State of Wisconsin
2013 – 2014 LEGISLATURE

LRB–0056/P3
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PRELIMINARY DRAFT – NOT READY FOR INTRODUCTION

AN ACT ***to amend*** 23.45 (1) (d), 23.50 (1), 23.50 (3), 23.53 (1), 23.56 (1), 23.57 (1) (intro.), 23.58, 23.62 (1) (intro.), 25.29 (1) (a), 30.26 (4) (a) (intro.), 30.26 (4) (b), 30.29 (1) (b), 46.03 (18) (f), 59.54 (14) (g), 77.51 (13s), 77.61 (1), 77.73 (2), 78.01 (2) (e), 78.01 (2m) (f), 78.40 (1), 78.75 (1m) (a) 2m., 78.75 (1m) (a) 3., 110.07 (1) (a) 1., 110.07 (3), 322.111, 345.11 (1r), 346.66 (1) (c), 800.02 (2) (b), 814.63 (3m) (a), 814.65 (4m) (a), 885.235 (1m), 895.043 (6), 938.17 (1) (intro.), 938.343 (9), 940.09 (1m) (b), 940.09 (3), 940.25 (1m) (b) and 940.25 (3); and ***to create*** 15.347 (9), 20.370 (1) (jg), 20.370 (1) (jq), 20.370 (3) (av), 23.37, 25.40 (1) (br), 341.059 and 814.77 (17) of the statutes; **relating to:** regulation of off–highway vehicles, creating an off–highway vehicle council, granting rule–making authority, requiring the exercise of rule–making authority, making appropriations, and providing 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.

INSERT ANALYSIS

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.

a Class B

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~~ a Class B OHV in such a manner that it exceeds specified noise limits.

OHV operation

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 an OHV on an OHV trail at a speed greater than the posted speed limit or, if no speed limit is posted, at a speed greater than 20 miles per hour.

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 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 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.

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:

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

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

SECTION 2. 20.370 (1) (jg) of the statutes is created to read:

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

SECTION 3. 20.370 (1) (jq) of the statutes is created to read:

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

SECTION 4. 20.370 (3) (av) of the statutes is created to read:

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

INS. 4-20

SECTION 5. 23.37 of the statutes is created to read:

23.37 Off–highway vehicles. (1) DEFINITIONS. In this section:

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

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

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

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

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

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

INS. 5-10 from page 6

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

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

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

INS. 5-12

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

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

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

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

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

(f) "Off–highway vehicle" means a 4–wheel drive vehicle that is powered by an electric or internal combustion engine ~~and~~ that is capable of cross–country travel on

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natural terrain without the benefit of a road or trail. An off–highway vehicle does not include an all–terrain vehicle, a utility terrain vehicle, a watercraft, or a motorcycle.

(g) (k) "Off–highway vehicle club" means a club consisting of individuals that promotes the recreational use of off–highway vehicles.

(h) (cf) Class B "Off–highway vehicle dealer" means a person engaged in the sale of Class B off–highway vehicles for profit at wholesale or retail.

(i) (ch) Class B "Off–highway vehicle distributor" means a person who sells or distributes Class B off–highway vehicles to Class B off–highway vehicle dealers or who maintains distributor representatives.

(j) (cm) Class B "Off–highway vehicle manufacturer" means a person engaged in the manufacture of Class B off–highway vehicles for sale to the public.

(k) (cp) Class B "Off–highway vehicle renter" means a person engaged in the rental or leasing of Class B off–highway vehicles to the public.

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

(m) "Operate" means to exercise physical control over the speed or direction of an off–highway vehicle or to physically manipulate or activate any of the controls of an off–highway vehicle to put it in motion.

(mn) "Operation" means the exercise of physical control over the speed or direction of an off–highway vehicle or the physical manipulation or activation of any of the controls of an off–highway vehicle necessary to put it in motion.

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

(o) "Owner" means a person who has lawful possession of an off–highway vehicle by virtue of legal title in the off–highway vehicle that entitles the person to possession of the off–highway vehicle.

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

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

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

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

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

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

3. Cocaine or any of its metabolites.

4. Methamphetamine.

5. Delta–9–tetrahydrocannabinol.

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

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

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

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

(2) REGISTRATION. (a) *Requirement.* No person may operate, and no owner may give another person permission to operate, an off–highway vehicle on an off–highway vehicle trail unless the off–highway vehicle is registered with the department under this subsection or sub. (2g) or is exempt from registration with the department under this subsection. No person under the age of 18 may register an off–highway vehicle under this subsection.

(b) *Exemptions.* An off–highway vehicle is exempt from registration under this subsection if any of the following applies:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(d) *Registration information.* The Lac du Flambeau band and the Mole Lake band shall provide registration information to the state by establishing a 24–hour per day data retrieval system, consisting of either a law enforcement agency with 24–hour per day staffing or a computerized data retrieval system to which law enforcement officials of this state have access at all times.

