "Motorcycle" has the meaning given in s. 340.01 (32).

21 (f) "Off-highway vehicle" means a 4-wheel drive vehicle that is capable of  
22 cross-country travel on natural terrain without the benefit of a road or trail. An

that is powered by an electric or internal combustion engine and

1 off-highway vehicle does not include an all-terrain vehicle, a utility terrain vehicle,  
2 a watercraft, or a motorcycle.

3 (g) “Off-highway vehicle club” means a club consisting of individuals that  
4 promotes the recreational use of off-highway vehicles.

5 (h) “Off-highway vehicle dealer” means a person engaged in the sale of  
6 off-highway vehicles for profit at wholesale or retail.

7 (i) “Off-highway vehicle distributor” means a person who sells or distributes  
8 off-highway vehicles to off-highway vehicle dealers or who maintains distributor  
9 representatives.

10 (j) “Off-highway vehicle manufacturer” means a person engaged in the  
11 manufacture of off-highway vehicles for sale to the public.

12 (k) “Off-highway vehicle renter” means a person engaged in the rental or  
13 leasing of off-highway vehicles to the public.

14 (L) “Off-highway vehicle trail” means a marked corridor on public property or  
15 on private lands subject to public easement or lease, designated for use by  
16 off-highway vehicle operators by the governmental agency having jurisdiction, but  
17 excluding roadways of highways.

18 (m) “Operate” means to exercise physical control over the speed or direction of  
19 an off-highway vehicle or to physically manipulate or activate any of the controls of  
20 an off-highway vehicle to put it in motion.

21 (mn) “Operation” means the exercise of physical control over the speed or  
22 direction of an off-highway vehicle or the physical manipulation or activation of any  
23 of the controls of an off-highway vehicle necessary to put it in motion.

1 (n) "Operator" means a person who operates an off-highway vehicle, who is  
2 responsible for the operation of an off-highway vehicle, or who is supervising the  
3 operation of an off-highway vehicle.

4 (o) "Owner" means a person who has lawful possession of an off-highway  
5 vehicle by virtue of legal title ~~or equitable interest~~ in the off-highway vehicle that  
6 entitles the person to possession of the off-highway vehicle.

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

10 (or) "Refusal law" means sub. (4p) (e) or a local ordinance in conformity  
11 therewith.

12 (p) "Registration documentation" means an off-highway vehicle registration  
13 certificate or a registration decal.

14 (pm) "Restricted controlled substance" means any of the following:

15 1. A controlled substance included in schedule I under ch. 961 other than a  
16 tetrahydrocannabinol.

17 2. A controlled substance analog, as defined in s. 961.01 (4m), of a controlled  
18 substance described in subd. 1.

19 3. Cocaine or any of its metabolites.

20 4. Methamphetamine.

21 5. Delta-9-tetrahydrocannabinol.

22 (q) "Roadway" has the meaning given in s. 340.01 (54).

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

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

1 (s) "Utility terrain vehicle" has the meaning given in s. 23.33 (1) (ng).

2 (2) REGISTRATION. (a) *Requirement.* No person may operate, and no owner may

3 give another person permission to operate, an off-highway vehicle on an

4 off-highway vehicle trail unless the off-highway vehicle is registered <sup>with the department</sup> under this

5 subsection or sub. (2g) or is exempt from registration <sup>with the department</sup> under this subsection. No

6 person under the age of 18 may register an off-highway vehicle under this

7 subsection.

8 (b) *Exemptions.* An off-highway vehicle is exempt from registration under this

9 subsection if any of the following applies:

10 1. It is owned by this state or a political subdivision of this state and used for  
11 enforcement or emergency purposes.

12 2. It is owned or operated under contract with a utility and operated for the  
13 purpose of utility work.

14 3. It is owned by the United States, another state, or a political subdivision of  
15 that state.

16 (c) *Registration; Class A; fee.* The fee for issuance or renewal of a registration  
17 certificate for a Class A off-highway vehicle is \$50.

18 (d) *Registration; Class B; fee.* The fee for issuance or renewal of a registration  
19 certificate for a Class B off-highway vehicle is \$100.

20 (e) *Registration; commercial owner; fee.* 1. A person who is an off-highway  
21 vehicle manufacturer, off-highway vehicle dealer, off-highway vehicle distributor,  
22 or off-highway vehicle renter or any combination thereof engaged in business in this  
23 state shall register with the department and obtain from the department a  
24 commercial off-highway vehicle certificate.

1           2. The fee for the issuance or renewal of a commercial off-highway vehicle  
2 certificate is \$50 except that the fee for the issuance or renewal of a commercial  
3 off-highway vehicle certificate to an off-highway vehicle manufacturer is \$150.

4           (f) *Other fees.* The fee for the issuance of a duplicate off-highway vehicle  
5 registration certificate or decal and the fee for transfer of an off-highway vehicle  
6 registration certificate is \$5.

7           (g) *Effective period.* An off-highway vehicle registration certificate is valid for  
8 one year.

9           (h) *Registration; issuers.* For the issuance of original or duplicate registration  
10 documentation and for the transfer or renewal of registration documentation, the  
11 department may do any of the following:

12           1. Directly issue, transfer, or renew the registration documentation with or  
13 without using the procedures specified in par. (j) 1.

14           2. Appoint persons, who are not employees of the department, as agents of the  
15 department to issue, transfer, or renew the registration documentation using either  
16 or both of the procedures specified in par. (j) 1.

17           (i) *Registration; required information.* The department may not issue a  
18 registration certificate under this subsection for an off-highway vehicle unless the  
19 application for the registration certificate includes the name and address of every  
20 owner of the off-highway vehicle.

21           (j) *Registration; methods of issuance.* 1. For the issuance of original or  
22 duplicate registration documentation and for the transfer or renewal of registration  
23 documentation, the department may implement either or both of the following  
24 procedures:

1 a. A procedure under which the department or an agent appointed under par.  
2 (h) 2. accepts applications for registration documentation and issues a validated  
3 registration receipt at the time the applicant submits the application accompanied  
4 by the required fees.

5 b. A procedure under which the department or an agent appointed under par.  
6 (h) 2. may accept applications for registration documentation and issue to each  
7 applicant all or some of the items of the registration documentation at the time the  
8 applicant submits the application accompanied by the required fees.

9 2. Under either procedure under subd. 1., the applicant shall receive any  
10 remaining items of registration documentation directly from the department at a  
11 later date. The items of registration documentation issued at the time of the  
12 submittal of the application under either procedure shall be sufficient to allow the  
13 off-highway vehicle for which the application is submitted to be operated in  
14 compliance with the registration requirements under this subsection. The items of  
15 registration documentation issued under subd. 1. b. shall include at least one  
16 registration decal.

17 (k) *Registration; supplemental fees.* 1. In addition to the applicable fee under  
18 par. (c), (d), or (f), each agent appointed under par. (h) 2. shall collect a service fee of  
19 \$3 each time the agent issues a validated registration receipt under par. (j) 1. a. The  
20 agent shall retain the entire amount of each service fee the agent collects.

21 2. In addition to the applicable fee under par. (c), (d), or (f), the department or  
22 the agent appointed under par. (h) 2. shall collect a service fee of \$5 each time the  
23 procedure under par. (j) 1. b. is provided. The agent shall remit to the department  
24 \$1 of each service fee the agent collects.

1 (L) *Display.* A person who is issued a registration decal under par. (j) shall affix  
2 the decal to the registered off-highway vehicle in such a manner that it may not be  
3 removed. The registration decal shall be displayed on the windshield of a registered  
4 Class A off-highway vehicle on the upper right passenger side. The registration  
5 decal shall be displayed within 2 inches of the right rear brake light on a registered  
6 Class B off-highway vehicle.

7 ~~(m) *Use of fees.* All fees remitted to or collected by the department under this  
8 subsection shall be credited to the appropriation account under s. 20.370 (1) (ir).  
9 From the amounts appropriated under s. 20.370 (1) (ir), the department shall expend  
10 one-third for state off-highway vehicle trails, one-third for state law enforcement  
11 operations related to off-highway vehicles, and one-third for grants under sub. (10).~~

12 m (n) *Rules.* The department may establish by rule additional procedures and  
13 requirements for off-highway vehicle registration.

14 (2g) LAC DU FLAMBEAU BAND AND MOLE LAKE BAND REGISTRATION PROGRAMS. (a)  
15 *Authorization for issuance.* The Lac du Flambeau band and the Mole Lake band may  
16 issue registration certificates for off-highway vehicles that are equivalent to the  
17 registration certificates for off-highway vehicles that are issued by the department.  
18 The Lac du Flambeau band and the Mole Lake band may renew and transfer a  
19 registration certificate that the respective band or the department has issued. The  
20 Lac du Flambeau band and the Mole Lake band may issue duplicates of only those  
21 registration certificates that the respective band issues under this subsection.

22 (b) *Requirements for issuance; fees; effective periods.* 1. For issuing or renewing  
23 a registration certificate under this subsection, the Lac du Flambeau band and the  
24 Mole Lake band shall collect the same fee that would be collected for the equivalent  
25 registration certificate under sub. (2) (a). For transferring a registration certificate

1 or issuing a duplicate registration certificate under this subsection, the Lac du  
2 Flambeau band and the Mole Lake band shall collect the same fee that would be  
3 collected for the equivalent service under sub. (2) (f).

4 2. The Lac du Flambeau band and the Mole Lake band may not issue, renew,  
5 or otherwise process registration certificates under this subsection in conjunction  
6 with discount coupons or as part of a promotion or other merchandising offer.

7 3. For a registration certificate issued, transferred, or renewed under this  
8 subsection, the effective period shall be the same as it would be for the equivalent  
9 registration certificate under sub. (2) (g).

10 4. The Lac du Flambeau band and the Mole Lake band may issue, renew, or  
11 otherwise process registration certificates under this subsection only to applicants  
12 who appear in person on the Lac du Flambeau reservation or the Mole Lake  
13 reservation, respectively.

14 (c) *Requirements for registration applications and decals.* 1. The Lac du  
15 Flambeau band and the Mole Lake band shall use registration applications and  
16 registration certificates that are substantially similar to those under sub. (2) with  
17 regard to length, legibility, and information content.

18 2. The Lac du Flambeau band and the Mole Lake band shall use registration  
19 decals that are substantially similar to those under sub. (2) with regard to color, size,  
20 legibility, information content, and placement on the off-highway vehicle.

21 3. The Lac du Flambeau band and the Mole Lake band shall use a sequential  
22 numbering system that includes a series of letters or initials that identify the Lac du  
23 Flambeau band or the Mole Lake band, respectively, as the issuing authority.

24 (d) *Registration information.* The Lac du Flambeau band and the Mole Lake  
25 band shall provide registration information to the state by establishing a 24-hour

1 per day data retrieval system, consisting of either a law enforcement agency with  
2 24-hour per day staffing or a computerized data retrieval system to which law  
3 enforcement officials of this state have access at all times.

4 (e) *Reports; records; tax collection.* 1. Before June 1 annually, the Lac du  
5 Flambeau band and the Mole Lake band shall each submit a report to the  
6 department notifying it of the number of each type of registration certificate that the  
7 Lac du Flambeau band and the Mole Lake band, respectively, issued, transferred, or  
8 renewed, for the period beginning on April 1 of the previous year and ending on  
9 March 31 of the year in which the report is submitted.

10 2. For law enforcement purposes, the Lac du Flambeau band and the Mole Lake  
11 band shall each make available for inspection by the department during normal  
12 business hours the Lac du Flambeau band's and the Mole Lake band's respective  
13 records of all registration certificates issued, renewed, or otherwise processed under  
14 this subsection, including copies of all applications made for certificates.

15 3. The Lac du Flambeau band and the Mole Lake band shall ensure that the  
16 record of each registration certificate issued, renewed, or otherwise processed under  
17 this subsection, including a copy of each application made, is retained for at least 2  
18 years after the date of expiration of the certificate.

19 4. The Lac du Flambeau band and the Mole Lake band shall collect the sales  
20 and use taxes due under s. 77.61 (1) on any off-highway vehicle registered under this  
21 subsection and make the report in respect to those taxes. On or before the 15th day  
22 of each month, the Lac du Flambeau band and the Mole Lake band shall pay to the  
23 department of revenue all taxes that the Lac du Flambeau band and the Mole Lake  
24 band, respectively, collected in the previous month.

1           **(3) DUTIES OF THE OFF-HIGHWAY VEHICLE COUNCIL.** (a) The department shall  
2 distribute any rule that it is proposing and that affects the operation of off-highway  
3 vehicles to each member of the off-highway vehicle council for his or her review and  
4 comment at least 20 days before the notice stating that the proposed rule is in final  
5 draft form and is submitted to the legislature in the manner provided under s. 227.19

6 (2). A member of the off-highway vehicle council may submit his or her written  
7 comments on the proposed rule to the department.

8           (b) 1. Before June 30 of each even-numbered year, the department shall consult  
9 with the off-highway vehicle council on the proposed changes for the succeeding  
10 biennium in the appropriations and laws that affect off-highway vehicles or the  
11 operation of off-highway vehicles.

12           2. A member of the off-highway vehicle council may submit before August 1 of  
13 the even-numbered year his or her written comments on the proposed changes  
14 specified in subd. 1. to the secretary of natural resources.

15           (c) The secretary of natural resources shall submit the written comments that  
16 the secretary receives under par. (b) 2. to the natural resources board and to the  
17 secretary of administration with the department's submission of its budget report  
18 under s. 16.42.

