



# State of Wisconsin

LEGISLATIVE REFERENCE BUREAU

## Appendix A ... segment I

### LRB BILL HISTORY RESEARCH APPENDIX

The drafting file for 2011 LRB-0339 (For: Rep. Mursau)

has been transferred to the drafting file for

**2013 LRB-0056** (For: Rep. Mursau)



# **RESEARCH APPENDIX -**

## **PLEASE KEEP WITH THE DRAFTING FILE**

Date Transfer Requested: 10/03/2012 (Per: RNK)

The attached draft was incorporated into the new draft listed above. For research purposes the attached materials were added, as a appendix, to the new drafting file. If introduced this section will be scanned and added, as a separate appendix, to the electronic drafting file folder.

**2011 DRAFTING REQUEST**

**Bill**

Received: **11/05/2010**

Received By: **rkite**

Wanted: **As time permits**

Companion to LRB:

For: **Jeffrey Mursau (608) 266-3780**

By/Representing: **Andy Potts**

May Contact:

Drafter: **rkite**

Subject: **Nat. Res. - miscellaneous**

Addl. Drafters:

Extra Copies:

Submit via email: **YES**

Requester's email: **Rep.Mursau@legis.wisconsin.gov**

Carbon copy (CC:) to:

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**Pre Topic:**

No specific pre topic given

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**Topic:**

Off highway vehicle registration and regulation

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**Instructions:**

See attached

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**Drafting History:**

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	rkite 01/13/2011	wjackson 01/18/2011		_____			
/P1	rkite 01/19/2011	kfollett 02/04/2011	rschluet 02/07/2011	_____	sbasford 02/07/2011		

FE Sent For:

<END>

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By/Representing: **Andy Rotts**

*Tim Gary*

May Contact:

Drafter: **rkite**

Subject: **Nat. Res. - miscellaneous**

Addl. Drafters: *MGG*

Extra Copies: *ARG*  
*EVM*

Submit via email: **YES**

Requester's email: **Rep.Mursau@legis.wisconsin.gov**

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/?	rkite	<i>1/16/11</i> <i>2/4</i>	<i>[Signature]</i> <i>2/11</i>	<i>[Signature]</i>			

FE Sent For:

<END>

Class A - "street legal"

Class B - not street legal

Questions and comments -

1. Some discrepancies in draft are terms that aren't used.

2. Pg 8 - "intentionally operate" >  
don't need

3. Where can these vehicles be operated >  
p. 11 =  
"mapped trails" >

4. Off highway vehicle damage account -  
how funded >

5. Pg. 13 - prohibits operation of OHV unless  
registered -  
so every "street legal" vehicle must be  
registered w/ DNR >

OHV trails - DNR establishes -

registrations & stickers to fund -  
nonresidents need  $\frac{2}{3}$  nonresident stickers

$\frac{1}{3}$  law enf. /  $\frac{1}{3}$  trails /  $\frac{1}{3}$  damage acct  
(3) (1) (5)

Meeting w/ Rep Mursaw



**A Proposal to Create an  
Off-Highway Vehicle Sticker/Registration Program  
for the State of Wisconsin**

**Presented by  
Wisconsin Off-Highway Vehicle Association**

**November 5, 2010**

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DRAFT

## **Executive Summary**

This proposal is submitted on behalf of the Wisconsin Off-Highway Vehicle Association (WOHVA) and the Four Wheel Drive Clubs who have submitted letters of endorsement (See Attachments).

The following information represents a formal request to the Wisconsin Legislature to draft legislation that creates a funding source which mirrors those which exist for boats, ATV's and snowmobiles. This funding source would be used to promote environmentally safe OHV recreation in addition to providing Wisconsin OHV enthusiasts recreational opportunities.

WOHVA promotes a two level OHV registration classes; one for street legal, registered and licensed, passenger vehicles, and a second, for vehicles such as buggies and home-made projects which do not fit into the first category.

This proposal covers topics such as private property rights, safety, law enforcement and program administration, while promoting personal safety and environmental responsibility.

WOHVA encourages the Wisconsin Legislature to draft legislation which creates recreational opportunity for Wisconsin OHV enthusiasts and promotes environmental responsibility.

**Definitions**

*4 wheel drive*  
*define*

**"Off-Highway Vehicle" (OHV)** means a motor driven recreational vehicle capable of cross country travel on natural terrain without the benefit of a road or trail. "OHV" does not include a snowmobile, an all-terrain vehicle (ATV), a watercraft, a motorcycle, a farm vehicle being used for farming, a vehicle used for military, fire, emergency, or law enforcement purposes, a construction or logging vehicle being used in the performance of its common function; a motor vehicle owned by or operated under contract with a utility, whether publicly or privately owned, when used for work on utilities; Federal, State or municipal vehicles; a commercial vehicle being used for its intended purpose; snow-grooming equipment when used for its intended purpose; or an aircraft. The design of an OHV is such that the manufacturer (or modification after-market) has made it capable of easily traversing high-clearance Maintenance Level 1 and Level 2 roads/trails as defined by the US Forest Service (FSH 7709.58, 10, 12.3)

*no ATV*

? **"Dealer"** means a person engaged in the sale, lease, or rental of an OHV as a regular business or, for purposes of selling licenses, any other person authorized by the department to sell licenses or permits, or both, under this act.

*diff*

? **"Designated"**, unless the context implies otherwise, means posted open for OHV use with appropriate signs by the department.