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

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

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

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

(3) DUTIES OF THE OFF–HIGHWAY VEHICLE COUNCIL. (a) The department shall distribute any rule that it is proposing and that affects the operation of off–highway vehicles to each member of the off–highway vehicle council for his or her review and comment at least 20 days before the notice stating that the proposed rule is in final

draft form and is submitted to the legislature in the manner provided under s. 227.19 (2). A member of the off–highway vehicle council may submit his or her written comments on the proposed rule to the department.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

9. In a manner that violates rules promulgated by the department.

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

2. On or before the first day of the 7th month beginning after the effective date of this subdivision .... [LRB inserts date], the department shall prepare maps that identify each off–highway vehicle trail in this state. The department shall update the maps at least annually and shall make them available to the public on the department's Internet site.

INS. 16-8

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

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

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

4. A person may be charged with and a prosecutor may proceed upon a complaint based upon a violation of any combination of subd. 1., 2., or 3. for acts arising out of the same incident or occurrence. If the person is charged with violating any combination of subd. 1., 2., or 3., the offenses shall be joined. If the person is found guilty of any combination of subd. 1., 2., or 3. for acts arising out of the same incident or occurrence, there shall be a single conviction for purposes of sentencing. Subdivisions 1., 2., and 3. each require proof of a fact for conviction that the others do not require.

5. In an action under subd. 3. that is based on the defendant allegedly having a detectable amount of methamphetamine, gamma–hydroxybutyric acid, or

delta–9–tetrahydrocannabinol in his or her blood, the defendant has a defense if he or she proves by a preponderance of the evidence that at the time of the incident or occurrence he or she had a valid prescription for methamphetamine or one of its metabolic precursors, gamma–hydroxybutyric acid, or delta–9–tetrahydrocannabinol.

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

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

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

4. A person may be charged with and a prosecutor may proceed upon a complaint based upon a violation of any combination of subd. 1., 2., or 3. for acts arising out of the same incident or occurrence. If the person is charged with violating any combination of subd. 1., 2., or 3. in the complaint, the crimes shall be joined under s. 971.12. If the person is found guilty of any combination of subd. 1., 2., or 3. for acts arising out of the same incident or occurrence, there shall be a single conviction for purposes of sentencing and counting convictions under sub. (14) (b) 2. and 3. Subdivisions 1., 2., and 3. each require proof of a fact for conviction that the others do not require.

5. a. In an action under this paragraph, the defendant has a defense if he or she proves by a preponderance of the evidence that the injury would have occurred even if he or she had been exercising due care and he or she had not been under the influence of an intoxicant, did not have an alcohol concentration of more than 0.0, or

did not have a detectable amount of a restricted controlled substance in his or her blood.

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

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

(b) *Use of test results.* A law enforcement officer may use the results of a preliminary breath screening test for the purpose of deciding whether or not to arrest a person for a violation of the intoxicated operation of an off–highway vehicle law or for the purpose of deciding whether or not to request a chemical test under sub. (4p). Following the preliminary breath screening test, chemical tests may be required of the person under sub. (4p).

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

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

(4j) APPLICABILITY OF THE INTOXICATED OPERATION OF AN OFF–HIGHWAY VEHICLE LAW. The intoxicated operation of an off–highway vehicle law applies to the operation of an off–highway vehicle on any off–highway vehicle trail.

(4L) IMPLIED CONSENT. Any person who engages in the operation of an off–highway vehicle on any off–highway vehicle trail is deemed to have given consent to provide one or more samples of his or her breath, blood, or urine for the purpose of authorized analysis as required under sub. (4p). Any person who engages in the operation of an off–highway vehicle on any off–highway vehicle trail is considered to have given consent to submit to one or more chemical tests of his or her breath, blood, or urine for the purpose of authorized analysis as required under sub. (4p).

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

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

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

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

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

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

(b) *Chemical tests.* 1. Upon the request of a law enforcement officer, a test facility shall administer a chemical test of breath, blood, or urine for the purpose of authorized analysis. A test facility shall be prepared to administer 2 of 3 of these tests for the purpose of authorized analysis. The department may enter into agreements for the cooperative use of test facilities.

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

3. A test facility shall specify another chemical test of breath, blood, or urine, other than the test designated under subd. 2., that it is prepared to administer for the purpose of authorized analysis as an additional chemical test.

4. A chemical test of blood or urine conducted for the purpose of authorized analysis is valid as provided under s. 343.305 (6). The duties and responsibilities of the laboratory of hygiene, department of health services, and department of transportation under s. 343.305 (6) apply to a chemical test of blood or urine

conducted for the purpose of authorized analysis under this subsection. Blood may be withdrawn from a person arrested for a violation of the intoxicated operation of an off–highway vehicle law only by a physician, registered nurse, medical technologist, physician assistant, or person acting under the direction of a physician. The person who withdraws the blood, the employer of that person, and any hospital where blood is withdrawn have immunity from civil or criminal liability as provided under s. 895.53.

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

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

2. If a person is arrested for a violation of the intoxicated operation of an off–highway vehicle law and if the person is not requested to provide a sample or to

submit to a test under par. (a) 1., the person may request the test facility to administer a chemical test of his or her breath or may request, at his or her own expense, a reasonable opportunity to have any qualified person administer a chemical test of his or her breath, blood, or urine for the purpose of authorized analysis. If a test facility is unable to perform a chemical test of breath, the person may request the test facility to administer the designated chemical test under par. (b) 2. or the additional chemical test under par. (b) 3.