19           (d) Before March 1 of each odd-numbered year, the off-highway vehicle council  
20 shall meet and review the provisions that are included in the executive budget bill  
21 or bills that affect off-highway vehicles or the operation of off-highway vehicles. A  
22 member of the off-highway vehicle council may submit his or her written comments  
23 on these provisions to the secretary of natural resources before March 10 of each  
24 odd-numbered year.

1 (e) The secretary of natural resources shall submit the written comments that  
2 he or she receives under par. (b) 2. or (d) before March 10 of the odd-numbered year  
3 to the cochairpersons of the joint committee on finance before March 15 of that  
4 odd-numbered year.

5 (4) OPERATION OF OFF-HIGHWAY VEHICLES. (a) *Operator's license required.* No  
6 person may operate an off-highway vehicle unless the person possesses a valid  
7 operator's license issued under ch. 343.

8 (b) *General restrictions; Class B off-highway vehicles.* No person may operate  
9 a Class B off-highway vehicle in the following manner:

10 1. On public property except on an off-highway vehicle trail that is posted as  
11 open to the operation of off-highway vehicles.

12 2. On the private property of another without the consent of the owner or lessee.  
13 Failure to post private property does not imply consent for off-highway vehicle use.

14 3. In any careless way so as to endanger the person or property of another.

15 4. On Indian lands without the consent of the tribal governing body or Indian  
16 owner. Failure to post Indian lands does not imply consent for off-highway vehicle  
17 use.

18 5. With any crossbow in his or her possession unless the crossbow is not cocked  
19 or is unloaded and enclosed in a carrying case.

20 6. With any bow in his or her possession unless the bow does not have an arrow  
21 nocked.

22 7. With any firearm in his or her possession unless the firearm is unloaded or  
23 is a handgun, as defined in s. 175.60 (1) (bm). This subdivision does not apply to a  
24 firearm that is placed or possessed on an off-highway vehicle that is stationary, as  
25 defined in s. 167.31 (1) (fg).

1 8. To drive or pursue any animal except as part of normal farming operations  
2 involving the driving of livestock.

3 ~~9. Except as provided in subd. 10., at a speed exceeding 20 miles per hour.~~

4 ~~10. When within 150 feet of a dwelling, at a speed exceeding 10 miles per hour.~~

5 ~~11. In a manner that violates rules promulgated by the department.~~

6 (c) *Restrictions on public land; department requirements.* 1. The department  
7 shall establish seasons during which a person may operate an off-highway vehicle  
8 on designated trails in state forest lands.

9 2. On or before the first day of the 7th month beginning after the effective date  
10 of this subdivision .... [LRB inserts date], the department shall prepare maps that  
11 identify each off-highway vehicle trail in this state. <sup>(No ff)</sup>

12 The department shall update the maps at least annually and shall make them  
13 available to the public on the department's Internet site.

14 (4c) INTOXICATED OPERATION OF AN OFF-HIGHWAY VEHICLE. (a) *Operation.* 1. No  
15 person may operate an off-highway vehicle while under the influence of an  
16 intoxicant.

17 2. No person may operate an off-highway vehicle while the person has an  
18 alcohol concentration above 0.0.

19 3. No person may operate an off-highway vehicle while the person has a  
20 detectable amount of a restricted controlled substance in his or her blood.

21 4. A person may be charged with and a prosecutor may proceed upon a  
22 complaint based upon a violation of any combination of subd. 1., 2., or 3. for acts  
23 arising out of the same incident or occurrence. If the person is charged with violating  
24 any combination of subd. 1., 2., or 3., the offenses shall be joined. If the person is  
25 found guilty of any combination of subd. 1., 2., or 3. for acts arising out of the same

and counting convictions  
under sub. (14) (a) 2. and 3. ab

1 incident or occurrence, there shall be a single conviction for purposes of sentencing.  
2 Subdivisions 1., 2., and 3. each require proof of a fact for conviction that the others  
3 do not require.

4 5. In an action under subd. 3. that is based on the defendant allegedly having  
5 a detectable amount of methamphetamine, gamma-hydroxybutyric acid, or  
6 delta-9-tetrahydrocannabinol in his or her blood, the defendant has a defense if he  
7 or she proves by a preponderance of the evidence that at the time of the incident or  
8 occurrence he or she had a valid prescription for methamphetamine or one of its  
9 metabolic precursors, gamma-hydroxybutyric acid, or  
10 delta-9-tetrahydrocannabinol.

11 (b) *Causing injury.* 1. No person while under the influence of an intoxicant may  
12 cause injury to another person by the operation of an off-highway vehicle.

13 2. No person who has an alcohol concentration above 0.0 may cause injury to  
14 another person by the operation of an off-highway vehicle.

15 3. No person who has a detectable amount of a restricted controlled substance  
16 in his or her blood may cause injury to another person by the operation of an  
17 off-highway vehicle.

18 4. A person may be charged with and a prosecutor may proceed upon a  
19 complaint based upon a violation of any combination of subd. 1., 2., or 3. for acts  
20 arising out of the same incident or occurrence. If the person is charged with violating  
21 any combination of subd. 1., 2., or 3. in the complaint, the crimes shall be joined under  
22 s. 971.12. If the person is found guilty of any combination of subd. 1., 2., or 3. for acts  
23 arising out of the same incident or occurrence, there shall be a single conviction for  
24 purposes of sentencing. Subdivisions 1., 2., and 3. each require proof of a fact for  
25 conviction that the others do not require.

18 -  
(this paragraph)

\*\*\*NOTE: For now, I have omitted language as to how convictions are to be counted as prior violations. See the accompanying drafter's note.

1            5. a. In an action under this paragraph, the defendant has a defense if he or she  
2 proves by a preponderance of the evidence that the injury would have occurred even  
3 if he or she had been exercising due care and he or she had not been under the  
4 influence of an intoxicant, did not have an alcohol concentration of more than 0.0, or  
5 did not have a detectable amount of a restricted controlled substance in his or her  
6 blood.

Subd. 3. & 4.

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18-

7            b. In an action under subd. 3. that is based on the defendant allegedly having  
8 a detectable amount of methamphetamine, gamma-hydroxybutyric acid, or  
9 delta-9-tetrahydrocannabinol in his or her blood, the defendant has a defense if he  
10 or she proves by a preponderance of the evidence that at the time of the incident or  
11 occurrence he or she had a valid prescription for methamphetamine or one of its  
12 metabolic precursors, gamma-hydroxybutyric acid, or  
13 delta-9-tetrahydrocannabinol.

4.

14            (4g) PRELIMINARY BREATH SCREENING TEST. (a) *Requirement.* A person shall  
15 provide a sample of his or her breath for a preliminary breath screening test if a law  
16 enforcement officer has probable cause to believe that the person is violating or has  
17 violated the intoxicated operation of an off-highway vehicle law and if, prior to an  
18 arrest, the law enforcement officer requested the person to provide this sample.

19            (b) *Use of test results.* A law enforcement officer may use the results of a  
20 preliminary breath screening test for the purpose of deciding whether or not to arrest  
21 a person for a violation of the intoxicated operation of an off-highway vehicle law or  
22 for the purpose of deciding whether or not to request a chemical test under sub. (4p).

1 Following the preliminary breath screening test, chemical tests may be required of  
2 the person under sub. (4p).

3 (c) *Admissibility.* The result of a preliminary breath screening test is not  
4 admissible in any action or proceeding except to show probable cause for an arrest,  
5 if the arrest is challenged, or to show that a chemical test was properly required of  
6 a person under sub. (4p).

7 (d) *Refusal.* There is no penalty for a violation of par. (a). Subsection (14) (a)  
8 and the general penalty provision under s. 939.61 do not apply to that violation.

9 (4j) APPLICABILITY OF THE INTOXICATED OPERATION OF AN OFF-HIGHWAY VEHICLE  
10 LAW. (a) Except as provided in par. (b), the intoxicated operation of an off-highway  
11 vehicle law is applicable to all ice-bound waters of this state and to all premises held  
12 out to the public for use of off-highway vehicles, whether such premises are publicly  
13 or privately owned and whether or not a fee is charged for the use thereof.  
14 (b) The intoxicated operation of an off-highway vehicle law is not applicable  
15 to the highways of this state and to any other areas to which s. 346.63 (1) or (2m),  
16 346.63 (2) or (6), 940.09 (1), or 940.25 applies or a local ordinance in conformity with  
17 s. 346.63 (1) or (2m) applies.

18 (4L) IMPLIED CONSENT. Any person who engages in the operation of an  
19 off-highway vehicle on <sup>any off-highway</sup> ~~those~~ areas enumerated in sub. (4j) (a) is deemed to have  
20 given consent to provide one or more samples of his or her breath, blood, or urine for  
21 the purpose of authorized analysis as required under sub. (4p). Any person who  
22 engages in the operation of an off-highway vehicle on <sup>any off-highway</sup> ~~those~~ areas enumerated in sub.  
23 (4j) (a) is considered to have given consent to submit to one or more chemical tests  
24 of his or her breath, blood, or urine for the purpose of authorized analysis as required  
25 under sub. (4p).

vehicle trail ← INSERT 19-17

any off-highway vehicle trail

1           **(4p) CHEMICAL TESTS. (a) Requirement.** 1. A person shall provide one or more  
2 samples of his or her breath, blood, or urine for the purpose of authorized analysis  
3 if he or she is arrested for a violation of the intoxicated operation of an off-highway  
4 vehicle law and if he or she is requested to provide the sample by a law enforcement  
5 officer. A person shall submit to one or more chemical tests of his or her breath, blood,  
6 or urine for the purpose of authorized analysis if he or she is arrested for a violation  
7 of the intoxicated operation of an off-highway vehicle law and if he or she is  
8 requested to submit to the test by a law enforcement officer.

9           2. A law enforcement officer requesting a person to provide a sample or to  
10 submit to a chemical test under subd. 1. shall inform the person of all of the following  
11 at the time of the request and prior to obtaining the sample or administering the test:

12           a. That he or she is deemed to have consented to tests under sub. (4L).

13           b. That a refusal to provide a sample or to submit to a chemical test constitutes  
14 a violation under par. (e) and is subject to the same penalties and procedures as a  
15 violation of sub. (4c) (a) 1.

16           c. That in addition to the designated chemical test under par. (b) 2., he or she  
17 may have an additional chemical test under par. (c) 1.

18           3. A person who is unconscious or otherwise not capable of withdrawing  
19 consent is presumed not to have withdrawn consent under this paragraph, and if a  
20 law enforcement officer has probable cause to believe that the person violated the  
21 intoxicated operation of an off-highway vehicle law, one or more chemical tests may  
22 be administered to the person without a request under subd. 1. and without  
23 providing information under subd. 2.

24           **(b) Chemical tests.** 1. Upon the request of a law enforcement officer, a test  
25 facility shall administer a chemical test of breath, blood, or urine for the purpose of

1 authorized analysis. A test facility shall be prepared to administer 2 of <sup>3</sup> ~~the~~  
2 ~~chemical~~ <sup>e of these</sup> tests of breath, blood, or urine for the purpose of authorized analysis. The  
3 department may enter into agreements for the cooperative use of test facilities.

4 2. A test facility shall designate one chemical test of breath, blood, or urine that  
5 it is prepared to administer first for the purpose of authorized analysis.

6 3. A test facility shall specify <sup>another</sup> ~~one~~ chemical test of breath, blood, or urine, other  
7 than the test designated under subd. 2., that it is prepared to administer for the  
8 purpose of authorized analysis as an additional chemical test.

9 4. A chemical test of blood or urine conducted for the purpose of authorized  
10 analysis is valid as provided under s. 343.305 (6). The duties and responsibilities of  
11 the laboratory of hygiene, department of health services, and department of  
12 transportation under s. 343.305 (6) apply to a chemical test of blood or urine  
13 conducted for the purpose of authorized analysis under this subsection. Blood may  
14 be withdrawn from a person arrested for a violation of the intoxicated operation of  
15 an off-highway vehicle law only by a physician, registered nurse, medical  
16 technologist, physician assistant, or person acting under the direction of a physician.  
17 The person who withdraws the blood, the employer of that person, and any hospital  
18 where blood is withdrawn have immunity from civil or criminal liability as provided  
19 under s. 895.53.

20 5. A test facility that administers a chemical test of breath, blood, or urine for  
21 the purpose of authorized analysis under this subsection shall prepare a written  
22 report, which shall include the findings of the chemical test, the identification of the  
23 law enforcement officer or the person who requested a chemical test, and the  
24 identification of the person who provided the sample or submitted to the chemical

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

3 (c) *Additional and optional chemical tests.* 1. If a person is arrested for a  
4 violation of the intoxicated operation of an off-highway vehicle law or is the operator  
5 of an off-highway vehicle involved in an accident resulting in great bodily harm to  
6 or the death of someone and if the person is requested to provide a sample or to  
7 submit to a test under par. (a) 1., the person may request the test facility to  
8 administer the additional chemical test specified under par. (b) 3. or may request, at  
9 his or her own expense, a reasonable opportunity to have any qualified person  
10 administer a chemical test of his or her breath, blood, or urine for the purpose of  
11 authorized analysis.

12 2. If a person is arrested for a violation of the intoxicated operation of an  
13 off-highway vehicle law and if the person is not requested to provide a sample or to  
14 submit to a test under par. (a) 1., the person may request the test facility to  
15 administer a chemical test of his or her breath or may request, at his or her own  
16 expense, a reasonable opportunity to have any qualified person administer a  
17 chemical test of his or her breath, blood, or urine for the purpose of authorized  
18 analysis. If a test facility is unable to perform a chemical test of breath, the person  
19 may request the test facility to administer the designated chemical test under par.  
20 (b) 2. or the additional chemical test under par. (b) 3.