*no*

? **"Forest road"** means a hard surfaced road, gravel or dirt road, or other route capable of travel by a 2-wheel drive, 4-wheel conventional vehicle designed for highway use, except an interstate, state, or county highway.

*no?*

? **"Highway"** means the entire width between the boundary lines of a way publicly maintained when any part of the way is open to the use of the public for purposes of vehicular travel.

?  
*o*

**"Highly restricted personal information"** means an individual's photograph or image, social security number, digitized signature, and medical and disability information.

*not used*

? **"Manufacturer"** means a person, partnership, corporation, or association engaged in the production and manufacture of OHV's.

**"Off-Highway vehicle account"** means the segregated off-highway vehicle account of the Wisconsin Department of Natural Resources (DNR) (Department).

*no*

? **"Operate"** means to ride in, and be in actual physical control, of the operation of an OHV.

*diff*

✓ **"Operator"** means a person who operates or is in actual physical control of the operation of an OHV. *diff*

**"Personal information"** means information that identifies an individual, including an individual's driver identification number, name, address, zip code, and telephone number, but does not include information on OHV operation or equipment-related violations or civil infractions, operator or vehicle registration status, accidents, or other behaviorally-related information. *not used*

**"Public agency"** means a federal, state, county, tribal or local unit of government. *no*

✓ **"Roadway"** means that portion of a highway improved, designated, or ordinarily used for vehicular travel. If a highway includes 2 or more separate roadways, the term roadway refers to a roadway separately, but not to all roadways collectively. *?*

? **"Route"** means a forest road or other road that is designated for purposes of this part by the Department. *?*

? **"Safety chief instructor"** means a person who has been certified by the Department or recognized OHV organization, to certify instructors and to do on-sight evaluations of instructors. *?*

✓ **"Agricultural purpose"** means a purpose related to bee-keeping, operating commercial feedlots, dairying, egg production, floriculture, fish or fur farming, forest and game management, grazing, livestock raising, operating orchards, plant greenhouses or nurseries, poultry raising, raising grain, grass mint or seed crops, sod farming or raising fruits, nuts, berries or vegetables. *same*

✓ **"OHV Club"** means a club consisting of individuals that promotes the recreational use of OHV's. *same (1)(bc)*

✓ **"Off-highway vehicle manufacturer"** means a person engaged in the manufacture of OHV's for sale to the public. *(1)(bp)*

✓ **"OHV renter"** means a person engaged in the rental or leasing of OHV's to the public. *(1)(bt)*

**"OHV route"** means a highway, road or trail designated for use by OHV operators by the governmental agency having jurisdiction. *(1)(c) diff*

✓ **"OHV trail"** means a marked corridor on public property or on private lands subject to public easement or lease, designated for use by OHV vehicle operators by the governmental agency having jurisdiction, but excluding *(1)(d) diff*

roadways or highways (including those roadways that are seasonally not maintained for motor vehicle traffic).

- ✓ **"Approved public treatment facility"** has the meaning specified under s. 51.45 (2) (c). *same (i)(dm)*
- ✓ **"Controlled substance"** has the meaning specified under s. 961.01 (4). *same (i)(e)*
- ✓ **"Controlled substance analog"** has the meaning given in s. 961.01 (4m). *(i)(f)*
- ✓ **"Immediate family"** means persons who are related as spouses, as siblings or as parent and child. *(i)(h)*
- ✓ **"Intoxicant"** means any alcohol beverage, controlled substance, controlled substance analog or other drug or any combination thereof. *(i)(i)*
- ✓ **"Intoxicated operation of an OHV law"** means sub. (4c) or a local ordinance in conformity therewith or, if the operation of an OHV is involved, s. 940.09 or 940.25. *(i)(ic)*
- ✓ **"Land under the management and control of the person's immediate family"** means land owned or leased by the person or a member of the person's immediate family over which the owner or lessee has management and control. This term excludes land owned or leased by an organization of which the person or a member of the person's immediate family is a member. *(i)(if)*
- ✓ **"Law enforcement officer"** has the meaning specified under s. 165.85 (2) (c) and includes a person appointed as a conservation warden by the department under s. 23.10 (1). *(i)(ig)*
- **"Accredited OHV Safety Driving School"** is an educational provider presenting educational and safety instruction as required by the DNR and is authorized to issue OHV Safety Certificates which convey successful completion of environment and safety education and training courses.
- ✓ **"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. *(i)(je)*
- ✓ **"Refusal law"** means sub. (4p) (e) or a local ordinance in conformity therewith. *(i)(jm)*
- ✓ **"Registration documentation"** means an OHV registration certificate, a validated registration receipt, or a registration decal. *(i)(jn)*
- ✓ **"Restricted controlled substance"** means any of the following: *(i)(jo)*

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.

**“Snorkel”** means any device or modification (attached to or modifying the air intake or the exhaust system) to allow the vehicle to be operated in or under water; and any device which enhances operation of the vehicle in water depth in excess of one-half of the diameter of the tires used to propel the vehicle.

✓ **1. Restrictions on Operation**

**A. General Restrictions**

a. A person may not intentionally operate an off-highway vehicle:

- 1) on a trail on public land that is not designated or signed for OHV use;
- 2) on restricted areas within public lands that are posted as closed or where gates or other clearly visible structures are placed to prevent unauthorized motorized vehicle access;
- 3) in unfrozen public waters, in a scientific and/or natural area; or in a wildlife management area; or on state property except as specifically authorized by law or rule adopted by the DNR,
- 4) in a calcareous fen, as identified by the DNR.
- 5) in a manner indicating willful, wanton, or reckless *diff. (3)(a)* disregard for the safety of persons or property;
- 6) on the private property of another without the consent of the owner or lessee. Failure to post private property *(3)(c)* as closed to motorized recreation does not imply consent for OHV use.
- 7) on Indian lands without the consent of the tribal governing body or Indian owner. Failure to post Indian *(3)(d)*

lands closed to motorized recreation does not imply consent for OHV use.