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

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

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

(e) *Refusal.* No person may refuse a lawful request to provide one or more samples of his or her breath, blood, or urine or to submit to one or more chemical tests under par. (a). A person shall not be considered to have refused to provide a sample

or to submit to a chemical test if it is shown by a preponderance of the evidence that the refusal was due to a physical inability to provide the sample or to submit to the test due to a physical disability or disease unrelated to the use of an intoxicant. Issues in any action concerning violation of par. (a) or this paragraph are limited to the following:

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

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

3. Whether the law enforcement officer requested the person to provide a sample or to submit to a chemical test and provided the information required under par. (a) 2. or whether the request and information were unnecessary under par. (a) 3.

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

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

(4x) OFFICER'S ACTION AFTER ARREST FOR OPERATING AN OFF–HIGHWAY VEHICLE WHILE UNDER INFLUENCE OF INTOXICANT. A person arrested for a violation of sub. (4c) (a) 1. or 2. or a local ordinance in conformity therewith or sub. (4c) (b) 1. or 2. may not be released until 12 hours have elapsed from the time of his or her arrest or unless a chemical test administered under sub. (4p) (a) 1. shows that the person has an

alcohol concentration of 0.05 or less, but the person may be released to his or her attorney, spouse, relative, or other responsible adult at any time after arrest.

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

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

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

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

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

(a) If it is equipped with an internal combustion engine, it has a complete exhaust system that includes a muffler and a tailpipe.

(b) It has a permanently mounted and attached fuel cell or tank.

(c) It has a frame–mounted roll cage that is constructed in a manner specified by the department by rule and that encloses the operator and each passenger.

(d) It has a permanently affixed blaze orange safety flag that is at least 144 square inches in size and that is displayed from a pole that extends at least 8 feet above the ground on the front passenger side of the off–highway vehicle.

(e) It has 2 headlights.

(f) It has 2 brake lights.

(g) It has front and rear turn signals.

(h) It has side markers on the front and rear driver and passenger sides.

(i) All of the seats are permanently mounted and equipped with shoulder and lap safety belts.

(j) It does not contain an infant or child seat.

(k) It is equipped with an unopened kit that is capable of absorbing, containing, and collecting a spill of a minimum of 3.75 gallons of petroleum products and that is approved by the Wisconsin Off–Highway Vehicle Association.

(L) It has a battery that is secured in the vehicle in a manner that requires the use of a wrench or key to remove it.

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

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

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

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

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

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

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

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

(e) *Interference with signs and standards prohibited.* 1. No person may intentionally remove, damage, deface, move, or obstruct any uniform off–highway vehicle trail sign or standard or intentionally interfere with the effective operation of any uniform off–highway vehicle trail sign or standard if the sign or standard is legally placed by the state, any municipality, or any authorized individual.

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

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

(b) The department may use funds appropriated to the department under s. 20.370 (1) (jg) for state off–highway vehicle projects conducted for any of the following purposes: INS. 27-5

1. To acquire an easement or land in fee simple for development of an off–highway vehicle trail.

2. To develop or maintain an off–highway vehicle facility, including a parking area, riding area, shelter, toilet, or other improvement.

3. To develop or maintain an off–highway vehicle trail.

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

(b) No person who is 16 or 17 years of age may operate an off–highway vehicle on an off–highway vehicle trail unless he or she is subject to the continuous verbal direction and control of a person who is operating another off–highway vehicle and who is at least 18 years of age.

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

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

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

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

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

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

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

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

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

5. The organization has a board of directors that has a majority of members who are off–highway vehicle enthusiasts and off–highway vehicle trail users.

6. The organization provides support to off–highway vehicle clubs.

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

1. Collecting data on the recreational operation of off–highway vehicles off of the highways.

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

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

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

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

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

operation of off–highway vehicles that is given in the field to off–highway vehicle operators.

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

(d) The department shall pay the grants from the appropriation under s. 20.370 (1) (jg).

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

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

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

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

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

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

(b) *Penalties related to intoxicated operation.* 1. Except as provided in subds. 2. and 3., any person who violates sub. (4c) (a) 1., 2., or 3. or (4p) (e) shall forfeit not less than $150 nor more than $300.

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

3. Any person who violates sub. (4c) (a) 1., 2., or 3. or (4p) (e) and who, within 5 years prior to the arrest for the current violation, was convicted 2 or more times previously under the intoxicated operation of an off–highway vehicle law shall be fined not less than $600 nor more than $2,000 and shall be imprisoned not less than 30 days nor more than one year in the county jail.

(c) *Penalty related to causing injury; intoxicants.* Any person who violates sub. (4c) (b) shall be fined not less than $300 nor more than $2,000 and may be imprisoned not less than 30 days nor more than one year in the county jail.

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

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

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

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

(g) *Safety certificate requirement.* In addition to the penalties under par. (a), the court shall require any person who violates this section to successfully complete the program of instruction on off–highway vehicle laws established by the department under sub. (9) (d), regardless of whether the person has previously successfully completed the program.

(h) *Restoration or replacement of signs and standards.* In addition to any other penalty, the court may order the defendant to restore or replace any uniform off–highway vehicle trail sign or standard that the defendant removed, damaged, defaced, moved, or obstructed.