21 3. A test facility shall comply with a request under this paragraph to  
22 administer any chemical test it is able to perform.

23 4. The failure or inability of a person to obtain a chemical test at his or her own  
24 expense does not preclude the admission of evidence of the results of a chemical test  
25 required and administered under pars. (a) and (b).

1           (d) *Admissibility; effect of test results; other evidence.* The results of a chemical  
2 test required or administered under par. (a), (b), or (c) are admissible in any civil or  
3 criminal action or proceeding arising out of the acts committed by a person alleged  
4 to have violated the intoxicated operation of an off-highway vehicle law on the issue  
5 of whether the person was under the influence of an intoxicant or the issue of  
6 whether the person had alcohol concentrations above specified levels or a detectable  
7 amount of a restricted controlled substance in his or her blood. Results of these  
8 chemical tests shall be given the effect required under s. 885.235. This subsection  
9 does not limit the right of a law enforcement officer to obtain evidence by any other  
10 lawful means.

11           (e) *Refusal.* No person may refuse a lawful request to provide one or more  
12 samples of his or her breath, blood, or urine or to submit to one or more chemical tests  
13 under par. (a). A person shall not be considered to have refused to provide a sample  
14 or to submit to a chemical test if it is shown by a preponderance of the evidence that  
15 the refusal was due to a physical inability to provide the sample or to submit to the  
16 test due to a physical disability or disease unrelated to the use of an intoxicant.  
17 Issues in any action concerning violation of par. (a) or this paragraph are limited to  
18 the following:

19           1. Whether the law enforcement officer had probable cause to believe the  
20 person was violating or had violated the intoxicated operation of an off-highway  
21 vehicle law.

22           2. Whether the person was lawfully placed under arrest for violating the  
23 intoxicated operation of an off-highway vehicle law.

24           3. Whether the law enforcement officer requested the person to provide a  
25 sample or to submit to a chemical test and provided the information required under

1 par. (a) 2. or whether the request and information were unnecessary under par. (a)  
2 3.

3 4. Whether the person refused to provide a sample or to submit to a chemical  
4 test.

5 (4t) REPORT ARREST TO DEPARTMENT. If a law enforcement officer arrests a person  
6 for a violation of the intoxicated operation of an off-highway vehicle law or the  
7 refusal law, the law enforcement officer shall notify the department of the arrest as  
8 soon as practicable.

9 (4x) OFFICER'S ACTION AFTER ARREST FOR OPERATING AN OFF-HIGHWAY VEHICLE  
10 WHILE UNDER INFLUENCE OF INTOXICANT. A person arrested for a violation of sub. (4c)  
11 (a) 1. or 2. or a local ordinance in conformity therewith or sub. (4c) (b) 1. or 2. may  
12 not be released until 12 hours have elapsed from the time of his or her arrest or unless  
13 a chemical test administered under sub. (4p) (a) 1. shows that the person has an  
14 alcohol concentration of 0.05 or less, but the person may be released to his or her  
15 attorney, spouse, relative, or other responsible adult at any time after arrest.

16 (4z) PUBLIC EDUCATION PROGRAM. (a) The department shall promulgate rules  
17 to provide for a public education program to do all of the following:

18 1. Inform off-highway vehicle operators of the prohibitions and penalties  
19 included in the intoxicated operation of an off-highway vehicle law.

20 2. Provide for the development of signs briefly explaining the intoxicated  
21 operation of an off-highway vehicle law.

22 (b) The department shall develop and issue an educational pamphlet on the  
23 intoxicated operation of an off-highway vehicle law to be distributed, beginning  
24 within 6 months after the effective date of this paragraph .... [LRB inserts date], to  
25 persons issued off-highway vehicle registration certificates under sub. (2).

1           (5) EQUIPMENT REQUIREMENTS. No person may operate a Class B off-highway  
2 vehicle unless it meets all of the following requirements:

3           ~~(a) It has a minimum of 4 wheels and is propelled by those wheels using an~~  
4 ~~electric or internal combustion engine.~~

5           <sup>e a</sup>  
6           (6) If it is equipped with an internal combustion engine, it has a complete  
7 exhaust system that includes a muffler and a tailpipe.

8           <sup>e b</sup>  
9           (7) It has a permanently mounted and attached fuel cell or tank.

10           <sup>e c</sup>  
11           (8) It has a frame-mounted roll cage that is constructed in a manner specified  
12 by the department by rule and that encloses the operator and each passenger.

13           <sup>e d</sup>  
14           (9) It has a permanently affixed blaze orange safety flag that is at least 144  
15 square inches in size and that is displayed from a pole that extends at least 8 feet  
16 above the ground on the front passenger side of the off-highway vehicle.

17           <sup>e e</sup>  
18           (10) It has 2 headlights.

19           <sup>e f</sup>  
20           (11) It has 2 brake lights.

21           <sup>e g</sup>  
22           (12) It has front and rear turn signals.

23           <sup>e h</sup>  
24           (13) It has side markers on the front and rear driver and passenger sides.

25           <sup>e i</sup>  
26           (14) All of the seats are permanently mounted and equipped with shoulder and  
27 lap safety belts.

28           <sup>e j</sup>  
29           (15) It does not contain an infant or child seat.

30           <sup>e k</sup>  
31           (16) It is equipped with an unopened kit that is capable of absorbing, containing,  
32 and collecting a spill of a minimum of 3.75 gallons of petroleum products and that  
33 is approved by the Wisconsin Off-Highway Vehicle Association.

34           <sup>e l</sup>  
35           (17) It has a battery that is secured in the vehicle in a manner that requires the  
36 use of a wrench or key to remove it.

1           (6) NOISE LIMITS. No person may manufacture, sell, rent, or operate a Class B  
 2 off-highway vehicle that is constructed in such a manner that noise emitted from the  
 3 off-highway vehicle exceeds 96 decibels on the A scale as measured in the manner  
 4 prescribed under rules promulgated by the department.

5           (7) ACCIDENTS. If an accident results in the death of any person, in the injury  
 6 of any person that requires the treatment of the person by a physician, or in property  
 7 damage of \$500 or more, the operator of each off-highway vehicle involved in the  
 8 accident shall, within 10 days of the date of the accident, provide a report of the  
 9 accident to the department in the form and manner required by the department by  
 10 rule.

11           (8) TRAILS. (a) *Department authority.* The department shall encourage and  
 12 supervise a system of off-highway vehicle trails. The system shall include trails in  
 13 state forests. The department may establish standards and procedures for certifying  
 14 the designation of off-highway vehicle trails.

15           (b) *Designation.* A town, village, city, county, or the department may designate  
 16 corridors through land that it owns or controls, or for which it obtains leases,  
 17 easements, or permission, for use as off-highway vehicle trails.

18           (c) *Restrictions.* The designating authority may specify effective periods for the  
 19 use of off-highway vehicle trails and may restrict or prohibit the operation of an  
 20 off-highway vehicle during certain periods of the year.

21           (d) *Signs.* The department, in cooperation with the department of  
 22 transportation, shall establish uniform off-highway vehicle trail signs and  
 23 standards.

24           (e) *Interference with signs and standards prohibited.* 1. No person may  
 25 intentionally remove, damage, deface, move, or obstruct any uniform off-highway

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1 vehicle trail sign or standard or intentionally interfere with the effective operation  
2 of any uniform off-highway vehicle trail sign or standard if the sign or standard is  
3 legally placed by the state, any municipality, or any authorized individual.

4 2. No person may possess any uniform off-highway vehicle trail sign or  
5 standard of the type established by the department for the warning, instruction, or  
6 information of the public, unless he or she obtained the uniform off-highway vehicle  
7 trail sign or standard in a lawful manner. Possession of a uniform off-highway  
8 vehicle trail sign or standard creates a rebuttable presumption of illegal possession.

9 (9) AGE RESTRICTIONS FOR OPERATION; SAFETY CERTIFICATE REQUIREMENTS. (a) No  
10 person under the age of 16 may operate an off-highway vehicle on an off-highway  
11 vehicle trail.

12 (b) No person who is 16 or 17 years of age may do any of the following: No ff

13 ~~1. Operate an off-highway vehicle on an off-highway vehicle trail without  
14 wearing protective headgear of the type required under s. 347.485 (1) (a) and with  
15 the chin strap properly fastened.~~

16 ~~2. Operate an off-highway vehicle on an off-highway vehicle trail unless he or  
17 she is subject to the continuous verbal direction and control of a person who is  
18 operating another off-highway vehicle and who is at least 18 years of age.~~

19 (c) No person who is born on or after December 31, 1993, may operate an  
20 off-highway vehicle on an off-highway vehicle trail unless he or she holds a valid  
21 safety certificate issued under par. (d) or issued by another state or a province of  
22 Canada.

23 (d) The department shall establish or supervise the establishment of a program  
24 of instruction on off-highway vehicle laws, including the intoxicated operation of an  
25 off-highway vehicle law, regulations, safety, and related subjects. The department

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SECTION 4

1 shall establish by rule an instruction fee for this program. The department shall  
 2 issue certificates to persons successfully completing the program. An instructor  
 3 conducting the program of instruction under this paragraph shall collect the fee from  
 4 each person who receives instruction. The department may determine the portion  
 5 of this fee, which may not exceed 50 percent, that the instructor may retain to defray  
 6 expenses incurred by the instructor in conducting the program. The instructor shall  
 7 remit the remainder of the fee or, if nothing is retained, the entire fee to the  
 8 department. The department shall issue a duplicate certificate of accomplishment  
 9 to a person who is entitled to a duplicate certificate of accomplishment and who pays  
 10 a fee of \$5.

11 (10) GRANT PROGRAM. (a) The department shall establish a program to award  
 12 grants to organizations that meet the eligibility requirements under par. (b).

13 (b) To be eligible for a grant under this subsection, an organization shall meet  
 14 all of the following requirements:

15 1. The organization is a nonstock corporation organized in this state.

16 2. The organization promotes the operation of off-highway vehicles in a  
 17 manner that is safe and responsible and that does not harm the environment.

18 3. The organization promotes the operation of off-highway vehicles in a  
 19 manner that does not conflict with the laws, rules, and departmental policies that  
 20 relate to the operation of off-highway vehicles.

21 4. The interest of the organization is limited to the recreational operation of  
 22 off-highway vehicles on off-highway vehicle trails and other areas that are off of the  
 23 highways.

24 5. The organization has a board of directors that has a majority of members who  
 25 are ~~representatives of off-highway vehicle clubs~~ <sup>enthusiasts</sup> ~~enthusiasts~~ and OHV

↓  
off-highway  
vehicle

trail users

1           6. The organization provides support to off-highway vehicle clubs.

2           (c) An organization receiving a grant under this subsection shall use the grant  
3 moneys to promote and provide support to the program established under sub. (9) (d)  
4 by conducting activities that include all of the following:

5           1. Collecting data on the recreational operation of off-highway vehicles off of  
6 the highways.

7           2. Providing assistance to the department in locating, recruiting, and training  
8 instructors for the program established under sub. (9) (d).

9           3. Attempting to increase participation by current and future off-highway  
10 vehicle operators and owners in the program established under sub. (9) (d).

11           4. In consultation with the department of natural resources and the  
12 department of tourism, creating an outreach program to inform local communities  
13 of appropriate off-highway vehicle use in their communities and of the economic  
14 benefits that may be gained from promoting tourism to attract off-highway vehicle  
15 operators.

16           5. Attempting to improve and maintain its relationship with the department  
17 of natural resources, the department of tourism, off-highway vehicle dealers,  
18 off-highway vehicle manufacturers, all-terrain vehicle clubs, as defined in s. 23.33  
19 (1) (bc), utility terrain vehicle clubs, snowmobile clubs, as defined in s. 350.138 (1)  
20 (e), snowmobile alliances, as defined in s. 350.138 (1) (d), and other organizations  
21 that promote the recreational operation of all-terrain vehicles, utility terrain  
22 vehicles, and snowmobiles.

23           6. Recruiting, assisting in the training of, and providing support to a corps of  
24 volunteers that will assist in providing instruction on the safe and responsible

1 operation of off-highway vehicles that is given in the field to off-highway vehicle  
2 operators.

3 7. Publishing a manual in cooperation with the department to be used to train  
4 volunteers in monitoring the recreational operation of off-highway vehicles for  
5 safety issues and other issues that relate to the responsible operation of off-highway  
6 vehicles.

7 (d) The department shall pay the grants from the appropriation under s. 20.370

8 (1) (ir) (jg) ✓

9 (11) DAMAGE CLAIM PROGRAM. The department shall establish, by rule, a  
10 program to pay claims to owners of property damaged by the unauthorized operation  
11 of off-highway vehicles. The rules shall specify eligibility requirements and  
12 procedures for obtaining a payment under the program. The department shall make  
13 payments under this subsection from the appropriation under s. 20.370 (1) (ir) (jg) ✓

14 (12) LOCAL ORDINANCES. (a) Counties, towns, cities, and villages may enact  
15 ordinances regulating off-highway vehicles on off-highway vehicle trails  
16 maintained or designated by the county, city, town, or village.

17 (b) Any county, town, city, or village may enact an ordinance that is in strict  
18 conformity with this section and rules promulgated by the department under this  
19 section if the ordinance encompasses all aspects encompassed by this section.