8) with any firearm in his or her possession unless it is unloaded and enclosed in a carrying case, or any bow unless it is unstrung or enclosed in a carrying case.

9) to drive or pursue any animal except as a part of normal farming operations involving the driving of livestock.

10) when within 150 feet of a dwelling at a speed exceeding 10 miles per hour.

11) on the frozen surface of public waters within 100 feet of a person not in or on an OHV or motor vehicle, attending or participating in an event, or within 100 feet of a fishing shanty at a speed exceeding 10 miles per hour.

11) in a manner which violates rules promulgated by the department.

## **B. Restrictions on Wetland Disturbance**

a. A person may not operate an off-highway vehicle in a manner to:

- 1) carelessly upset the natural and ecological balance of a wetland or public waters wetland; or
- 2) impact a wetland or public waters wetland in excess of the amounts authorized the DNR.

## **C. Restrictions on Private Land Access**

a. The DNR may grant up to a ten-year permit to exempt a private landowner or leaseholder from this section when the only reasonable access to a permit applicant's land is across state land.

## **2. Off-Highway Vehicle Civil Citations**

### **A. Civil Citation and Authority to Issue**

a. A conservation officer or other licensed peace officer may issue a civil citation to a person who operates an off-highway

vehicle of any manner listed in the Restrictions of Operations Section (Section 1).

1) A civil citation under General Restrictions (Section 1, A) shall require restitution for public and private property damage and impose a penalty of:

- i) not less than \$250 for the first offense; and
- ii) not less than \$500 for the second offense; and
- iii) not less than \$1000 for third and subsequent offenses.

2) A civil citation under Restrictions on Wetland Disturbance (Section 1, B) shall require restitution for public and private property damage and impose a penalty of:

- i) not less than \$500 for the first offense;
- ii) not less than \$1000 for the second offense; and
- iii) not less than \$2500 for third and subsequent offenses.

3) If the peace officer determines that there is damage to property requiring restitution, the DNR must send a written explanation of the extent of the damage and the cost of the repair by first class mail to the address provided by the person receiving the citation within 15 days of the date of the citation.

4) An off-highway vehicle or all-terrain vehicle that is equipped with a snorkel device and receives a civil citation under this section is subject to twice the penalty amounts in paragraphs (1) and (2).

#### **B. Appeals.**

Civil citations may be appealed if the recipient of the citation requests a hearing by notifying the DNR in writing within 30 days after receipt of the citation or, if applicable, within 15 days after the date of mailing the explanation of restitution. If a hearing is not requested within the 30-day period, the citation becomes a final order not subject to further review.

**C. Enforcement.**

Penalty amounts must be remitted within 30 days of issuance of the citation.

**D. Allocation of Penalty Amounts.**

Penalty amounts collected from civil citations issued under this section must be paid to the treasury of the DNR and shall be credited to the off-highway vehicle segregated account. Penalty amounts credited under this subdivision are dedicated for the enforcement of off-highway vehicle laws and environmental restoration.

**E. Selection of Remedy.**

A peace officer may not seek both civil and misdemeanor penalties for offenses listed in Off-Highway Vehicle Civil Citations.

**3. Off-Highway Vehicle Use of State Lands Restricted**

**A. Designated Trails.**

a. Except as otherwise allowed by law or rules adopted by the DNR effective June 1, 2011, notwithstanding section 11, the use of off-highway vehicles is prohibited on state land administered by the DNR, and on county-administered forest land within the boundaries of a state forest, except on roads and trails specifically designated and posted by the DNR for use by off-highway vehicles.

b. Paragraph (a) does not apply to US Forest Service land if the Forest Service modifies restrictions on the use of off-highway vehicles on land within the forest.

**B. Off-Highway Vehicle Seasons.**

a. The DNR shall prescribe seasons for off-highway vehicle use on state forest lands. Except for designated forest roads, a person must not operate an off-highway vehicle on state forest lands outside of the seasons prescribed under this paragraph.

b. The DNR may designate and post winter trails on state forest lands for use by off-highway vehicles.

**C. Mapped Trails.**

a. After completion of official department off-highway vehicle maps for the area, a person must not operate an off-highway vehicle on state land that is not mapped for the type of off-

highway vehicle. This paragraph does not apply US Forest Service land.

**D. Exemption from Rulemaking.**

3  
a. Determinations of the DNR under this section may be modified by written order published in the State Register and are exempt from the rulemaking provisions

✓ **4. Off-Highway Vehicle Damage Account**

**A.** A segregated off-highway vehicle damage account is created in the natural resources fund.

a. Money in the off-highway vehicle damage account is appropriated to the OHV Council for the repair or restoration of property damaged by the illegal operation of off-highway vehicles or the operation of off-highway vehicles in a non-permitted area after August 1, 2011, and for the costs of administration for this section.

b. Before the DNR may make a payment from this account, the DNR must:

1) Determine whether the damage to the property was caused by the non-permitted or illegal use of off-highway vehicles.

2) Determine that the applicant has made reasonable efforts to identify the responsible individual and obtain payment from the individual, and that the applicant has made reasonable efforts to prevent reoccurrence.

c. Determinations of the DNR under this section must be made by written order and approved by the OHV Council.