SECTION 6. 23.45 (1) (d) of the statutes is amended to read:

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

SECTION 7. 23.50 (1) of the statutes is amended to read:

23.50 **(1)** The procedure in ss. 23.50 to 23.85 applies to all actions in circuit court to recover forfeitures, plus costs, fees, and surcharges imposed under ch. 814, for violations of ss. 77.09, 90.21, 134.60, 167.10 (3), 167.31 (2), 281.48 (2) to (5), 283.33, 285.57 (2), 285.59 (2), (3) (c) and (4), 287.07, 287.08, 287.81 and 299.64 (2), subch. VI of ch. 77, this chapter, and chs. 26 to 31, ch. 169, and ch. 350, and any administrative rules promulgated thereunder, violations specified under s. 280.98 (2) or 285.86, violations of ch. 951 if the animal involved is a captive wild animal, violations of rules of the Kickapoo reserve management board under s. 41.41 (7) (k), violations to which s. 299.85 (7) (a) 2. or 4. applies, or violations of local ordinances enacted by any local authority in accordance with s. 23.33 (11) (am), 23.37 (12), or 30.77.

SECTION 8. 23.50 (3) of the statutes is amended to read:

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

SECTION 9. 23.53 (1) of the statutes is amended to read:

23.53 **(1)** The citation created under this section shall, in all actions to recover forfeitures, plus costs, fees, and surcharges imposed under ch. 814, for violations of those statutes enumerated in s. 23.50 (1), any administrative rules promulgated thereunder, and any rule of the Kickapoo reserve management board under s. 41.41 (7) (k) be used by any law enforcement officer with authority to enforce those laws, except that the uniform traffic citation created under s. 345.11 may be used by a traffic officer employed under s. 110.07 in enforcing s. 167.31 or by an officer of a law enforcement agency of a municipality or county or a traffic officer employed under s. 110.07 in enforcing s. 287.81. In accordance with s. 345.11 (1m), the citation shall not be used for violations of ch. 350 relating to highway use. The citation may be used for violations of local ordinances enacted by any local authority in accordance with s. 23.33 (11) (am), 23.37 (12), or 30.77.

SECTION 10. 23.56 (1) of the statutes is amended to read:

23.56 **(1)** A person may be arrested for a violation of those statutes enumerated in s. 23.50 (1), any administrative rules promulgated thereunder, any rule of the

Kickapoo reserve management board under s. 41.41 (7) (k), or any local ordinances enacted by any local authority in accordance with s. 23.33 (11) (am), 23.37 (12), or 30.77, after a warrant that substantially complies with s. 968.04 has been issued. Except as provided in sub. (2), the person arrested shall be brought without unreasonable delay before a court having jurisdiction to try the action.

SECTION 11. 23.57 (1) (intro.) of the statutes is amended to read:

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

SECTION 12. 23.58 of the statutes is amended to read:

23.58 Temporary questioning without arrest. After having identified himself or herself as an enforcing officer, an enforcing officer may stop a person in a public place for a reasonable period of time when the officer reasonably suspects that such person is committing, is about to commit or has committed a violation of those statutes enumerated in s. 23.50 (1), any administrative rules promulgated thereunder, any rule of the Kickapoo reserve management board under s. 41.41 (7) (k), or any local ordinances enacted by any local authority in accordance with s. 23.33 (11) (am), 23.37 (12), or 30.77. Such a stop may be made only where the enforcing officer has proper authority to make an arrest for such a violation. The officer may demand the name and address of the person and an explanation of the person's conduct. Such detention and temporary questioning shall be conducted in the vicinity where the person was stopped.

SECTION 13. 23.62 (1) (intro.) of the statutes is amended to read:

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

SECTION 14. 25.29 (1) (a) of the statutes is amended to read:

25.29 **(1)** (a) Except as provided in ss. 25.293 and 25.295, all moneys accruing to the state for or in behalf of the department under chs. 26, 27, 28, 29, 169, and 350, 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 to 23.99, 30.50 to 30.55, 70.58, 71.10 (5), 71.30 (10), and 90.21, including grants received from the federal government or any of its agencies except as otherwise provided by law.

SECTION 15. 25.40 (1) (br) of the statutes is created to read:

25.40 **(1)** (br) Moneys received under s. 23.37.

SECTION 16. 30.26 (4) (a) (intro.) of the statutes is amended to read:

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

SECTION 17. 30.26 (4) (b) of the statutes is amended to read:

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

SECTION 18. 30.29 (1) (b) of the statutes is amended to read:

30.29 **(1)** (b) "Motor vehicle" includes a utility terrain vehicle, as defined in s. 23.33 (1) (ng), ~~and~~ an all–terrain vehicle, as defined in s. 340.01 (2g), and an off–highway vehicle, as defined in s. 23.37 (1) (f). JM

SECTION 19. 46.03 (18) (f) of the statutes is amended to read:

46.03 **(18)** (f) Notwithstanding par. (a), any person who submits to an assessment or airman or driver safety plan under s. 23.33 (13) (e), 23.37 (14) (e), 30.80 (6) (d), 114.09 (2) (bm), 343.16 (5) (a), 343.30 (1q), 343.305 (10) or 350.11 (3) (d) shall pay a reasonable fee therefor to the appropriate county department under s. 51.42 or traffic safety school under s. 345.60. A county may allow the person to pay the assessment fee in 1, 2, 3 or 4 equal installments. The fee for the airman or driver safety plan may be reduced or waived if the person is unable to pay the complete fee, but no fee for assessment or attendance at a traffic safety school under s. 345.60 may be reduced or waived. Nonpayment of the assessment fee is noncompliance with the court order that required completion of an assessment and airman or driver safety plan. Upon a finding that the person has the ability to pay, nonpayment of the airman or driver safety plan fee is noncompliance with the court order that required completion of an assessment and airman or driver safety plan.