20 (13) ENFORCEMENT. (a) An officer of the state traffic patrol under s. 110.07 (1),  
21 inspector under s. 110.07 (3), conservation warden appointed by the department  
22 under s. 23.10, county sheriff, or municipal peace officer has authority and  
23 jurisdiction to enforce this section and ordinances enacted in accordance with this  
24 section.

by the department

1 (b) No operator of an off-highway vehicle required to be registered under this  
2 section may refuse to stop after being requested or signaled to do so by a law  
3 enforcement officer or a commission warden, as defined in s. 939.22 (5).

4 (14) PENALTIES. (a) *General penalties.* <sup>Except as provided in pars. (b) and (c)</sup> Any person who violates this section  
5 shall forfeit not less than \$250 nor more than \$5,000 for a first violation, not less than  
6 \$500 nor more than \$10,000 for a 2nd violation within 10 years of the first violation,  
7 and not less than \$1,000 nor more than \$25,000 for a 3rd or subsequent violation  
8 within 10 years of the immediately preceding violation.

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9 (g) ~~(b)~~ <sup>g</sup> *Safety certificate requirement.* In addition to the penalties under par. (a),  
10 the court shall require any person who violates this section to successfully complete  
11 the program of instruction on off-highway vehicle laws established by the  
12 department under sub. (9) (d), regardless of whether the person has previously  
13 successfully completed the program.

14 (h) ~~(c)~~ <sup>h</sup> *Restoration or replacement of signs and standards.* In addition to any other  
15 penalty, the court may order the defendant to restore or replace any uniform  
16 off-highway vehicle trail sign or standard that the defendant removed, damaged,  
17 defaced, moved, or obstructed.

18 SECTION 5. 23.45 (1) (d) of the statutes is amended to read:

19 23.45 (1) (d) "Registration" means any registration documentation, as defined  
20 in s. 23.33 (1) (jn), 23.37 (1) (p), or s. 350.01 (10t), or certification or registration  
21 documentation, as defined in s. 30.50 (3b), issued by the department or its agents.

22 SECTION 6. 23.50 (1) of the statutes is amended to read:

23 23.50 (1) The procedure in ss. 23.50 to 23.85 applies to all actions in circuit  
24 court to recover forfeitures, plus costs, fees, and surcharges imposed under ch. 814,  
25 for violations of ss. 77.09, 90.21, 134.60, 167.10 (3), 167.31 (2), 281.48 (2) to (5),

**SECTION 6**

1 283.33, 285.57 (2), 285.59 (2), (3) (c) and (4), 287.07, 287.08, 287.81 and 299.64 (2),  
2 subch. VI of ch. 77, this chapter, and chs. 26 to 31, ch. 169, and ch. 350, and any  
3 administrative rules promulgated thereunder, violations specified under s. 280.98  
4 (2) or 285.86, violations of ch. 951 if the animal involved is a captive wild animal,  
5 violations of rules of the Kickapoo reserve management board under s. 41.41 (7) (k),  
6 violations to which s. 299.85 (7) (a) 2. or 4. applies, or violations of local ordinances  
7 enacted by any local authority in accordance with s. 23.33 (11) (am), 23.37 (12), or  
8 30.77.

9 **SECTION 7.** 23.50 (3) of the statutes is amended to read:

10 23.50 (3) All actions in municipal court to recover forfeitures, plus costs, fees,  
11 and surcharges imposed under ch. 814, for violations of local ordinances enacted by  
12 any local authority in accordance with s. 23.33 (11) (am), 23.37 (12), or 30.77 shall  
13 utilize the procedure in ch. 800. The actions shall be brought before the municipal  
14 court having jurisdiction. Provisions relating to citations, arrests, questioning,  
15 releases, searches, deposits, and stipulations of no contest in ss. 23.51 (1m), (3), and  
16 (8), 23.53, 23.54, 23.56 to 23.64, 23.66, and 23.67 shall apply to violations of such  
17 ordinances.

18 **SECTION 8.** 23.53 (1) of the statutes is amended to read:

19 23.53 (1) The citation created under this section shall, in all actions to recover  
20 forfeitures, plus costs, fees, and surcharges imposed under ch. 814, for violations of  
21 those statutes enumerated in s. 23.50 (1), any administrative rules promulgated  
22 thereunder, and any rule of the Kickapoo reserve management board under s. 41.41  
23 (7) (k) be used by any law enforcement officer with authority to enforce those laws,  
24 except that the uniform traffic citation created under s. 345.11 may be used by a  
25 traffic officer employed under s. 110.07 in enforcing s. 167.31 or by an officer of a law

1 enforcement agency of a municipality or county or a traffic officer employed under  
2 s. 110.07 in enforcing s. 287.81. In accordance with s. 345.11 (1m), the citation shall  
3 not be used for violations of ch. 350 relating to highway use. The citation may be used  
4 for violations of local ordinances enacted by any local authority in accordance with  
5 s. 23.33 (11) (am), 23.37 (12), or 30.77.

6 **SECTION 9.** 23.56 (1) of the statutes is amended to read:

7 23.56 (1) A person may be arrested for a violation of those statutes enumerated  
8 in s. 23.50 (1), any administrative rules promulgated thereunder, any rule of the  
9 Kickapoo reserve management board under s. 41.41 (7) (k), or any local ordinances  
10 enacted by any local authority in accordance with s. 23.33 (11) (am), 23.37 (12), or  
11 30.77, after a warrant that substantially complies with s. 968.04 has been issued.  
12 Except as provided in sub. (2), the person arrested shall be brought without  
13 unreasonable delay before a court having jurisdiction to try the action.

14 **SECTION 10.** 23.57 (1) (intro.) of the statutes is amended to read:

15 23.57 (1) (intro.) A person may be arrested without a warrant when the  
16 arresting officer has probable cause to believe that the person is committing or has  
17 committed a violation of those statutes enumerated in s. 23.50 (1), any  
18 administrative rules promulgated thereunder, any rule of the Kickapoo reserve  
19 management board under s. 41.41 (7) (k), or any local ordinances enacted by any local  
20 authority in accordance with s. 23.33 (11) (am), 23.37 (12), or 30.77; and:

21 **SECTION 11.** 23.58 of the statutes is amended to read:

22 **23.58 Temporary questioning without arrest.** After having identified  
23 himself or herself as an enforcing officer, an enforcing officer may stop a person in  
24 a public place for a reasonable period of time when the officer reasonably suspects  
25 that such person is committing, is about to commit or has committed a violation of

**SECTION 11**

1 those statutes enumerated in s. 23.50 (1), any administrative rules promulgated  
 2 thereunder, any rule of the Kickapoo reserve management board under s. 41.41 (7)  
 3 (k), or any local ordinances enacted by any local authority in accordance with s. 23.33  
 4 (11) (am), 23.37 (12), or 30.77. Such a stop may be made only where the enforcing  
 5 officer has proper authority to make an arrest for such a violation. The officer may  
 6 demand the name and address of the person and an explanation of the person's  
 7 conduct. Such detention and temporary questioning shall be conducted in the  
 8 vicinity where the person was stopped.

9 **SECTION 12.** 23.62 (1) (intro.) of the statutes is amended to read:

10 23.62 (1) (intro.) Whenever an enforcing officer has probable cause to believe  
 11 that a person subject to his or her authority is committing or has committed a  
 12 violation of those statutes enumerated in s. 23.50 (1), any administrative rules  
 13 promulgated thereunder, any rule of the Kickapoo reserve management board under  
 14 s. 41.41 (7) (k), or any local ordinances enacted by any local authority in accordance  
 15 with s. 23.33 (11) (am), 23.37 (12), or 30.77, the officer may proceed in the following  
 16 manner:

INS.  
34-16

17 **SECTION 13.** 30.26 (4) (a) (intro.) of the statutes is amended to read:

18 30.26 (4) (a) (intro.) The department may not prohibit the crossing of a bridge  
 19 over a wild river by an all-terrain vehicle or utility terrain vehicle traveling on an  
 20 all-terrain vehicle trail, as defined under s. 23.33 (1) (d), by an off-highway vehicle  
 21 traveling on an off-highway vehicle trail, as defined under s. 23.37 (1) (L), or by a  
 22 snowmobile traveling on a snowmobile trail, as defined under s. 350.01 (17), that is  
 23 constructed in any of the following locations:

24 **SECTION 14.** 30.26 (4) (b) of the statutes is amended to read:

1 30.26 (4) (b) The state shall permit all-terrain vehicles, utility terrain vehicles,  
 2 off-highway vehicles and snowmobiles to travel in a corridor across any state land that separates an  
 3 all-terrain vehicle trail or a snowmobile trail and the bridges constructed at the  
 4 locations listed under par. (a).

\*\*\*NOTE: Do you want to amend this provision to include off-highway vehicles?

5 SECTION 15. 30.29 (1) (b) of the statutes is amended to read:

6 30.29 (1) (b) "Motor vehicle" includes a utility terrain vehicle, as defined in s.  
 7 23.33 (1) (ng), and an all-terrain vehicle, as defined in s. 340.01 (2g), and an  
 8 off-highway vehicle, as defined in s. 23.37 (1) (f).

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← INSERT 35-8 B

9 SECTION 16. 77.61 (1) of the statutes is amended to read:

10 77.61 (1) (a) No motor vehicle, boat, snowmobile, recreational vehicle, as  
 11 defined in s. 340.01 (48r), trailer, semitrailer, all-terrain vehicle, utility terrain  
 12 vehicle, off-highway vehicle, or aircraft shall be registered or titled in this state  
 13 unless the registrant presents proof that the sales or use taxes imposed by this  
 14 subchapter have been paid.

15 (b) In the case of motor vehicles, boats, snowmobiles, recreational vehicles, as  
 16 defined in s. 340.01 (48r), trailers, semitrailers, all-terrain vehicles, utility terrain  
 17 vehicles, off-highway vehicles, or aircraft purchased from a retailer, the registrant  
 18 shall present proof that the tax has been paid to such retailer.

19 (c) In the case of motor vehicles, boats, snowmobiles, recreational vehicles, as  
 20 defined in s. 340.01 (48r), trailers, semitrailers, all-terrain vehicles, utility terrain  
 21 vehicles, off-highway vehicles, or aircraft registered or titled, or required to be  
 22 registered or titled, in this state purchased from persons who are not retailers, the  
 23 purchaser shall file a sales tax return and pay the tax prior to registering or titling  
 24 the motor vehicle, boat, snowmobile, recreational vehicle, as defined in s. 340.01

1 (48r), semitrailer, all-terrain vehicle, utility terrain vehicle, off-highway vehicle, or  
2 aircraft in this state.

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3 SECTION 17. 78.01 (2) (e) of the statutes is amended to read:

4 78.01 (2) (e) Gasoline sold for nonhighway use in mobile machinery and  
5 equipment; other than use in a snowmobile, an all-terrain vehicle or utility terrain  
6 vehicle that is not registered for private use under s. 23.33 (2) (d), a Class B  
7 off-highway vehicle registered under s. 23.37, (2)(a) or (2g) or a recreational motorboat; and  
8 delivered directly into the consumer's storage tank in an amount of not less than 100  
9 gallons.

10 SECTION 18. 78.01 (2m) (f) of the statutes is amended to read:

11 78.01 (2m) (f) It is dyed diesel fuel and is sold for off-highway use other than  
12 use in a snowmobile, an all-terrain vehicle or utility terrain vehicle that is not  
13 registered for private use under s. 23.33 (2) (d) or (2g), a Class B off-highway vehicle  
14 registered under s. 23.37 (2) (a) or (2g), or in a recreational motorboat or if no claim  
15 for a refund for the tax on the diesel fuel may be made under s. 78.75 (1m) (a) 3.

16 SECTION 19. 78.40 (1) of the statutes is amended to read:

17 78.40 (1) IMPOSITION OF TAX AND BY WHOM PAID. An excise tax at the rate  
18 determined under ss. 78.405 and 78.407 is imposed on the use of alternate fuels. The  
19 tax, with respect to all alternate fuel delivered by an alternate ~~fuel~~ fuels dealer into  
20 supply tanks of motor vehicles in this state, attaches at the time of delivery and shall  
21 be collected by the dealer from the alternate fuels user and shall be paid to the  
22 department. The tax, with respect to alternate fuels acquired by any alternate fuels  
23 user other than by delivery by an alternate ~~fuel~~ fuels dealer into a fuel supply tank  
24 of a motor vehicle, or of a snowmobile, an all-terrain vehicle or utility terrain vehicle  
25 that is not registered for private use under s. 23.33 (2) (d) or (2g), a Class B

1 off-highway vehicle registered under s. 23.37 (2) (a) or (2g), or a recreational  
2 motorboat, attaches at the time of the use of the fuel and shall be paid to the  
3 department by the user. The department may permit any supplier of alternate fuels  
4 to report and pay to the department the tax on alternate fuels delivered into the  
5 storage facility of an alternate fuels user or retailer which will be consumed for  
6 alternate fuels tax purposes or sold at retail.

7 **SECTION 20.** 78.75 (1m) (a) 2m. of the statutes is amended to read:

8 78.75 (1m) (a) 2m. A person who uses motor vehicle fuel or an alternate fuel  
9 upon which has been paid the tax required under this chapter for the purpose of  
10 operating an all-terrain vehicle, as defined under s. 340.01 (2g), or a utility terrain  
11 vehicle, as defined under s. 23.33 (1) (ng), may not be reimbursed or repaid the  
12 amount of tax paid unless the all-terrain vehicle or utility terrain vehicle is  
13 registered for private use under s. 23.33 (2) (d) or (2g). A person who uses motor  
14 vehicle fuel or an alternate fuel upon which has been paid the tax required under this  
15 chapter for the purpose of operating an off-highway vehicle registered under s. 23.37  
16 (2) (a) or (2g) may not be reimbursed or repaid the amount of tax paid.