**5. Use of Department Resources**

**A.** The DNR may permit Department of Natural Resources personnel and equipment from the Division of Parks and Recreation to be used to assist local units of government in developing and maintaining off-highway vehicle grant-in-aid trails located on property owned by or under the control of the local unit of government.

## **6. Registration**

### **A. General Requirements**

a. Unless exempted in Section 6, B, no person may operate and an owner may not give permission for another to operate an Off-Highway Vehicle unless the vehicle has been registered under this section.

b. No person may operate and an owner may not give permission for another to operate an Off-Highway Vehicle unless the vehicle is equipped with an un-opened OHV spill kit approved by the Wisconsin Off-Highway Vehicle Association (WOHVA).

### **B. Exemptions**

- a. Registration is not required for an OHV which is:
- 1) a farm vehicle being used for farming.
  - 2) a vehicle used for military, fire, emergency, or law enforcement purposes.
  - 3) a construction or logging vehicle being used in the performance of its common function.
  - 4) a motor vehicle owned by or operated under contract with a utility, whether publicly or privately owned, when used for work on utilities.
  - 5) federal, state, tribal or municipal vehicles.
  - 6) a commercial vehicle being used for its intended purpose.
  - 7) snow-grooming equipment when used for its intended purpose.
  - 8) or an aircraft.

### **C. Application; Issuance; Reports**

a. Application for registration or continued registration must be made to the DNR or an authorized deputy registrar of OHV's, in a form prescribed by the DNR. The form must state the name and address of every owner of the off-highway vehicle.

b. Upon receipt of the application and the appropriate fee, the DNR or authorized deputy registrar shall issue to the applicant, or provide to the dealer, an assigned OHV Sticker. Once issued, the OHV Sticker must be affixed to the OHV according to paragraph (c).

c. The OHV Sticker shall be prominently displayed:

- 1) Class A vehicles must have the sticker attached to the windshield on the upper right (passenger) side.

2) Class B vehicles must have the sticker attached to the vehicles within 2 inches of the right rear brake light assembly.

d. The DNR shall develop a registration system to issue OHV Class A and OHV Class B stickers.

e. In addition to other fees prescribed by law, a filing fee of \$5.00 is charged for each OHV registration renewal, duplicate or replacement registration card, and replacement decal and a filing fee of \$10.00 will be charged for each OHV registration and registration transfer issued by DNR and must be deposited in the DNR General Account.

e. Unless exempted in Section 6, (a), the owner of an OHV must display a registration decal issued by the DNR.

f. The decal must be attached in a manner so that it is not removable.

g. The issued decals must be of a size to work within the constraints of the electronic licensing system, not to exceed three inches high and three inches wide.

h. Display of a registration decal is not required for an OHV:

- 1) while being operated on private property,
- 2) or while competing in a closed-course event.

#### **D. Registration Card; Signature; Replacement Fee**

a. The DNR shall provide to the registrant a registration card that includes:

- 1) the registration number, the date of registration, the make and serial number of the OHV,
- 2) the owner's name and address,
- 3) and additional information the DNR may require.

b) The registration is not valid unless signed by at least one owner.

c) Information concerning registrations must be kept by the DNR.

d) Upon a satisfactory showing that the registration card has been lost or destroyed, the DNR shall issue a replacement

registration card upon payment of a fee of \$5. The fees collected from replacement registration cards shall be credited to the DNR General Account.

**E. Report of transfers; fee**

a. A person who sells or transfers ownership of an OHV registered under this section shall report the sale or transfer to the DNR within 15 days of the date of transfer.

b. An application for transfer must be executed by the registered owner and the buyer on a form prescribed by the DNR with the owner's registration certificate, a bill of sale, and a \$5 fee.

**F. Registration fees**

a. The fee for registration of an OHV under this section is:

- ✓ 1) \$50.00 annually for a Class A OHV,
- ✓ 2) and \$100.00 annually for a Class B OHV.

b. A Class A OHV is a street legal, licensed, passenger vehicle that meets all safety standards and requirements as set forth by the State of Wisconsin Department of Motor Vehicles.

c. A Class B OHV is a non-street legal, registered or unregistered passenger vehicle that meets all safety standards and requirements as set forth by the DNR (See Attachment).

d. The total registration fee for OHV's owned by a dealer and operated for demonstration or testing purposes is \$50 per year.

- 1) Dealer registrations are not transferable.

e. The total registration fee for OHV's owned by a manufacturer and operated for research, testing, experimentation, or demonstration purposes is \$150 per year.

- 2) Manufacturer registrations are not transferable.

f. The fees collected under this subdivision must be deposited in the state treasury and credited to the Segregated OHV Registration Account and may not be used for any purpose not intended by this legislation.

g. All OHV operators must hold a valid passenger vehicle driver's license issued in their state of residence.

### **G. Fee Uses**

- a. All fees collected under the Class A and Class B OHV Sticker Program shall be used for the following programs/grants in the following percentages after a \$5 administration fee is forwarded to the DNR:
  - 1) 33.33% for OHV safety training and enforcement of OHV laws,
  - 2) 33.33% for OHV trail acquisition and refurbishments,
  - 3) and 33.33% for OHV a recreation area/park acquisition, development and operation.
- b. Money in the account is available until expended.

### **H. Renewals**

- a. An owner of an OHV must renew registration in a manner prescribed by the DNR upon payment of the appropriate registration fee in Section 6, (F).