SECTION 20. 59.54 (14) (g) of the statutes is amended to read:

59.54 **(14)** (g) A county may establish extensions of the jail, which need not be at the county seat, to serve as places of temporary confinement. No person may be

detained in such an extension for more than 24 consecutive hours, except that a court may order that a person subject to imprisonment under s. 23.33 (13) (b) 2. or 3. or (c), 23.37 (14) (b) 2. or 3., or 350.11 (3) (a) 2. or 3. or (b) be imprisoned for more than 24 consecutive hours in such an extension. Jail extensions shall be subject to plans and specifications approval by the department of corrections and shall conform to other requirements imposed by law on jails, except that cells may be designed and used for multiple occupancy.

SECTION 21. 77.51 (13s) of the statutes is amended to read:

77.51 **(13s)** "Safety classes" means all classes approved by the department of natural resources related to hunting, including hunting with a bow, and related to firearms, all–terrain vehicles, utility terrain vehicles, Class B off–highway vehicles, boats, and snowmobiles.

SECTION 22. 77.61 (1) of the statutes is amended to read:

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

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

(c) In the case of motor vehicles, boats, snowmobiles, recreational vehicles, as defined in s. 340.01 (48r), trailers, semitrailers, all–terrain vehicles, utility terrain vehicles, off–highway vehicles, or aircraft registered or titled, or required to be

registered or titled, in this state purchased from persons who are not retailers, the purchaser shall file a sales tax return and pay the tax prior to registering or titling the motor vehicle, boat, snowmobile, recreational vehicle, as defined in s. 340.01 (48r), semitrailer, all–terrain vehicle, utility terrain vehicle, off–highway vehicle, or aircraft in this state.

SECTION 23. 77.73 (2) of the statutes is amended to read:

77.73 **(2)** Counties and special districts do not have jurisdiction to impose the tax under s. 77.71 (2) in regard to items, property, and goods under s. 77.52 (1) (b), (c), and (d), and tangible personal property, except snowmobiles, trailers, semitrailers, all–terrain vehicles, ~~and~~ utility terrain vehicles, and Class B off–highway vehicles purchased in a sale that is consummated in another county or special district in this state that does not have in effect an ordinance or resolution imposing the taxes under this subchapter and later brought by the buyer into the county or special district that has imposed a tax under s. 77.71 (2).

SECTION 24. 78.01 (2) (e) of the statutes is amended to read:

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

SECTION 25. 78.01 (2m) (f) of the statutes is amended to read:

78.01 **(2m)** (f) It is dyed diesel fuel and is sold for off–highway use other than use in a snowmobile, an all–terrain vehicle or utility terrain vehicle that is not registered for private use under s. 23.33 (2) (d) or (2g), a Class B off–highway vehicle

registered under s. 23.37 (2) (a) or (2g), or ~~in~~ a recreational motorboat or if no claim for a refund for the tax on the diesel fuel may be made under s. 78.75 (1m) (a) 3.

SECTION 26. 78.40 (1) of the statutes is amended to read:

78.40 **(1)** IMPOSITION OF TAX AND BY WHOM PAID. An excise tax at the rate determined under ss. 78.405 and 78.407 is imposed on the use of alternate fuels. The tax, with respect to all alternate fuel delivered by an alternate ~~fuel~~ fuels dealer into supply tanks of motor vehicles in this state, attaches at the time of delivery and shall be collected by the dealer from the alternate fuels user and shall be paid to the department. The tax, with respect to alternate fuels acquired by any alternate fuels user other than by delivery by an alternate ~~fuel~~ fuels dealer into a fuel supply tank of a motor vehicle, or of a snowmobile, an all–terrain vehicle or utility terrain vehicle that is not registered for private use under s. 23.33 (2) (d) or (2g), a Class B off–highway vehicle registered under s. 23.37 (2) (a) or (2g), or a recreational motorboat, attaches at the time of the use of the fuel and shall be paid to the department by the user. The department may permit any supplier of alternate fuels to report and pay to the department the tax on alternate fuels delivered into the storage facility of an alternate fuels user or retailer which will be consumed for alternate fuels tax purposes or sold at retail.

SECTION 27. 78.75 (1m) (a) 2m. of the statutes is amended to read:

78.75 **(1m)** (a) 2m. A person who uses motor vehicle fuel or an alternate fuel upon which has been paid the tax required under this chapter for the purpose of operating an all–terrain vehicle, as defined under s. 340.01 (2g), or a utility terrain vehicle, as defined under s. 23.33 (1) (ng), may not be reimbursed or repaid the amount of tax paid unless the all–terrain vehicle or utility terrain vehicle is registered for private use under s. 23.33 (2) (d) or (2g). A person who uses motor

vehicle fuel or an alternate fuel upon which has been paid the tax required under this chapter for the purpose of operating an off–highway vehicle registered under s. 23.37 (2) (a) or (2g) may not be reimbursed or repaid the amount of tax paid.