17 **SECTION 21.** 78.75 (1m) (a) 3. of the statutes is amended to read:

18 78.75 (1m) (a) 3. Claims under subd. 1. shall be made and filed. The forms shall  
19 indicate that refunds are not available for motor vehicle fuel or alternate fuels used  
20 for motorboats, except motorboats exempt from registration as motor vehicles under  
21 s. 341.05 (20) and motorboats that are not recreational motorboats, or motor vehicle  
22 fuel or alternate fuels used for snowmobiles and that the estimated snowmobile  
23 motor vehicle fuel or alternate fuels tax payments are used for snowmobile trails and  
24 areas. The forms shall indicate that refunds are not available for motor vehicle fuel  
25 or alternate fuels used for all-terrain vehicles or utility terrain vehicles unless the

1 vehicle is registered for private use under s. 23.33 (2) (d) or (2g) and shall indicate  
2 that estimated all-terrain vehicle or utility terrain vehicle motor vehicle fuel or  
3 alternate fuels tax payments are used for all-terrain vehicle trails and areas. The  
4 forms shall indicate that refunds are not available for motor vehicle fuel or alternate  
5 fuels used for off-highway vehicles registered under s. 23.37 (2) (a) or (2g). The forms  
6 shall also indicate that refunds are not available for the tax on less than 100 gallons.  
7 The department shall distribute forms in sufficient quantities to each county clerk.

8 **SECTION 22.** 110.07 (1) (a) 1. of the statutes is amended to read:

9 110.07 (1) (a) 1. Enforce and assist in the administration of this chapter and  
10 chs. 194, 218, 341 to 349 and 351, and ss. 23.33, 23.37, 125.07 (4) (b), 125.085 (3) (b),  
11 167.31 (2) (b) to (d) and 287.81 and ch. 350 where applicable to highways, or orders  
12 or rules issued pursuant thereto.

13 **SECTION 23.** 110.07 (3) of the statutes is amended to read:

14 110.07 (3) The secretary may employ inspectors who may not wear the uniform  
15 of the state patrol, whose duties shall be to enforce and assist in administering s.  
16 346.63, this chapter and chs. 194, 218, 340 to 345 and 347 to 351, ~~s. ss. 23.33,~~ and  
17 23.37, the inspection requirements of s. 121.555 (2) (b) and the requirements under  
18 s. 346.45 (4) for vehicles being used to transport hazardous materials. Such  
19 inspectors, in the performance of these duties, shall have the powers and authority  
20 of state traffic officers. For the purpose of death, disability and retirement coverage,  
21 such inspectors shall be subject to ch. 40 as is the state traffic patrol. Subject to sub.  
22 (5), the secretary may clothe and equip inspectors as the interest of public safety and  
23 their duties require.

24 **SECTION 24.** 322.111 of the statutes is amended to read:

(b) 3.

1           **322.111 Article 111 — Drunken or reckless operation of an all-terrain**  
 2 **vehicle, utility terrain vehicle, off-highway vehicle, vehicle, snowmobile,**  
 3 **aircraft, or vessel.** Any person who violates s. 23.33 (3) (a) or (4c), 23.37 (4) (a) or  
 4 (4c), 30.68, 30.681, 114.09, 346.62, 346.63 (1) or (2), 350.10 (1) (b), 350.101, 940.25,  
 5 or 940.09 where the offense involved the operation or physical control of an aircraft,  
 6 all-terrain vehicle, utility terrain vehicle, off-highway vehicle, snowmobile, vehicle  
 7 or vessel on or off a highway shall be punished as the court-martial may direct.

8           **SECTION 25.** 341.059 of the statutes is created to read:

9           **341.059 Off-highway vehicles.** Class B off-highway vehicles, as defined in  
 10 s. 23.37 (1) (c), are not required to be registered under this chapter but shall be  
 11 registered under s. 23.37 (2) or (2g).

12           **SECTION 26.** 345.11 (1r) of the statutes is amended to read:

13           **345.11 (1r)** The uniform traffic citation or the citation form under s. 23.54 shall  
 14 be used for violations of ~~s. ss.~~ ss. 23.33 and 23.37 relating to highway use or ordinances  
 15 enacted in accordance with ~~that section~~ those sections if the violation is committed  
 16 on a highway, but no points may be assessed against the driving record of the  
 17 operator of an all-terrain vehicle or, utility terrain vehicle, or off-highway vehicle.

18 When the uniform traffic citation is used, the report of conviction shall be forwarded  
 19 to the department. When the citation form under s. 23.54 is used, the procedure in  
 20 ss. 23.50 to 23.85 applies.

21           **SECTION 27.** 800.02 (2) (b) of the statutes is amended to read:

22           **800.02 (2) (b)** Except for parking violations, in traffic regulation actions in  
 23 municipal court, the uniform traffic citation specified in s. 345.11 shall be used in lieu  
 24 of the citation form specified in par. (ag). In actions for violations of local ordinances

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Class B

1 enacted in accordance with s. 23.33 (11) (am), 23.37 (12), or 30.77, the citation form  
2 specified in s. 23.54 shall be used in lieu of the citation form specified in par. (ag).

3 **SECTION 28.** 885.235 (1m) of the statutes is amended to read:

4 885.235 (1m) In any action under s. 23.33 (4c) (a) 3., 30.681 (1) (bn), 346.63 (2m)  
5 or (7), or 350.101 (1) (c), evidence of the amount of alcohol in the person's blood at the  
6 time in question, as shown by chemical analysis of a sample of the person's blood or  
7 urine or evidence of the amount of alcohol in the person's breath, is admissible on the  
8 issue of whether he or she had an alcohol concentration in the range specified in s.  
9 23.33 (4c) (a) 3., 30.681 (1) (bn), 346.63 (2m), or 350.101 (1) (c) or an alcohol  
10 concentration above 0.0 under s. 23.37 (4c) (a) 2. or 346.63 (7) if the sample was taken  
11 within 3 hours after the event to be proved. The fact that the analysis shows that  
12 the person had an alcohol concentration of more than 0.0 but not more than 0.08 is  
13 prima facie evidence that the person had an alcohol concentration in the range  
14 specified in s. 23.33 (4c) (a) 3., 30.681 (1) (bn), 346.63 (2m), or 350.101 (1) (c) or an  
15 alcohol concentration above 0.0 under s. 23.37 (4c) (a) 2. or 346.63 (7).

16 **SECTION 29.** 895.043 (6) of the statutes is amended to read:

17 895.043 (6) **LIMITATION ON DAMAGES.** Punitive damages received by the plaintiff  
18 may not exceed twice the amount of any compensatory damages recovered by the  
19 plaintiff or \$200,000, whichever is greater. This subsection does not apply to a  
20 plaintiff seeking punitive damages from a defendant whose actions under sub. (3)  
21 included the operation of a vehicle, including a motor vehicle as defined under s.  
22 340.01 (35), a snowmobile as defined under s. 340.01 (58a), an all-terrain vehicle as  
23 defined under s. 340.01 (2g), a utility terrain vehicle as defined under s. 23.33 (1) (ng),  
24 an off-highway vehicle as defined under s. 23.37 (1) (f), and a boat as defined under  
25 s. 30.50 (2), while under the influence of an intoxicant to a degree that rendered the

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1 defendant incapable of safe operation of the vehicle. In this subsection, "intoxicant"  
2 has the meaning given in s. 30.50 (4e).

3 **SECTION 30.** 895.049 of the statutes is amended to read:

4 **895.049 Recovery by a person who fails to use protective headgear**  
5 **while operating certain motor vehicles.** Notwithstanding s. 895.045, failure by  
6 a person who operates or is a passenger on a utility terrain vehicle, as defined in s.  
7 23.33 (1) (ng), a motorcycle, as defined in s. 340.01 (32), an all-terrain vehicle, as  
8 defined in s. 340.01 (2g), an off-highway vehicle, as defined in s. 23.37 (1) (f), or a  
9 snowmobile, as defined in s. 340.01 (58a), on or off a highway, to use protective  
10 headgear shall not reduce recovery for injuries or damages by the person or the  
11 person's legal representative in any civil action. This section does not apply to any  
12 person required to wear protective headgear under s. 23.33 (3g), 23.37 (9) (b) 1., or  
13 347.485 (1).

14 **SECTION 31.** 901.053 of the statutes is amended to read:

15 **901.053 Admissibility of evidence relating to use of protective**  
16 **headgear while operating certain motor vehicles.** Evidence of use or nonuse  
17 of protective headgear by a person, other than a person required to wear protective  
18 headgear under s. 23.33 (3g), 23.37 (9) (b) 1., or 347.485 (1), who operates or is a  
19 passenger on a utility terrain vehicle, as defined in s. 23.33 (1) (ng), a motorcycle, as  
20 defined in s. 340.01 (32), an all-terrain vehicle, as defined in s. 340.01 (2g), an  
21 off-highway vehicle, as defined in s. 23.37 (1) (f), or a snowmobile, as defined in s.  
22 340.01 (58a), on or off a highway, is not admissible in any civil action for personal  
23 injury or property damage. This section does not apply to the introduction of such  
24 evidence in a civil action against the manufacturer or producer of the protective  
25 headgear arising out of any alleged deficiency or defect in the design or manufacture

1 of the protective headgear or, with respect to such use of protective headgear, in a civil  
2 action on the sole issue of whether the protective headgear contributed to the  
3 personal injury or property damage incurred by another person.

4 SECTION 32. 938.17 (1) (intro.) of the statutes is amended to read:

5 938.17 (1) TRAFFIC, BOATING, SNOWMOBILE, ALL-TERRAIN VEHICLE, AND UTILITY  
6 TERRAIN VEHICLE, <sup>(CS) → class B</sup> AND OFF-HIGHWAY VEHICLE VIOLATIONS. (intro.) Except for violations  
7 of ss. 342.06 (2) and 344.48 (1), and violations of ss. 30.67 (1) and 346.67 (1) when  
8 death or injury occurs, courts of criminal and civil jurisdiction have exclusive  
9 jurisdiction in proceedings against juveniles 16 years of age or older for violations of  
10 s. ss. 23.33 and 23.37, of ss. 30.50 to 30.80, of chs. 341 to 351, and of traffic  
11 regulations, as defined in s. 345.20, and nonmoving traffic violations, as defined in  
12 s. 345.28 (1). A juvenile charged with a traffic, boating, snowmobile, all-terrain  
13 vehicle, or utility terrain vehicle, or <sup>class B</sup> off-highway vehicle offense in a court of criminal  
14 or civil jurisdiction shall be treated as an adult before the trial of the proceeding  
15 except that the juvenile may be held in secure custody only in a juvenile detention  
16 facility. A juvenile convicted of a traffic, boating, snowmobile, all-terrain vehicle, or  
17 utility terrain vehicle, or <sup>class B</sup> off-highway vehicle offense in a court of criminal or civil  
18 jurisdiction shall be treated as an adult for sentencing purposes except as follows:

19 SECTION 33. 938.343 (9) of the statutes is amended to read:

20 938.343 (9) ALL-TERRAIN OR VEHICLE, UTILITY TERRAIN VEHICLE, OR OFF-HIGHWAY  
21 VEHICLE SAFETY COURSE. If the violation is one under s. 23.33 or under an ordinance  
22 enacted in accordance with s. 23.33 concerning the use of all-terrain vehicles or  
23 utility terrain vehicles, order the juvenile to attend an all-terrain vehicle or utility  
24 terrain vehicle safety course. If the violation is one under s. 23.37 or under an

1 ordinance enacted in accordance with s. 23.37 (12) concerning the use of off-highway  
2 vehicles, order the juvenile to attend an off-highway vehicle safety course.

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←

3 SECTION 34. 940.09 (3) of the statutes is amended to read:

4 940.09 (3) An officer who makes an arrest for a violation of this section shall  
5 make a report as required under s. 23.33 (4t), 23.37 (4t), 30.686, 346.635 or 350.106.

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←

6 SECTION 35. Nonstatutory provisions.

7 (1) Notwithstanding the length of terms specified in section 15.347 (9) of the  
8 statutes, as created by this act, the governor shall appoint 1 of the initial members  
9 of the off-highway vehicle council for terms expiring on June 30, 2016, 2 of the initial  
10 members of the off-highway vehicle council for terms expiring on June 30, 2017, and  
11 2 of the initial members of the off-highway vehicle council for terms expiring on June  
12 30, 2018.

13 (END)

2013-2014 DRAFTING INSERT  
FROM THE  
LEGISLATIVE REFERENCE BUREAU

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1           SECTION ~~24~~ 20.370 (1) (jg) of the statutes is created to read:

2           20.370 (1) (jg) *Off-highway vehicle administration.* From the general fund, a  
3           sum sufficient equal to the amount determined under s. 23.37 (8m) (a) for the  
4           purposes specified under 23.37 (8m) (b), for issuing and renewing off-highway  
5           vehicle registration documentation by the department under s. 23.37 (2) (h), for  
6           grants under s. 23.37 (10), for state law enforcement operations related to  
7           off-highway vehicles, and for the payment of claims under s. 23.37 (11).

8           SECTION ~~24~~ 20.370 (1) (jq) of the statutes is created to read:

9           20.370 (1) (jq) *Off-highway vehicles; enforcement; trail restoration.* All moneys  
10          received under s. 23.37 (14) (f) for state law enforcement operations related to  
11          off-highway vehicles and for off-highway vehicle trail restoration activities.