### **I. Registration by minors prohibited.**

- a. A person under the age of 18 may not register an OHV.

### **J. Refunds.**

- a. The DNR may issue a refund on a registration, not including any issuing fees;
  - 1) if the refund request is received within 12 months of the original registration,
  - 2) and the OHV was registered incorrectly by the DNR or the deputy registrar;
  - 3) or the OHV was registered twice.

## **7. OHV Council**

### **A. Establishment**

- a. The DNR will establish an OHV Council and whose members are appointed by the Governor of the State of Wisconsin.
- b. The OHV Council shall consist of nine members.
- c. OHV Council appointees;
  - 1) shall come from a pool of candidates active within the OHV community,

2) shall serve a 3-year term with up to two re-appointments,

3) and shall be appointed so as to allow 3 council seats to expire annually.

d. The OHV Council shall administer, authorize and oversee all disbursements from the Segregated OHV Registration Fund account, the Segregated OHV Damage Fund account and the Segregated OHV Law Enforcement Fund account.

e. The OHV Council shall meet quarterly

f. The OHV Council shall authorize and approve grants adhering to restrictions in Section 6 (G)

g. The OHV Council shall be consulted and approve all DNR policies and rules pertaining to OHV use.

## ✓ 8. Sound Emissions

### A. General Restrictions

a. All OHV's must have a complete exhaust system with spark arrester muffler to adhere to Section 8A(b).

b. Sound emissions of all OHV's are limited to not more than 96 dbA when measured at a distance of 20 inches from the tail pipe, at a 90 degree angle for the end of the tail pipe, while of motor/engine is being operated at 2000 RPM's or 50% of full throttle (if tachometer is not installed or non-operational).

## 9. Rulemaking & Accident Reporting

### A. General Rulemaking Requirements

a. With a view of achieving proper use of OHV's consistent with public safety and protection of the environment, the DNR in consultation with the OHV Council, shall adopt rules relating to:

1) registration of OHV's and display of registration stickers;

2) use of OHV's insofar as game and fish resources are affected;

3) use of OHV's on public lands and waters under the jurisdiction of the DNR;

4) uniform signs to be used by the state, counties, and cities necessary or desirable to control, direct, or regulate the operation and use of OHV's;

5) and OHV sound levels.

b. The DNR, in consultation with the OHV Council and Department of Transportation, may adopt rules regulating the use of OHV's on public roads.

**B. General Accident Reporting Requirements**

a. The operator and an officer investigating an accident of an OHV resulting in injury requiring medical attention or hospitalization or death of a person or total damage to an extent of \$500 or more shall forward within ten days a written report of the accident to the DNR on a form prescribed by the DNR.

**10. Education and Training**

**A. Program Established; When Required.**

a. The DNR shall establish or supervise a comprehensive OHV Environment and Safety Education Program, including;

1) the preparation and dissemination of vehicle information and safety advice to the public,

2) the training of OHV operators,

3) and the issuance of OHV safety certificates to operators who successfully complete the OHV Environment and Safety Education Program.

4) the intoxicated operation of an OHV laws.

5) OHV Environment and Safety Education Program classes shall be instructed by certified instructors.

6) An instructor conducting the program of instruction under Section 10 (A)(a) shall;

i) collect the fee from each person who receives instruction. The department may determine the portion of this fee, which may not exceed 50% that the instructor may retain to defray expenses

incurred by the instructor in conducting the program.

ii) remit the remainder of the fee or, if nothing is retained the entire fee to the department.

7) 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 \$5.00.

b. The DNR working with the OHV Council shall establish an OHV Safety Chief Instructor Program to assist in certifying instructors qualified to present the OHV Environment and Safety Education and Training Program.

c. An individual who is convicted of violating a law related to the operation of an OHV must successfully complete the OHV Environment and Safety Education and Training Program established under Section 8(a) before continuing operation of an OHV.

d. Any OHV operator born after December 31, 1993 must hold a valid OHV Environment and Safety Education and Training Program certificate to legally operate an OHV.

#### **B. Program Grant Funding Established**

a. The department shall establish a program to award grants to organizations that meet the eligibility requirements under Section 10 (A).

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

- 1) The organization is a non-stock corporation organized in this state.
- 2) The organization promotes the operation of OHV's in a manner that is safe and responsible and that does not harm the environment.
- 3) The organization promotes the operation of OHV's in a manner that does not conflict with the laws, rules, and departmental policies that relate to the operation of OHV's.
- 4) The interest of the organization is limited to the recreational operation of OHV's on OHV trails and other areas that are off the highways.
- 5) The organization has a board of directors that has a majority of members who are representatives of OHV clubs.
- 6) The organization provides support to OHV 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 Section 10 (A) by conducting activities that include all of the following:

- 1) Collecting data on the recreational operation of OHV's off the highways.
- 2) Providing assistance to the department in locating, recruiting, and training instructors for the program established under Section 10 (A)(b).
- 3) Attempting to increase participation by current and future OHV operators and owners in the program established under Section 10(A)(a).
- 4) Assisting the department of natural resources and the Department of Tourism in creating an outreach program to inform local communities of appropriate OHV use in their communities and of the economic benefits that may be gained from promoting tourism to attract OHV operators.
- 5) Attempting to improve and maintain its relationship with the department of natural resources, the department of tourism, OHV dealers, OHV manufacturers, 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 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 OHV's that is given in the field to OHV operators.
- 7) Publishing a manual in cooperation with the department that shall be used to train volunteers in monitoring the recreational operation of OHV's for safety issues and other issues that relate to the responsible operation of OHV's.

d. The department shall pay the grants from the appropriation under Section 6.