SECTION 28. 78.75 (1m) (a) 3. of the statutes is amended to read:

78.75 **(1m)** (a) 3. Claims under subd. 1. shall be made and filed. The forms shall indicate that refunds are not available for motor vehicle fuel or alternate fuels used for motorboats, except motorboats exempt from registration as motor vehicles under s. 341.05 (20) and motorboats that are not recreational motorboats, or motor vehicle fuel or alternate fuels used for snowmobiles and that the estimated snowmobile motor vehicle fuel or alternate fuels tax payments are used for snowmobile trails and areas. The forms shall indicate that refunds are not available for motor vehicle fuel or alternate fuels used for all–terrain vehicles or utility terrain vehicles unless the vehicle is registered for private use under s. 23.33 (2) (d) or (2g) and shall indicate that estimated all–terrain vehicle or utility terrain vehicle motor vehicle fuel or alternate fuels tax payments are used for all–terrain vehicle trails and areas. The forms shall indicate that refunds are not available for motor vehicle fuel or alternate fuels used for off–highway vehicles registered under s. 23.37 (2) (a) or (2g). The forms shall also indicate that refunds are not available for the tax on less than 100 gallons. The department shall distribute forms in sufficient quantities to each county clerk.

SECTION 29. 110.07 (1) (a) 1. of the statutes is amended to read:

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

SECTION 30. 110.07 (3) of the statutes is amended to read:

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

SECTION 31. 322.111 of the statutes is amended to read:

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

SECTION 32. 341.059 of the statutes is created to read:

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

SECTION 33. 345.11 (1r) of the statutes is amended to read:

345.11 **(1r)** The uniform traffic citation or the citation form under s. 23.54 shall be used for violations of ~~s.~~ ss. 23.33 and 23.37 relating to highway use or ordinances

enacted in accordance with ~~that section~~ those sections if the violation is committed on a highway, but no points may be assessed against the driving record of the operator of an all–terrain vehicle ~~or~~, utility terrain vehicle, or Class B off–highway vehicle. When the uniform traffic citation is used, the report of conviction shall be forwarded to the department. When the citation form under s. 23.54 is used, the procedure in ss. 23.50 to 23.85 applies.

SECTION 34. 346.66 (1) (c) of the statutes is amended to read:

346.66 **(1)** (c) Sections 346.67 to 346.70 do not apply to accidents involving only snowmobiles, all–terrain vehicles, utility terrain vehicles, Class B off–highway vehicles, as defined under s. 23.37(1)(c), or vehicles propelled by human power or drawn by animals.

INS. 43-10

SECTION 35. 800.02 (2) (b) of the statutes is amended to read:

800.02 **(2)** (b) Except for parking violations, in traffic regulation actions in municipal court, the uniform traffic citation specified in s. 345.11 shall be used in lieu of the citation form specified in par. (ag). In actions for violations of local ordinances enacted in accordance with s. 23.33 (11) (am), 23.37 (12), or 30.77, the citation form specified in s. 23.54 shall be used in lieu of the citation form specified in par. (ag).

SECTION 36. 814.63 (3m) (a) of the statutes is amended to read:

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

SECTION 37. 814.65 (4m) (a) of the statutes is amended to read:

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

SECTION 38. 814.77 (17) of the statutes is created to read:

814.77 **(17)** The off–highway vehicle surcharge under s. 23.37 (14) (f).

SECTION 39. 885.235 (1m) of the statutes is amended to read:

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

SECTION 40. 895.043 (6) of the statutes is amended to read:

895.043 **(6)** LIMITATION ON DAMAGES. Punitive damages received by the plaintiff may not exceed twice the amount of any compensatory damages recovered by the plaintiff or $200,000, whichever is greater. This subsection does not apply to a

plaintiff seeking punitive damages from a defendant whose actions under sub. (3) included the operation of a vehicle, including a motor vehicle as defined under s. 340.01 (35), a snowmobile as defined under s. 340.01 (58a), an all–terrain vehicle as defined under s. 340.01 (2g), a utility terrain vehicle as defined under s. 23.33 (1) (ng), an off–highway vehicle as defined under s. 23.37 (1) (f), and a boat as defined under s. 30.50 (2), while under the influence of an intoxicant to a degree that rendered the defendant incapable of safe operation of the vehicle. In this subsection, "intoxicant" has the meaning given in s. 30.50 (4e).