12          SECTION ~~24~~ 20.370 (3) (av) of the statutes is created to read:

13          20.370 (3) (av) *Off-highway vehicle instruction programs.* All moneys remitted  
14          to the department under s. 23.37 (9) (d) for programs or courses of instruction under  
15          s. 23.37 (9) (d).

INSERT 26-4

16          **(6m) SPEED LIMITS.** (a) Except as provided in par. (b), no person may operate  
17          an off-highway vehicle on an off-highway vehicle trail at a speed exceeding a posted  
18          speed limit or, if no speed limit is posted, at a speed exceeding 20 miles per hour.

19          (b) No person may operate an off-highway vehicle on an off-highway vehicle  
20          trail when within 150 feet of a dwelling at a speed exceeding 10 miles per hour.

INSERT 27-8

1 (8m) ADMINISTRATION. (a) Before January 1 of each fiscal year, the department  
2 shall determine the total amount of fees received from the registration of  
3 off-highway vehicles under sub. (2) in the previous fiscal year.

4 (b) The department may use funds appropriated to the department under  
5 20.370 (1) (jg) for off-highway vehicle projects conducted for any of the following  
6 purposes:

- 7 1. To acquire an easement or land in fee simple for development of an off-
- 8 highway vehicle trail.
- 9 2. To develop or maintain an off-highway vehicle facility, including a parking
- 10 area, riding area, shelter, toilet, or other improvement.
- 11 3. To develop or maintain an off-highway vehicle trail.

INSERT 31-8B

12 (f) *Surcharge*. If a court imposes a forfeiture for a violation of a provision of this  
13 section the court shall impose an off-highway vehicle surcharge under ch. 814 in the  
14 amount of \$100.

INSERT 34-16

15 SECTION 25.29 (1) (a) of the statutes is amended to read:

16 25.29 (1) (a) Except as provided in ss. 25.293 and 25.295, all moneys accruing  
17 to the state for or in behalf of the department under chs. 26, 27, 28, 29, 169, and 350,  
18 subchs. I and VI of ch. 77 and ss. 23.09 to 23.31, 23.325 to 23.35, 23.38 to 23.42, 23.50  
19 to 23.99, 30.50 to 30.55, 70.58, 71.10 (5), 71.30 (10), and 90.21, including grants

sure,  
not  
strike

1 received from the federal government or any of its agencies except as otherwise  
2 provided by law.

**History:** 1971 c. 125; 1973 c. 90; 1977 c. 29; 1977 c. 418 ss. 244, 245, 929 (37); 1979 c. 34 ss. 707v, 2102 (39) (a); 1979 c. 221; 1979 c. 361 s. 113; 1983 a. 27 ss. 636m, 637, 2202 (38); 1985 a. 29 ss. 638g, 3202 (39); 1985 a. 135; 1987 a. 27; 1987 a. 312 s. 17; 1989 a. 31; 1991 a. 39, 269; 1995 a. 27; 1995 a. 257 s. 3; 1997 a. 1, 27, 248; 1999 a. 9; 2001 a. 16, 56, 105; 2003 a. 166; 2007 a. 204; 2009 a. 28; 2011 a. 208.

3 **SECTION ~~23~~ 25.40** (1) (br) of the statutes is created to read:  
4 25.40 (1) (br) Moneys received under s. 23.37.

INSERT 35-8A<sup>e</sup> β

5 **SECTION ~~77~~ 77.51** (13s) of the statutes is amended to read:  
6 77.51 (13s) "Safety classes" means all classes approved by the department of  
7 natural resources related to hunting, including hunting with a bow, and related to  
8 firearms, all-terrain vehicles, utility terrain vehicles, Class B off-highway vehicles,  
9 boats, and snowmobiles.

**History:** 1973 c. 333; 1975 c. 39, 41, 99, 224; 1975 c. 413 s. 18; 1977 c. 29, 418; 1979 c. 1 ss. 57 to 59, 61, 62; 1979 c. 174; 1981 c. 20; 1981 c. 79 s. 17; 1983 a. 23, 27; 1983 a. 189 ss. 92 to 108, 329 (12); 1983 a. 510, 538; 1983 a. 544 ss. 13 to 46, 47 (1) (b); 1985 a. 29, 332; 1987 a. 27, 399; 1989 a. 31, 335, 336; 1991 a. 39, 269, 316; 1993 a. 16, 112, 184; 1997 a. 27, 237; 1999 a. 9, 83; 2001 a. 45, 102; 2003 a. 48; 2005 a. 25, 327, 441, 479; 2007 a. 11, 20, 130; 2009 a. 2 ss. 225 to 345, 389; 2009 a. 12 s. 18; 2009 a. 28 ss. 1830b to 1836b, 1844 to 1846; 2009 a. 276, 330; 2011 a. 208.

10 **SECTION ~~77~~ 77.73** (2) of the statutes is amended to read:  
11 77.73 (2) Counties and special districts do not have jurisdiction to impose the  
12 tax under s. 77.71 (2) in regard to items, property, and goods under s. 77.52 (1) (b),  
13 (c), and (d), and tangible personal property, except snowmobiles, trailers,  
14 semitrailers, all-terrain vehicles, and utility terrain vehicles, and Class B  
15 off-highway vehicles purchased in a sale that is consummated in another county or  
16 special district in this state that does not have in effect an ordinance or resolution

Insert 36-2

1 imposing the taxes under this subchapter and later brought by the buyer into the  
2 county or special district that has imposed a tax under s. 77.71 (2).

History: 1985 a. 41; 1995 a. 56; 2009 a. 2, 28; 2011 a. 32, 208.

INSERT 39-20

3 SECTION ~~346.66~~ 346.66 (1) (c) of the statutes is amended to read: Class B  
4 346.66 (1) (c) Sections 346.67 to 346.70 do not apply to accidents involving only  
5 snowmobiles, all-terrain vehicles, utility terrain vehicles, off-highway vehicles, or vehicles propelled by  
6 human power or drawn by animals.

History: 1971 c. 277; 1985 a. 29; 1995 a. 127; 2009 a. 62; 2011 a. 208.

INSERT 40-2B

7 SECTION ~~814.77~~ 814.77 (17) of the statutes is created to read:  
8 814.77 (17) The off-highway vehicle surcharge under s. 23.37 (14) ~~(a)~~ <sup>f</sup>.

1           **Insert 19-17**

2           **(4j) APPLICABILITY OF THE INTOXICATED OPERATION OF AN OFF-HIGHWAY VEHICLE**  
3           <sup>⓪</sup> **LAW** The intoxicated operation of an off-highway vehicle law applies to the operation  
4           of an off-highway vehicle on any off-highway vehicle trail.

5           **Insert 31-8A**

6           (b) *Penalties related to intoxicated operation.* 1. Except as provided under <sup>g</sup> in  
7           subds. 2. and 3., <sup>ny</sup> a person who violates sub. (4c) (a) 1., 2., or 3. or (4p) (e) shall forfeit  
8           not less than \$150 nor more than \$300.

9           2. Except as provided under <sup>e in</sup> subd. 3., <sup>ny</sup> a person who violates sub. (4c) (a) 1., 2. <sup>or</sup>  
10          3. or (4p) (e) and who, within 5 years prior to the arrest for the current violation, was  
11          convicted previously under the intoxicated operation of an off-highway vehicle law  
12          shall be fined not less than \$300 nor more than \$1,100 and shall be imprisoned not  
13          less than 5 days nor more than 6 months.

14          3. <sup>ny</sup> A person who violates sub. (4c) (a) 1., 2., or 3. or (4p) (e) and who, within 5  
15          years prior to the arrest for the current violation, was convicted 2 or more times  
16          previously under the intoxicated operation of an off-highway vehicle law shall be  
17          fined not less than \$600 nor more than \$2,000 and shall be imprisoned not less than  
18          30 days nor more than one year in the <sup>✓</sup> county jail.

19          (c) *Penalty related to causing injury; intoxicants.* <sup>ny</sup> A person who violates sub.  
20          (4c) (b) shall be fined not less than \$300 nor more than \$2,000 and may be imprisoned  
21          not less than 30 days nor more than one year in the county jail.

1 (d) *Calculation of previous convictions.* In determining the number of previous  
2 convictions under par. (b) 2. and 3.,<sup>✓</sup> convictions arising out of the same incident or  
3 occurrence shall be counted as one previous conviction.

4 (dm) *Reporting convictions to the department.* Whenever a person is convicted  
5 of a violation of the intoxicated operation of an off-highway vehicle law, the clerk of  
6 the court in which the conviction occurred, or the justice, judge, or magistrate of a  
7 court not having a clerk, shall forward to the department the record of such  
8 conviction. The record of conviction forwarded to the department shall state whether  
9 the offender was involved in an accident at the time of the offense.<sup>✓</sup>

10 (e) *Alcohol, controlled substances or controlled substance analogs; assessment.*

11 In addition to any other penalty or order, a person who violates sub. (4c) (a) or (b)<sup>✓</sup> or  
12 (4p) (e)<sup>✓</sup> or who violates s. 940.09 or 940.25<sup>✓</sup> if the violation involves the operation of  
13 an off-highway vehicle, shall be ordered by the court to submit to and comply with  
14 an assessment by an approved public treatment facility for an examination of the  
15 person's use of alcohol, controlled substances, or controlled substance analogs. The  
16 assessment order shall comply with s. 343.30 (1q) (c) 1. a. to c. Intentional failure  
17 to comply with an assessment ordered under this paragraph constitutes contempt  
18 of court, punishable under ch. 785.<sup>✓</sup>

19 **Insert 35-8 A**

20 **SECTION 46.03 (18) (f)** of the statutes is amended to read:

21 46.03 (18) (f) Notwithstanding par. (a), any person who submits to an  
22 assessment or airman or driver safety plan under s. 23.33 (13) (e), 23.37 (14) (e),<sup>✓</sup>  
23 30.80 (6) (d), 114.09 (2) (bm), 343.16 (5) (a), 343.30 (1q), 343.305 (10) or 350.11 (3) (d)  
24 shall pay a reasonable fee therefor to the appropriate county department under s.  
25 51.42 or traffic safety school under s. 345.60. A county may allow the person to pay

1 the assessment fee in 1, 2, 3 or 4 equal installments. The fee for the airman or driver  
 2 safety plan may be reduced or waived if the person is unable to pay the complete fee,  
 3 but no fee for assessment or attendance at a traffic safety school under s. 345.60 may  
 4 be reduced or waived. Nonpayment of the assessment fee is noncompliance with the  
 5 court order that required completion of an assessment and airman or driver safety  
 6 plan. Upon a finding that the person has the ability to pay, nonpayment of the  
 7 airman or driver safety plan fee is noncompliance with the court order that required  
 8 completion of an assessment and airman or driver safety plan.

**History:** 1971 c. 270 s. 104; 1973 c. 90; 1973 c. 284 ss. 2, 32; 1973 c. 333; 1975 c. 39, 82; 1975 c. 189 s. 99 (1), (2); 1975 c. 224, 377, 413, 422; 1977 c. 29, 193; 1977 c. 196 s. 131; 1977 c. 203, 205, 271, 354; 1977 c. 418 ss. 287 to 289m, 924 (18) (d); 1977 c. 447, 449; 1979 c. 32 s. 92 (1); 1979 c. 34; 1979 c. 175 s. 46; 1979 c. 221, 331, 352; 1981 c. 20, 81; 1981 c. 314 s. 144; 1981 c. 390; 1983 a. 27, 193; 1983 a. 435 s. 7; 1983 a. 447, 474; 1983 a. 532 s. 36; 1985 a. 19, 29, 120, 176, 234, 285, 328, 331; 1985 a. 332 s. 251 (3); 1987 a. 3, 5, 27, 161, 186, 307, 339, 385, 399, 403, 413; 1989 a. 31 ss. 938m to 951, 2909g, 2909i; 1989 a. 56, 105, 107, 122; 1991 a. 39, 277; 1993 a. 16 ss. 851 to 859, 3072d; 1993 a. 98, 377, 385, 446, 481; 1995 a. 27 ss. 2026m to 2038b, 9126 (19); 1995 a. 77, 201, 225, 352, 370, 404, 448; 1997 a. 3, 27, 111, 283, 292; 1999 a. 9, 83; 2001 a. 16, 59, 61, 109; 2003 a. 33; 2005 a. 26, 293, 406; 2005 a. 443 s. 265; 2007 a. 20 ss. 800 to 823, 9121 (6) (a); 2007 a. 96, 104; 2009 a. 28, 180, 280; 2011 a. 32.

9 ~~SECTION 59.54~~ (14) (g) of the statutes is amended to read:

10 59.54 (14) (g) A county may establish extensions of the jail, which need not be  
 11 at the county seat, to serve as places of temporary confinement. No person may be  
 12 detained in such an extension for more than 24 consecutive hours, except that a court  
 13 may order that a person subject to imprisonment under s. 23.33 (13) (b) 2. or 3. or (c) <sup>2</sup>  
 14 23.37 (14) (b) 2. or 3. or 350.11 (3) (a) 2. or 3. or (b) be imprisoned for more than 24  
 15 consecutive hours in such an extension. Jail extensions shall be subject to plans and  
 16 specifications approved by the department of corrections and shall conform to other  
 17 requirements imposed by law on jails, except that cells may be designed and used for  
 18 multiple occupancy.

**History:** 1995 a. 201 ss. 146 to 149, 154 to 156, 159, 160, 162, 175 to 177, 179, 180, 183, 191, 193, 210 to 213, 222, 226 to 228, 274, 283, 366, 403, 404; 1995 a. 448 s. 59; 1997 a. 27, 35; 2001 a. 16; 2003 a. 193; 2005 a. 90; 2009 a. 42; 2011 a. 31, 35.