## **B. Fees**

a. For the purposes of administering the OHV Environment and Safety Education and Training Program and to defray a portion of the expenses of training and certifying OHV operators;

- 1) the DNR shall collect a fee not to exceed \$25.00 from each person who receives the training.
- 2) the DNR shall collect a fee not to exceed \$5 for issuing a duplicate OHV Environment and Safety Education and Training Program certificate.

3) the fees shall be deposited in the state treasury and credited to the Natural Resources fund.

**C. Cooperation and Consultation**

- a. The DNR shall cooperate with private organizations and associations, private and public corporations, and local governmental units in furtherance of the program established under this section.
- b. The DNR shall consult with the OHV Council in regard to all training program subject matter and performance testing that leads to the certification of OHV operators.

**D. Exemption from rulemaking and legislative approval**

- a. The fees provided for under Section 10 (B) are not subject to the rulemaking provisions of Section 7 (A)(d). The DNR may establish and adjust the fees to adequately cover the costs associated with education and safety programs.

**11. Youthful Operators**

**A. Prohibitions**

- a. A person less than 16 years of age may not operate an OHV on ~~public lands~~ *trail (OHV)*
- b. A person under the age of 18 may not operate an OHV on public lands unless accompanied by another OHV driven by a person 18 years of age or older.
- c. All OHV operators must hold a valid driver's license issued in their state of residence.
- d. A person less than 18 years of age may not operate an OHV on public land unless wearing a safety helmet approved by the DOT.

**12. General OHV Restrictions**

**A. Prohibitions on Owner**

- a. An owner of an OHV may not knowingly allow it to be operated contrary to this section.

**B. Additional Restrictions**

- a. Operator and passengers must wear eye-protective device in lieu of windshield.
- b. Operator must hold a valid drivers license.

**C. Class A OHV Restrictions**

- a. Class A OHV must be a licensed, passenger vehicle which meets all requirements of a licensed passenger vehicle of the Wisconsin DMV.

**C. Class B OHV Restrictions**

- a. Class B OHV must meet all safety standards and requirements as set forth by the DNR. (See Attachment)
- b. Class B OHV may not be operated by individuals under the age of 18.

Class B OHV operator and passengers must wear DNR approved protective helmet.

**13. Off-Highway Vehicle Account & Receipts and Allocations**

**A. Registration Revenue**

- a. Fees from the registration of OHV's and the non-refunded gasoline tax attributable to OHV use must be deposited in the state treasury and credited to the OHV Registration account in the Natural Resources fund.

**B. Purposes**

- a. Money in the OHV Segregated Registration Fund account may only be spent for:
  - 1) Administration, enforcement, and implementation of Section 10; or
  - 2) Acquisition, maintenance, and development of OHV trails and use areas; or
  - 3) Grants-in-aid to counties and municipalities to construct and maintain OHV trails and use areas.
- b. Money in the OHV Segregated Registration Fund account shall only be spent in accordance with Section 6.
- c. The distribution of funds made available for grants-in-aid must be approved by the OHV Council and within the restrictions set forth in Section 10.

## **14. Operation Requirements & Local Regulation**

### **A. Operation on Public Road Right-of-Way**

a. A person may not operate an OHV within the right-of-way of a town road or a trunk, county state-aid, or county highway in this state unless the right-of-way encompasses:

- 1) a trail administered by the DNR and designated for OHV use or multiple use; or
- 2) a corridor access trail designated under Section 14 (A)(b).

b. A road authority may designate, with the approval of the DNR, corridor access trails on public road rights-of-way for gaining access to established OHV trails or areas.

c. A person may not operate a Class B OHV upon a trunk, county state-aid, or county highway in this state.

d. A person may not operate an OHV at any time within the right-of-way of an interstate highway or freeway within this state.

### **B. Crossing Public Road and Right-of-Way**

a. A person operating an OHV may make a direct crossing of a public road right-of-way provided:

- 1) 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 OHV prior to the crossing and yields the right-of-way to all other vehicles, pedestrians, and electric assistive mobility devices using the roadway.
- 2) In crossing a divided road, the crossing is made only at an intersection of the road with another public road; and
- 3) If the crossing is made between the hours of one-half hour after sunset to one-half hour before sunrise or in conditions of reduced visibility, only if both front and rear lights are on.

b. Section 14 applies only to the operation of OHV's upon streets and highways, except for those provisions relating to

required equipment and those provisions that by their nature have no application or have been otherwise addressed.

✓ **C. General Operation**

a. A person may not drive or operate an OHV:

- 1) at a rate of speed greater than reasonable or proper under the surrounding circumstances;
- 2) in a careless, reckless, or negligent manner so as to endanger or to cause injury or damage to the person or property of another;
- 3) in a tree nursery or planting in a manner that damages or destroys growing stock;
- 4) without a brake operational by either hand or foot;
- 5) on an OHV trail or area at a speed in excess of 20 mph;
- 6) in a manner that violates operation rules adopted by the DNR.

**D. Operating Under Influence of Alcohol or Controlled Substance**

a. A person may not operate or be in control of an OHV anywhere in this state or on the ice of any boundary water of this state while under the influence of alcohol or a controlled substance.

b. General Restrictions

- 1) No person may operate an OHV while under the influence of an intoxicant or controlled substance to a degree which renders him or her incapable of safe operation of an OHV vehicle.
- 2) No person may engage in the operation of an OHV while the person has an alcohol concentration of 0.08 or more.
- 3) No person may engage in the operation of an OHV vehicle while the person has a detectable amount of a restricted controlled substance in his or her blood.
- 4) No person may engage in the operation of a Class B OHV while the person has an alcohol concentration of 0.01 or more.