SECTION 41. 938.17 (1) (intro.) of the statutes is amended to read:

938.17 **(1)** TRAFFIC, BOATING, SNOWMOBILE, ALL–TERRAIN VEHICLE, ~~AND~~ UTILITY TERRAIN VEHICLE, AND CLASS B OFF–HIGHWAY VEHICLE VIOLATIONS. (intro.) Except for violations of ss. 342.06 (2) and 344.48 (1), and violations of ss. 30.67 (1) and 346.67 (1) when death or injury occurs, courts of criminal and civil jurisdiction have exclusive jurisdiction in proceedings against juveniles 16 years of age or older for violations of ~~s.~~ ss. 23.33 and 23.37, of ss. 30.50 to 30.80, of chs. 341 to 351, and of traffic regulations, as defined in s. 345.20, and nonmoving traffic violations, as defined in s. 345.28 (1). A juvenile charged with a traffic, boating, snowmobile, all–terrain vehicle, ~~or~~ utility terrain vehicle, or Class B off–highway vehicle offense in a court of criminal or civil jurisdiction shall be treated as an adult before the trial of the proceeding except that the juvenile may be held in secure custody only in a juvenile detention facility. A juvenile convicted of a traffic, boating, snowmobile, all–terrain vehicle, ~~or~~ utility terrain vehicle, or Class B off–highway vehicle offense in a court of criminal or civil jurisdiction shall be treated as an adult for sentencing purposes except as follows:

SECTION 42. 938.343 (9) of the statutes is amended to read:

938.343 **(9)** ALL–TERRAIN ~~OR~~ VEHICLE, UTILITY TERRAIN VEHICLE, OR OFF–HIGHWAY VEHICLE SAFETY COURSE. If the violation is one under s. 23.33 or under an ordinance enacted in accordance with s. 23.33 concerning the use of all–terrain vehicles or utility terrain vehicles, order the juvenile to attend an all–terrain vehicle or utility terrain vehicle safety course. If the violation is one under s. 23.37 or under an ordinance enacted in accordance with s. 23.37 (12) concerning the use of off–highway vehicles, order the juvenile to attend an off–highway vehicle safety course.

SECTION 43. 940.09 (1m) (b) of the statutes is amended to read:

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

SECTION 44. 940.09 (3) of the statutes is amended to read:

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

SECTION 45. 940.25 (1m) (b) of the statutes is amended to read:

940.25 **(1m)** (b) If a person is charged in an information with any of the combinations of crimes referred to in par. (a), the crimes shall be joined under s. 971.12. If the person is found guilty of more than one of the crimes so charged for

acts arising out of the same incident or occurrence, there shall be a single conviction for purposes of sentencing and for purposes of counting convictions under s. 23.33 (13) (b) 2. and 3., under s. 23.37 (14) (b) 2. and 3., under s. 30.80 (6) (a) 2. or 3., under ss. 343.30 (1q) and 343.305 or under s. 350.11 (3) (a) 2. and 3. Subsection (1) (a), (am), (b), (bm), (c), (cm), (d), and (e) each require proof of a fact for conviction which the others do not require.

SECTION 46. 940.25 (3) of the statutes is amended to read:

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

SECTION 47. Nonstatutory provisions.

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

(END)

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-0056/P4dn
RNK:

date

Please review the changes in this draft to ensure that they meet your intent. In particular, please note the following:

1. I have revised the definition of an "off-highway vehicle" to incorporate the information provided by John Schnorr from the Wisconsin Off-Highway Vehicle Association. According to that information, an OHV must have a 7 ground clearance. I have also incorporated the concept that an OHV must be a vehicle that is designed for use off of a highway, regardless of whether it is also designed for use on a highway. I made this change so that vehicles that are not designed for recreational use would not fall within the definition of an OHV. Please let me know if this revised definition is satisfactory.

2. As instructed, this redraft authorizes DNR to provide aids to local governments and the federal government for OHV projects. These aids are funded from the same general fund appropriation by which most of the other program costs are funded.

3. This redraft also allows a person to operate a Class B off-highway vehicle on the roadway portion of a highway in limited circumstances. The language in this redraft is based on similar language in s. 23.33 (4) (d) 1. to 4., stats. I did not include language about operation on a roadway similar to the language in s. 23.33 (4) (d) 5. to 7. because I do not think those provisions are applicable to OHVs. Do you agree?

Please feel free to contact me if you have any questions about this draft.

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2013–2014 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU

INSERT ANALYSIS

has a ground clearance of at least ~~7~~ seven inches, and that is designed for use off of a highway, regardless of whether it is also designed for use on a highway. The bill defines ground clearance as the distance between the base of an off–highway vehicle tire and the underside of the chassis of the off–highway vehicle.

INSERT 4–20

SECTION 1. 23.119 (1) (b) of the statutes is amended to read:

23.119 **(1)** (b) "Off–highway vehicle" means a motor–driven craft or vehicle principally manufactured for off–highway use but does not include a snowmobile, all–terrain vehicle, ~~or~~ utility terrain vehicle, or off–highway vehicle defined in s. 23.37 (1) (jm).

History: 2009 a. 252; 2011 a. 208; s. 35.17 correction in (1) (b).

INSERT 5–12

(dm) "Ground clearance" means the distance between the base of an off–highway vehicle tire and the underside of the chassis of the off–highway vehicle.

INSERT 6–1

has a ground clearance of at least 7 inches, and that is designed for use off of a highway, regardless of whether it is also designed for use on a highway.

INSERT 16–8

(d) *Operation on roadway.* A person may operate a Class B off–highway vehicle on the roadway portion of any highway only in the following situations:

1. To cross a roadway. The crossing of a roadway is authorized only if the crossing is done in the most direct manner practicable, if the crossing is made at a

place where no obstruction prevents a quick and safe crossing, and if the operator stops the off–highway vehicle prior to the crossing and yields the right–of–way to other vehicles, pedestrians, and electric personal assistive mobility devices using the roadway.