19

20 **Insert 40-2 A**

21 ~~SECTION 814.63~~ (3m) (a) of the statutes is amended to read:

1           814.63 (3m) (a) Except as provided in par. (d), if a defendant is required to  
 2 appear in court, in addition to any forfeiture, costs, fees, or surcharges it imposes, the  
 3 court shall impose and collect from the defendant any costs charged to or paid by a  
 4 law enforcement agency for the withdrawal of the defendant's blood if the court finds  
 5 that the defendant violated s. 23.33 (4c), 23.37 (4c), 30.681, 346.63, or 350.101, or a  
 6 local ordinance in conformity therewith.

History: 1981 c. 317; 1985 a. 36; 1987 a. 27, 399; 1989 a. 22, 31, 64, 97, 107, 359; 1991 a. 26, 39, 130; 1993 a. 16, 167, 313; 1995 a. 27, 227, 349; 1997 a. 27, 248; 1999 a. 9, 72; 2001 a. 16; 2003 a. 30, 33, 139, 168, 327; 2005 a. 455; 2009 a. 12, 28, 100; 2011 a. 32, 258, 260.

7           ~~SECTION 41~~ 814.65 (4m) (a) of the statutes is amended to read:

8           814.65 (4m) (a) Except as provided in par. (d), if a defendant is required to  
 9 appear in municipal court, in addition to any forfeiture, costs, fees, or surcharges it  
 10 imposes, the municipal court shall impose and collect from the defendant any costs  
 11 charged to or paid by a law enforcement agency for the withdrawal of the defendant's  
 12 blood if the court finds that the defendant violated a local ordinance in conformity  
 13 with s. 23.33 (4c), 23.37 (4c), 30.681, 346.63, or 350.101.

History: 1981 c. 317; 1983 a. 107; 1987 a. 181, 389, 399, 403; 1989 a. 22; 1991 a. 26; 1997 a. 27; 2003 a. 30, 33, 320; 2005 a. 54, 455; 2007 a. 96; 2009 a. 28, 100, 121; 2011 a. 32.

14           **Insert 43-2**

15           ~~SECTION 41~~ 940.09 (1m) (b) of the statutes is amended to read:

16           940.09 (1m) (b) If a person is charged in an information with any of the  
 17 combinations of crimes referred to in par. (a), the crimes shall be joined under s.  
 18 971.12. If the person is found guilty of more than one of the crimes so charged for  
 19 acts arising out of the same incident or occurrence, there shall be a single conviction  
 20 for purposes of sentencing and for purposes of counting convictions under s. 23.33  
 21 (13) (b) 2. and 3., under s. 23.37 (14) (b) 2. and 3., under s. 30.80 (6) (a) 2. and 3., under  
 22 s. 343.307 (1) or under s. 350.11 (3) (a) 2. and 3. Subsection (1) (a), (am), (b), (bm),  
 23 (c), (cm), (d), and (e) each require proof of a fact for conviction which the others do not

1 require, and sub. (1g) (a), (am), (b), (c), (cm), and (d) each require proof of a fact for  
2 conviction which the others do not require.

**History:** 1977 c. 173; 1981 c. 20, 184, 314, 391; 1983 a. 459; 1985 a. 331; 1987 a. 399; 1989 a. 105, 275, 359; 1991 a. 32, 277; 1993 a. 317; 1995 a. 425, 436; 1997 a. 237, 295, 338; 1999 a. 32, 109; 2001 a. 16, 109; 2003 a. 30, 97; 2009 a. 100.

3 **Insert 43-5**

4 **SECTION ~~4~~ 940.25 (1m) (b)** of the statutes is amended to read:

5 940.25 (1m) (b) If a person is charged in an information with any of the  
6 combinations of crimes referred to in par. (a), the crimes shall be joined under s.  
7 971.12. If the person is found guilty of more than one of the crimes so charged for  
8 acts arising out of the same incident or occurrence, there shall be a single conviction  
9 for purposes of sentencing and for purposes of counting convictions under s. 23.33  
10 (13) (b) 2. and 3., under s. 23.37 (14) (b) 2. and <sup>6</sup>3. under s. 30.80 (6) (a) 2. or 3., under  
11 ss. 343.30 (1q) and 343.305 or under s. 350.11 (3) (a) 2. and 3. Subsection (1) (a), (am),  
12 (b), (bm), (c), (cm), (d), and (e) each require proof of a fact for conviction which the  
13 others do not require.

**History:** 1977 c. 193, 272; 1981 c. 20, 184; 1983 a. 459; 1985 a. 331; 1987 a. 399; 1989 a. 105, 275, 359; 1991 a. 277; 1993 a. 317, 428, 478; 1995 a. 425, 436; 1997 a. 237, 295; 1999 a. 32, 109, 186; 2001 a. 16, 109; 2003 a. 30, 97; 2005 a. 253; 2009 a. 100.

14 **SECTION ~~4~~ 940.25 (3)** of the statutes is amended to read:

15 940.25 (3) An officer who makes an arrest for a violation of this section shall  
16 make a report as required under s. 23.33 (4t), 23.37 (4t), 30.686, 346.635 or 350.106.

**History:** 1977 c. 193, 272; 1981 c. 20, 184; 1983 a. 459; 1985 a. 331; 1987 a. 399; 1989 a. 105, 275, 359; 1991 a. 277; 1993 a. 317, 428, 478; 1995 a. 425, 436; 1997 a. 237, 295; 1999 a. 32, 109, 186; 2001 a. 16, 109; 2003 a. 30, 97; 2005 a. 253; 2009 a. 100.

**DRAFTER'S NOTE  
FROM THE  
LEGISLATIVE REFERENCE BUREAU**

LRB-0056/P3dn  
RNK:/:....  
Wlj

Date

This version of the draft remains in preliminary form. Please note the following:

1. The instructions for this draft included a request to provide that the newly created off-highway vehicle council approve the type of "spill kit" that an OHV must contain. Under current statutes, a council gives advice to a department head. It does not have any other powers, including rule-making power. Consequently, I did not include this requirement in the draft. Do you want DNR to promulgate a rule specifying the requirements of a spill kit?
2. The instructions also included a request for a provision about noise levels. This provision is already in the draft. See s. 23.37 (6), as created in the draft.
3. Please note that I added a provision that clarifies that DNR may acquire land for OHV trails or develop and maintain OHV trails and related facilities. See s. 23.37 (8m), as created in the draft.
4. The draft allows towns, villages, cities, or counties to designate corridors for use as OHV trails. Unlike current law as it applies to ATVs and UTVs, this draft does not provide state aids to these local governments for the development of these trails or for local law enforcement. Is this consistent with your intent?
5. You had indicated that you wanted the draft to provide a \$400,000 grant. Please let me know who would be eligible for the grant, for what purpose the grant must be used, and the source of funding for the grant.
6. The draft does not include any language that would allow a Class B OHV to cross a roadway for limited purposes as under current law as it applies to ATVs and UTVs. See s. 23.33 (4) (d). If you want a Class B OHV to be able to cross a roadway, additional drafting will be required in the next version of this draft.
7. As instructed, this version of the draft restructures the appropriations to DNR to ensure that any fees imposed for the registration of OHVs are not deposited into the conservation fund. The draft, instead, appropriates to DNR from the general fund an amount equal to the amount that DNR receives from registration fees. The registration fees under the draft are deposited into the transportation fund. These changes are to ensure that if Assembly Joint Resolution 2 is ratified, the provisions of

this draft will not violate the proposed constitutional amendment created in AJR 2. Please note that in this draft, the fees that DNR collects for safety course instruction and the penalty surcharge created in the draft are deposited into the conservation fund because they are not registration fees and need not be deposited into the conservation fund under the proposed constitutional amendment.

one-third

transportation

8. The previous version of this draft included a provision that required DNR to expend the fees it would receive from OHV registration in a manner such that 1/3 would be expended for OHV trails, 1/3 would be expended for law enforcement related to OHVs, and 1/3 would be expended for grants. I have removed that provision in this version of the draft because the restructuring of the appropriations as discussed above makes this provision, as drafted, unworkable. After you have had an opportunity to review the appropriations in the draft, I recommend that we meet to discuss this issue in more detail and to finalize the overall funding for the OHV program.

one-third

one-third

9. Please review s. 23.119, stats. That provision regulates the operation of OHVs on private property or public property that is closed to the operation of OHVs. That provision contains a different OHV definition than the OHV definition in this draft. It also contains language that overlaps with the language in this draft. These provisions will need to be harmonized. Do you want to amend the definition in s. 23.119, stats. so that it is consistent with the definition in this draft? Alternatively, you may wish to repeal s. 23.119, stats.

(1)(b)

10. In the course of revising this draft, I realized that the draft requires all commercial OHV manufacturers, dealers, distributors, or renters to have a commercial OHV registration. Should this requirement be limited to Class B OHVs? Otherwise this requirement will apply to any commercial proprietor who sells, manufacturers, etc., a vehicle that technically meets the definition of an OHV even if the vehicle is not intended for use off of a highway.

propose s. 23.37 (1) (f)

11. I think that the definition of "off-highway vehicle" in this draft may be too broad. Because the definition applies to almost any vehicle "capable of cross-country travel, other than an ATV, a UTV, a watercraft, or a motorcycle, the definition encompasses almost any vehicle. That is, shouldn't the definition be limited to vehicles that are designed to be used off of a highway or principally manufactured for off-highway use? Otherwise, the definition includes all four-wheel drive vehicles because any four-wheel drive vehicle is "capable of cross-country travel on natural terrain without the benefit of a road or trail.

four-wheel

four-wheel

12. Do you want to amend s. 346.66 (1) (c) or 346.71 (1) or (2), stats. to include references to Class B OHVs?

Given the number of issues raised in this drafter's note, you may prefer to schedule a meeting to go through these items in more detail. I would be happy to meet with you if that is your preference.

Robin N. Kite  
 Senior Legislative Attorney  
 Phone: (608) 266-7291  
 E-mail: robin.kite@legis.wisconsin.gov

**DRAFTER'S NOTE**  
**FROM THE**  
**LEGISLATIVE REFERENCE BUREAU**

LRB-0056/P3dn  
RNK:wlj:jm

April 9, 2013

This version of the draft remains in preliminary form. Please note the following:

1. The instructions for this draft included a request to provide that the newly created off-highway vehicle council approve the type of "spill kit" that an OHV must contain. Under current statutes, a council gives advice to a department head. It does not have any other powers, including rule-making power. Consequently, I did not include this requirement in the draft. Do you want DNR to promulgate a rule specifying the requirements of a spill kit?
2. The instructions also included a request for a provision about noise levels. This provision is already in the draft. See s. 23.37 (6), as created in the draft.
3. Please note that I added a provision that clarifies that DNR may acquire land for OHV trails or develop and maintain OHV trails and related facilities. See s. 23.37 (8m), as created in the draft.
4. The draft allows towns, villages, cities, or counties to designate corridors for use as OHV trails. Unlike current law as it applies to ATVs and UTVs, this draft does not provide state aids to these local governments for the development of these trails or for local law enforcement. Is this consistent with your intent?
5. You indicated that you wanted the draft to provide a \$400,000 grant. Please let me know who would be eligible for the grant, for what purpose the grant must be used, and the source of funding for the grant.
6. The draft does not include any language that would allow a Class B OHV to cross a roadway for limited purposes as under current law as it applies to ATVs and UTVs. See s. 23.33 (4) (d). If you want a Class B OHV to be able to cross a roadway, additional drafting will be required in the next version of this draft.
7. As instructed, this version of the draft restructures the appropriations to DNR to ensure that any fees imposed for the registration of OHVs are not deposited into the conservation fund. The draft, instead, appropriates to DNR from the general fund an amount equal to the amount that DNR receives from registration fees. The registration fees under the draft are deposited into the transportation fund. These changes are to ensure that if Assembly Joint Resolution 2 is ratified, the provisions of this draft will not violate the proposed constitutional amendment created in AJR 2. Please note that in this draft the fees that DNR collects for safety course instruction

and the penalty surcharge created in the draft are deposited into the conservation fund because they are not registration fees and need not be deposited into the transportation fund under the proposed constitutional amendment.

8. The previous version of this draft included a provision that required DNR to expend the fees it would receive from OHV registration in a manner such that one-third would be expended for OHV trails, one-third would be expended for law enforcement related to OHVs, and one-third would be expended for grants. I have removed that provision in this version of the draft because the restructuring of the appropriations as discussed above makes this provision, as drafted, unworkable. After you have had an opportunity to review the appropriations in the draft, I recommend that we meet to discuss this issue in more detail and to finalize the overall funding for the OHV program.

9. Please review s. 23.119, stats. That provision regulates the operation of OHVs on private property or public property that is closed to the operation of OHVs. That provision contains a different OHV definition from the OHV definition in this draft. It also contains language that overlaps with the language in this draft. These provisions will need to be harmonized. Do you want to amend the definition in s. 23.119 (1) (b), stats., so that it is consistent with the definition in this draft? Alternatively, you may wish to repeal s. 23.119, stats.

10. In the course of revising this draft, I realized that the draft requires all commercial OHV manufacturers, dealers, distributors, or renters to have a commercial OHV registration. Should this requirement be limited to Class B OHVs? Otherwise this requirement will apply to any commercial proprietor who sells, manufacturers, etc., a vehicle that technically meets the definition of an OHV even if the vehicle is not intended for use off of a highway.