*When  
operated  
no OHV -  
no alcohol -  
0.01*

c. Operating with Alcohol Concentrations at Specified Levels Below Age 21

1) if a person has not attained the age of 21, the person may not engage in the operation of an OHV while he or she has an alcohol concentration of more than 0.0.

d. Related Charges

1) A person may be charged with and a prosecutor may proceed upon a complaint based upon a violation of any combination of Section 14 (D)(a), (b) or (c) or for acts arising out of the same incident or occurrence.

2) If the person is charged with violating any combination of Section 14 (D)(a), (b) or (c), the offenses shall be joined.

3) If the person is found guilty of any combination of Section 14 (D)(a), (b) or (c) 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.

e. Defenses

1) In an action under Section 14 (D)(a) 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.

f. Causing Injury

1) No person while under the influence of an intoxicant to a degree which renders him or her incapable of safe operation of an OHV may cause injury to another person by the operation of an OHV.

2) No person who has an alcohol concentration of 0.08 or more may cause injury to another person by the operation of an OHV.

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 OHV.

4) No person under the age of 21 with an alcohol concentration above 0.0 may cause injury to another person by the operation of an OHV.

g. Related Charges

1) A person may be charged with and a prosecutor may proceed upon a complaint based upon a violation of any

combination of Section 14 (D)(a) and (f), for acts arising out of the same incident or occurrence.

2) If the person is charged with violating any combination of Section 14 (D)(a) and (f), the offenses shall be joined.

3) If the person is found guilty of any combination of Section 14 (D)(a) and (f) 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.

4) If the person is found guilty of any combination of Section 14 (D)(a) and (f) for acts arising out of the same incident or occurrence all fines and penalties shall be doubled.

#### h. Defenses

1) In an action under Section 14 (D)(a) and (f), 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 0.08 or more, did not have a detectable amount of a restricted controlled substance in his or her blood, or if under the age of 21 had maintained an alcohol concentration of 0.0.

2) In an action under Section 14 (D)(a) and (f) 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.

### E. Preliminary Breath Screening Test

#### a. Requirement

1) 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 OHV law and if, prior to an arrest, the law enforcement officer requested the person to provide this sample.

#### b. Use of Test Results

1) 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 OHV law or for the purpose of deciding whether or not to request a chemical test under Section 14 (F).

2) Following the preliminary breath screening test, chemical tests may be required of the person under Section 14 (F).

c. Admissibility

1) 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.

**F. Applicability of the Intoxicated Operation of an OHV Law**

a. In addition to being applicable upon highways, the intoxicated operation of an OHV law is applicable upon all premises held out to the public for use of their OHV's, whether such premises are publicly or privately owned and whether or not a fee is charged for the use thereof.

**G. Implied Consent**

a. Any person who engages in the operation of an OHV within this state 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 Section 14 (D)(b).

**H. 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 OHV law and if he or she is requested to provide the sample by a law enforcement officer.

2) 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 OHV law and if he or she is requested to submit to the test by a law enforcement officer.

b. Information

1) A law enforcement officer requesting a person to provide a sample or to submit to a chemical test under Section 14 (H) 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:

i. That he or she is deemed to have consented to tests under Section 14 (H).

ii. That a refusal to provide a sample or to submit to a chemical test constitutes a violation under Section 14 (H).

iii. That in addition to the designated chemical test under Section 14 (H)(a)(1), he or she may have an additional chemical test under Section 14 (H)(a)(2).

c. Unconscious Person.

1) 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 OHV law, one or more chemical tests may be administered to the person without a request under Section 14 (H)(a)(1) and without providing information under Section 14 (H)(a)(2).

d. Test Facility

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.

2) A test facility shall be prepared to administer 2 of the 3 chemical tests of breath, blood or urine for the purpose of authorized analysis.

3) The department may enter into agreements for the cooperative use of test facilities.

e. Designated Chemical Test

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

f. Additional Chemical Test

1) A test facility shall specify one chemical test of breath, blood or urine, other than the test designated Section 14 (H)(f)(1), which it is prepared to administer for the purpose of authorized analysis as an additional chemical test.

g. Validity & Procedure

1) A chemical test of blood or urine conducted for the purpose of authorized analysis is valid as provided under s. 343.305 (6).

2) The duties and responsibilities of the laboratory of hygiene, department of health and family services and department of transportation under s. 343.305 (6) apply to a chemical test of blood or urine conducted for the purpose of authorized analysis under this subsection.

3) Blood may be withdrawn from a person arrested for a violation of the intoxicated operation of an OHV law only by a physician, registered nurse, medical technologist, physician assistant or person acting under the direction of a physician

and the person who withdraws the blood, the employer of that person and any hospital where blood is withdrawn have immunity from civil or criminal liability as provided under s. 895.53.

h. Report

1) A test facility which 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.

2) 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.

j. Additional & Optional Chemical Tests

1) Additional Chemical Test

i. If a person is arrested for a violation of the intoxicated operation of an OHV law or is the operator of an OHV 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, the person may request the test facility to administer an additional chemical test at his or her own expense,

ii. the person shall be granted 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) Optional Test

i. If a person is arrested for a violation of the intoxicated operation of an OHV law and if the person is not requested to provide a sample or to submit to a test, the person may request the test facility to administer a chemical test of his or her breath, blood or urine, at his or her own expense,

ii. the person shall be granted 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.

iii. If a test facility is unable to perform a chemical test of breath, the person may request the test facility to administer a blood or urine additional chemical test.