2. On any roadway that is seasonally not maintained for motor vehicle traffic. Operation of an off–highway vehicle on this type of roadway is authorized only during the seasons when no maintenance occurs and only if the roadway is not officially closed to off–highway vehicle traffic.

3. To cross a bridge, culvert, or railroad right–of–way. The crossing of a bridge, culvert, or railroad right–of–way is not authorized if the roadway is officially closed to off–highway vehicle traffic. The crossing is authorized only if the crossing is done in the most direct manner practicable, if the crossing is made at a place where no obstruction prevents a quick and safe crossing, and if the operator stops the vehicle prior to the crossing, pedestrians, and electric personal assistive mobility devices using the roadway. and yields the right-of-way to other vehicles

4. On roadways of highways that are off–highway vehicle trails.

INSERT 27–5

or for aid to towns, villages, cities, counties, and federal agencies for nonstate off–highway vehicle projects

INSERT 43–10

SECTION 2. 346.71 (1) of the statutes is amended to read:

346.71 **(1)** Every coroner or medical examiner shall, on or before the 10th day of each month, report in writing any accident involving a motor vehicle occurring within the coroner's or medical examiner's jurisdiction resulting in the death of any person during the preceding calendar month. If the accident involved an all–terrain vehicle ~~or~~, a utility terrain vehicle, or a Class B off–highway vehicle, as defined in s. 23.37 (1) (c), the report shall be made to the department of natural resources and shall include the information specified by that department. If the accident involved any other motor vehicle, the report shall be made to the department and shall include the information specified by the department. The coroner or medical examiner of the county where the death occurs, if the accident occurred in another jurisdiction, shall, immediately upon learning of the death, report it to the coroner or medical examiner of the county where the accident occurred, as provided in s. 979.01 (1).

History: 1973 c. 272; 1977 c. 29 s. 1654 (7) (a); 1977 c. 273; 1983 a. 485; 1985 a. 29; 1987 a. 302; 1995 a. 27 s. 9126 (19); 2001 a. 90; 2007 a. 20 s. 9121 (6) (a); 2011 a. 208.

SECTION 3. 346.71 (2) of the statutes is amended to read:

346.71 **(2)** In cases of death involving a motor vehicle in which the decedent was the operator of a motor vehicle, a pedestrian 14 years of age or older or a bicycle or electric personal assistive mobility device operator 14 years of age or older and who died within 6 hours of the time of the accident, the coroner or medical examiner of the county where the death occurred shall require that a blood specimen of at least 10 cc. be withdrawn from the body of the decedent within 12 hours after his or her death, by the coroner or medical examiner or by a physician so designated by the coroner or medical examiner or by a qualified person at the direction of the physician. All funeral directors shall obtain a release from the coroner or medical examiner of the county where the accident occurred as provided in s. 979.01 (4) prior to proceeding with embalming any body coming under the scope of this section. The

blood so drawn shall be forwarded to a laboratory approved by the department of health services for analysis of the alcoholic content of the blood specimen. The coroner or medical examiner causing the blood to be withdrawn shall be notified of the results of each analysis made and shall forward the results of each such analysis to the department of health services. If the death involved a motor vehicle, the department shall keep a record of all such examinations to be used for statistical purposes only and the department shall disseminate and make public the cumulative results of the examinations without identifying the individuals involved. If the death involved an all–terrain vehicle ~~or~~, a utility terrain vehicle, or a Class B off–highway vehicle as defined in s. 23.37 (1) (c), the department of natural resources shall keep a record of all such examinations to be used for statistical purposes only and the department of natural resources shall disseminate and make public the cumulative results of the examinations without identifying the individuals involved.

History: 1973 c. 272; 1977 c. 29 s. 1654 (7) (a); 1977 c. 273; 1983 a. 485; 1985 a. 29; 1987 a. 302; 1995 a. 27 s. 9126 (19); 2001 a. 90; 2007 a. 20 s. 9121 (6) (a); 2011 a. 208.

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-0056/P4dn
RNK:eev:rs

May 14, 2013

Please review the changes in this draft to ensure that they meet your intent. In particular, please note the following:

1. I have revised the definition of an "off-highway vehicle" to incorporate the information provided by John Schnorr from the Wisconsin Off-Highway Vehicle Association. According to that information, an OHV must have a seven-inch ground clearance. I have also incorporated the concept that an OHV must be a vehicle that is designed for use off of a highway, regardless of whether it is also designed for use on a highway. I made this change so that vehicles that are not designed for recreational use would not fall within the definition of an OHV. Please let me know if this revised definition is satisfactory.

2. As instructed, this redraft authorizes DNR to provide aids to local governments and the federal government for OHV projects. These aids are funded from the same general fund appropriation by which most of the other program costs are funded.

3. This redraft also allows a person to operate a Class B off-highway vehicle on the roadway portion of a highway in limited circumstances. The language in this redraft is based on similar language in s. 23.33 (4) (d) 1. to 4., stats. I did not include language about operation on a roadway similar to the language in s. 23.33 (4) (d) 5. to 7., stats., because I do not think those provisions are applicable to OHVs. Do you agree?

Please feel free to contact me if you have any questions about this draft.

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