11. I think that the definition of "off-highway vehicle" in proposed s. 23.37 (1) (f) may be too broad. Because the definition applies to almost any vehicle "capable of cross-country travel," other than an ATV, a UTV, a watercraft, or a motorcycle, the definition encompasses almost any vehicle. That is, shouldn't the definition be limited to vehicles that are designed to be used off of a highway or principally manufactured for off-highway use? Otherwise, the definition includes all four-wheel drive vehicles because any four-wheel drive vehicle is "capable of cross-country travel" on natural terrain without the benefit of a road or trail.

12. Do you want to amend s. 346.66 (1) (c) or 346.71 (1) or (2), stats., to include references to Class B OHVs?

Given the number of issues raised in this drafter's note, you may prefer to schedule a meeting to go through these items in more detail. I would be happy to meet with you if that is your preference.

Robin N. Kite  
Senior Legislative Attorney  
Phone: (608) 266-7291  
E-mail: robin.kite@legis.wisconsin.gov

**DRAFTER'S NOTE**  
**FROM THE**  
**LEGISLATIVE REFERENCE BUREAU**

LRB-0056/P3dn  
RNK:wlj:jm

April 9, 2013

Notes from meeting w/ John Schorr (WOHVA), Tom Gary, and Rep. Thursaw

This version of the draft remains in preliminary form. Please note the following:

✓ 1. The instructions for this draft included a request to provide that the newly created off-highway vehicle council approve the type of "spill kit" that an OHV must contain. Under current statutes, a council gives advice to a department head. It does not have any other powers, including rule-making power. Consequently, I did not include this requirement in the draft. Do you want DNR to promulgate a rule specifying the requirements of a spill kit?

just say "spill kit"

✓ 2. The instructions also included a request for a provision about noise levels. This provision is already in the draft. See s. 23.37 (6), as created in the draft.

✓ OK

✓ 3. Please note that I added a provision that clarifies that DNR may acquire land for OHV trails or develop and maintain OHV trails and related facilities. See s. 23.37 (8m), as created in the draft.

✓ OK

✓ 4. The draft allows towns, villages, cities, or counties to designate corridors for use as OHV trails. Unlike current law as it applies to ATVs and UTVs, this draft does not provide state aids to these local governments for the development of these trails or for local law enforcement. Is this consistent with your intent?

wants local aids - also to feds. & private landowners

leave out } 5. You indicated that you wanted the draft to provide a \$400,000 grant. Please let me know who would be eligible for the grant, for what purpose the grant must be used, and the source of funding for the grant.

✓ 6. The draft does not include any language that would allow a Class B OHV to cross a roadway for limited purposes as under current law as it applies to ATVs and UTVs. See s. 23.33 (4) (d). If you want a Class B OHV to be able to cross a roadway, additional drafting will be required in the next version of this draft.

add this

✓ 7. As instructed, this version of the draft restructures the appropriations to DNR to ensure that any fees imposed for the registration of OHVs are not deposited into the conservation fund. The draft, instead, appropriates to DNR from the general fund an amount equal to the amount that DNR receives from registration fees. The registration fees under the draft are deposited into the transportation fund. These changes are to ensure that if Assembly Joint Resolution 2 is ratified, the provisions of this draft will not violate the proposed constitutional amendment created in AJR 2. Please note that in this draft the fees that DNR collects for safety course instruction

OK

and the penalty surcharge created in the draft are deposited into the conservation fund because they are not registration fees and need not be deposited into the transportation fund under the proposed constitutional amendment.

8. The previous version of this draft included a provision that required DNR to expend the fees it would receive from OHV registration in a manner such that one-third would be expended for OHV trails, one-third would be expended for law enforcement related to OHVs, and one-third would be expended for grants. I have removed that provision in this version of the draft because the restructuring of the appropriations as discussed above makes this provision, as drafted, unworkable. After you have had an opportunity to review the appropriations in the draft, I recommend that we meet to discuss this issue in more detail and to finalize the overall funding for the OHV program.

*omit*

9. Please review s. 23.119, stats. That provision regulates the operation of OHVs on private property or public property that is closed to the operation of OHVs. That provision contains a different OHV definition from the OHV definition in this draft. It also contains language that overlaps with the language in this draft. These provisions will need to be harmonized. Do you want to amend the definition in s. 23.119 (1) (b), stats., so that it is consistent with the definition in this draft? Alternatively, you may wish to repeal s. 23.119, stats.

*keep content*

10. In the course of revising this draft, I realized that the draft requires all commercial OHV manufacturers, dealers, distributors, or renters to have a commercial OHV registration. Should this requirement be limited to Class B OHVs? Otherwise this requirement will apply to any commercial proprietor who sells, manufacturers, etc., a vehicle that technically meets the definition of an OHV even if the vehicle is not intended for use off of a highway.

*only Class B*

11. I think that the definition of "off-highway vehicle" in proposed s. 23.37 (1) (f) may be too broad. Because the definition applies to almost any vehicle "capable of cross-country travel," other than an ATV, a UTV, a watercraft, or a motorcycle, the definition encompasses almost any vehicle. That is, shouldn't the definition be limited to vehicles that are designed to be used off of a highway or principally manufactured for off-highway use? Otherwise, the definition includes all four-wheel drive vehicles because any four-wheel drive vehicle is "capable of cross-country travel" on natural terrain without the benefit of a road or trail.

*4 wheel drive + high clearance  
↓  
can be altered to be higher*

12. Do you want to amend s. 346.66 (1) (c) or 346.71 (1) or (2), stats., to include references to Class B OHVs?

Given the number of issues raised in this drafter's note, you may prefer to schedule a meeting to go through these items in more detail. I would be happy to meet with you if that is your preference.

*Most important issue per John Schnorr: wants to be able to operate on forest roads, many of which are closed to OHVs*

Robin N. Kite  
Senior Legislative Attorney  
Phone: (608) 266-7291  
E-mail: robin.kite@legis.wisconsin.gov

## Kite, Robin

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**From:** John Schnorr, WOHVA - Legislative Director <jschnorr@charter.net>  
**Sent:** Saturday, April 27, 2013 2:22 PM  
**To:** Kite, Robin  
**Cc:** Rep.Mursau  
**Subject:** Definition  
**Attachments:** High-Clearance Vehicle Definition.pdf

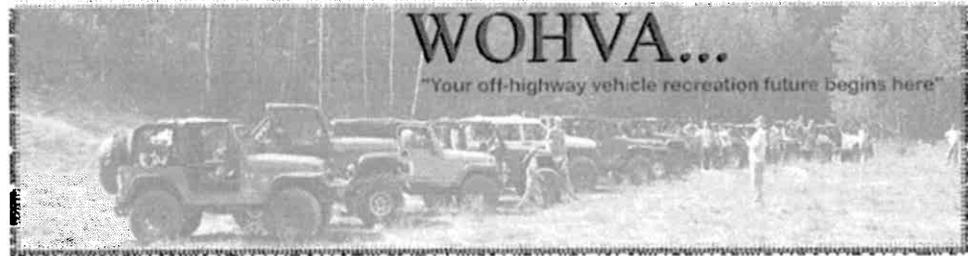
Robin,

Attached is the information I promised to get you. The first couple pages are more an explanation. The real guts (vagueness) of the definition is towards the end. Generally, the vehicle needs to have 4WD with a LOW Range capability. This distinguishes it from All Wheel Drive passenger vehicles. It needs to have 7" of ground clearance. The Forest Service also requires the ability to traverse the trail without impacting the trail surface. This keeps vehicle out of standing water & mud. It also controls trail access to low-rider type trucks and kids taking parents grocery getter on the trails.

Feel free to contact me with questions or concerns.

Happy Trails,

John Schnorr, Legislative Director  
Wisconsin Off-Highway Vehicle Association (WOHVA)  
715.490.5463



## National Forest System Facts

1. The forest transportation system is extensive and diverse; it includes an estimated 380,000 miles of Forest Service roads. Public roads, such as State and county roads, and private roads maintained by others on National Forest System lands, also exist.
  - a. Approximately one-fourth (22 percent) of all Forest Service roads serve passenger car use.
  - b. Over one-half (55 percent) of all Forest Service roads are maintained for high-clearance vehicle use.
  - c. Approximately one-fourth (23 percent) of all Forest Service roads are closed to highway use by the public. Closed roads may be used for a variety of recreation uses, and for forest administration and protection.
  - d. Currently, Forest Service inventories have identified at least 60,000 miles of unclassified roads including temporary roads and roads that were never planned, built, or maintained to safety, service, and environmental standards. It is anticipated that future inventories will verify the existence of substantially more miles of unclassified roads.
  - e. More than 7,000 bridges on Forest Service roads exist; three-fourths of these are on the roads serving passenger car use.
  - f. In 1998, new construction of Forest Service roads was 215 miles or .06 percent of the total Forest Service road system. New construction has trended downward annually from 2,310 miles in 1988.

## Road Management Level 1

Road management level 1 is defined in the FSH 7709.58,10,12.3 as: Assigned to intermittent service roads during the time they are closed to vehicular traffic. The closure period must exceed 1 year. Basic custodial maintenance is performed to keep damage to adjacent resources to an acceptable level and to perpetuate the road to facilitate future management activities. Emphasis is normally given to maintaining drainage facilities and runoff patterns. Planned road deterioration may occur at this level. Appropriate traffic management strategies are "prohibit" and "eliminate."

Roads receiving level 1 maintenance may be of any type, class or construction standard, and may be managed at any other maintenance level during the time they are open for traffic. However, while being maintained at level 1, they are closed to vehicular traffic, but may be open and suitable for nonmotorized uses.

These roads have the following attributes:

- Vehicular traffic is eliminated, including administrative traffic.
- Physically blocked or entrance is disguised.
- Not subject to the requirements of the Highway Safety Act.
- Maintenance is done only to minimize resource impacts.
- No maintenance other than a condition survey may be required so long as limited potential exists for resource damage. Maintenance prescription guidelines are from the FSH 7709.58,10,12.6, exhibit 01 and include:

1. General. As needed.
2. Traveled way. Generally no work is required.
3. Shoulder. Generally no work is required.
4. Drainage. As necessary to keep drainage facilities functional and prevent unacceptable environmental damage.
5. Roadway. Perform only that work needed to facilitate restoration of the roadway for future use and to alleviate erosion or sedimentation on or from the roadway or roadsides. Normally, defer the removal of brush and trees from the roadway. Vehicle traffic is not a consideration.
6. Roadside. Generally no work is required.
7. Structure. Inspect and repair only those items that cannot be deferred, and that are necessary to protect investment, and preserve structural integrity.
8. Traffic service. Ensure that physical closure devices and/or appropriate signing are in place and functional at the road entrance. Defer the maintenance of signs within the closure until the road is opened. Correct deferred items prior to opening the road to traffic.

## **Road Maintenance Level 2**

Road maintenance level 2 is defined in the FSH 7709.58,10,12.3 as:

Assigned to roads open for use by high-clearance vehicles. Passenger car traffic is not a consideration. Traffic is normally minor, usually consisting of one or a combination of administrative, permitted, dispersed recreation, or other specialized uses. Log haul may occur at this level. Appropriate traffic management strategies are either to (1) discourage or prohibit passenger cars or (2) accept or discourage high-clearance vehicles.

These roads have the following attributes:

- Roads have low traffic volume and low speed.
- Typically local roads.
- Typically connect collectors or other local roads.
- Dips are the preferred drainage treatment.
- Not subject to the requirements of the Highway Safety Act.
- Surface smoothness is not a consideration.
- Not suitable for passenger cars.

Maintenance prescription guidelines are from the FSH 7709.58,10,12.6 and include:

1. General. As needed.

2. Traveled way. Log out and brush as necessary to provide passage for planned traffic. Maintain road prism to provide for passage of high-clearance vehicles.
3. Shoulder. Maintain only as necessary for planned traffic.
4. Drainage. As necessary to keep drainage facilities functional and prevent unacceptable environmental damage.
5. Roadway. Manage vegetative cover as needed for planned traffic. Remove and/or repair slides and/or slumps as needed for access with high clearance vehicles to control resource damage.
6. Roadside. Generally no work is required.
7. Structure. Maintain all structures to provide for the passage of planned traffic.
8. Traffic service. Install and maintain route markers; warning, regulatory, and guide signs; and other traffic control devices to provide for planned traffic and an appropriate traffic management strategy.

### **High – Clearance Vehicles**

Ride height (also called ground clearance or simply clearance) is the amount of space between the base of an automobile tire and the underside of the chassis; or, more properly, to the shortest distance between a flat, level surface, and any part of a vehicle other than those parts designed to contact the ground (such as tires, tracks, skis, etc.). Ground clearance is measured with standard vehicle equipment, and for cars, is usually given with no cargo or passengers. The generally accepted minimum clearance is 7 inches of clearance, 4WD (with a LOW range capability) and/or the ability to traverse the trail with minimal contact with trail surface.

Ground clearance is a critical factor in several important characteristics of a vehicle. For all vehicles, especially cars, variations in clearance represent a trade-off between handling and practicality. A higher ground clearance means that the center of mass of the car is higher, which makes for less precise and more dangerous handling characteristics (most notably, the chance of rollover is higher). However, it also means that the car is more capable of being driven on roads that are not level, without the road scraping against and likely damaging the chassis and underbody. Higher ride heights will typically adversely affect aerodynamic properties. This is why sports cars typically have very low clearances, while off-road vehicles and SUVs have higher ones.

#### Mission Statement

The Wisconsin Off-Highway Vehicle Association promotes education, safety training and environmental awareness to assure that public and private off-highway motorized vehicular recreational opportunities are expanded in Wisconsin for responsible use by this and future generations.