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

v. 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 Section 14 (H)(a).

k. Admissibility, Effect of Test Results & Other Evidence

1) The results of a chemical test required or administered under Section 14 (H)(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 OHV law on the issue of whether the person was under the influence of an intoxicant or the issue of whether the person had alcohol concentrations at or above specified levels or a detectable amount of a restricted controlled substance in his or her blood.

2) Results of these chemical tests shall be given the effect required under s.885.235.

3) This subsection does not limit the right of a law enforcement officer to obtain evidence by any other lawful means.

l. Refusal

1) 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.

2) A person shall not be deemed to refuse to provide a sample or to submit to a chemical test if it is shown by a preponderance of the evidence that the refusal was due to a physical inability to provide the sample or to submit to the test due to a physical disability or disease unrelated to the use of an intoxicant.

3) Issues in any action concerning violation are limited to:

i. Whether the law enforcement officer had probable cause to believe the person was violating or had violated the intoxicated operation of an OHV law.

ii. Whether the person was lawfully placed under arrest for violating the intoxicated operation of an OHV law.

iii. Whether the law enforcement officer requested the person to provide a sample or to submit to a chemical test and provided the information required or,

iv. Whether the request and information was unnecessary under paragraph (c) of this Section..

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

m. Report Arrest to Department

1) If a law enforcement officer arrests a person for a violation of the intoxicated operation of an OHV law or the refusal law, the law enforcement officer shall notify the department of the arrest as soon as practicable.

n. Officer's Action After Arrest for Operating an OHV While Under Influence of Intoxicant

1) A person arrested for a violation of Section 14 (D) or a local ordinance in conformity therewith may not be released until 12 hours have elapsed from the time of his or her arrest or unless a chemical test administered under Section 14 (H) 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.

o. Public Education Program

1) The department shall promulgate rules to provide for a public education program to:

- i. Inform OHV operators of the prohibitions and penalties included in the intoxicated operation of an OHV law.
- ii. Provide for the development of signs briefly explaining the intoxicated operation of an OHV law.
- iii. The department shall develop and issue an educational pamphlet on the intoxicated operation of an OHV law to be distributed, beginning in 2012, to persons issued OHV registration certificates under Section 6.

**I. Conviction Tied to State Drivers License**

a. A person convicted of operating an OHV under the influence of alcohol or a controlled substance will have that conviction also applied to on their state drivers license.

**15. Organized Events**

A. Nothing in this section prohibits the use of OHV's within the right-of-way of a state trunk or county state-aid highway or upon public lands under the jurisdiction of the DNR, in an organized event, subject to the consent of the official or board having jurisdiction over the highway or public lands.

B. In permitting the event, the official or board having jurisdiction may prescribe restrictions, conditions, or permit revocation procedures, as the official or board considers advisable.

C. Organized events are not eligible for grants or other funding through the OHV Registration Fund.

✓ **16. Regulations by Political Subdivisions**

A. A county, city, or town, acting through its governing body, may regulate the operation of OHV's on public lands and property under its' jurisdiction other than public road rights-of-way within its boundaries by resolution or ordinance of the governing body and by giving appropriate notice, except that regulation must conform strictly to the provisions under Section 14 and;

- a. the regulations must be consistent with current State statutes and DNR policies.
- b. an ordinance may not impose a fee for the use of public land or water under the jurisdiction of either the U.S. Forest Service, Department of Natural Resources, or another agency of the state, or for the use of an access to it owned by the state, a county, or a city.

20 **17. Penalties**

A person who violates a provision of these statutes is guilty of a misdemeanor.

**18. OHV Grants-in-Aid**

This section applies to grants-in-aid under sections 7, 8, and 11

If the DNR determines that a grant-in-aid recipient has violated any federal or state law or any of the terms of the grant agreement with the DNR, the DNR may withhold all grant payments for any work occurring after the date the recipient was notified of the violation and seek restitution for any property damage caused by the violation.

A grant-in-aid recipient may appeal the DNR's decision to the OHV Council

**19. Restrictions on ATV and Snowmobile Trails**

The DNR shall not permit land administered by the DNR and used primarily for ATV or snowmobile trails/routes to be used by OHVs except:

- a. Upon approval by the legislature,
- b. or in designated motorized recreation areas.

✓  
**Attachment:**

**Class B OHV Safety Standards and Requirements**

Vehicle must have:

- A minimum of 4 wheels and be propelled by them using an electric or internal combustion engine.
- If equipped with an internal combustion engine, the OHV must have a complete exhaust system including a muffler and tail pipe.
- A permanently mounted and attached fuel cell or tank.
- A frame mounted roll cage constructed of at least 1.75", 0.120" wall DOM which encloses the vehicle operator and all passengers.
- A blaze orange safety flag of at least 144 square inches displayed a minimum of 8 feet above the ground permanently attached on the passenger's side, front of the vehicle.
- 2 operating head lights and 2 operating tail/brake lights.
- Operational turn signals (front & rear).
- Operational side markers on operator and passenger side (front & rear).
- Operator and passenger must be in permanently mounted seats equipped with shoulder and lap belts.
- Infant or child seats are not allowed in a Class B OHV.
- Battery must be permanently secured in the vehicle.

**Attachment:**

**Letters of Endorsement**

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