



2009 ASSEMBLY BILL 435

September 23, 2009 – Introduced by Representatives MURSAU, BROOKS, GUNDERSON, KAUFERT, KNODL, NASS, NERISON, NYGREN, A. OTT, SUDER, TOWNSEND, M. WILLIAMS and BALLWEG, cosponsored by Senators HOLPERIN, HANSEN, OLSEN and SCHULTZ. Referred to Committee on Transportation.

1 **AN ACT** *to renumber and amend* 23.33 (5) (a); *to amend* 23.33 (4) (b), 23.33 (5)
2 (b) 1., 23.33 (5) (b) 2., 23.33 (5) (c), 23.33 (5) (d), 23.33 (11) (b), 23.33 (11m) (e)
3 2., 23.50 (1), 23.50 (3), 23.53 (1), 23.56 (1), 23.57 (1) (intro.), 23.58, 23.62 (1)
4 (intro.) and 800.02 (2) (b); and *to create* 23.33 (1) (im), 23.33 (4) (f), 23.33 (5)
5 (a) 2. and 23.33 (11r) of the statutes; **relating to:** the operation of all-terrain
6 vehicles on highways for the purpose of certain types of access and granting
7 rule-making authority.

Analysis by the Legislative Reference Bureau

Under current law, a person may not operate an all-terrain vehicle (ATV) on the roadway of a highway, street, or road except under certain limited circumstances. This bill specifically authorizes the operation of ATVs, on a portion of a roadway and shoulder of a highway, street, or road if the highway, by operators who are at least 16 years old, street, or road is within the jurisdiction of a county, town, city, or village (municipality) that has enacted an ordinance that allows the operation of ATVs for the purposes of residential access or access to and from a lodging establishment or a campground. A municipality may not enact an ordinance for access to and from a lodging establishment unless it has also enacted an ordinance for residential access.

For a state trunk highway (STH), the portion of the highway that may be open to this access must be the shortest distance between the residence or lodging

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establishment and the ATV route or trail. For distances on a STH that are more than one-quarter mile, the Department of Transportation (DOT) must approve the access. For distances on a STH that are one-quarter mile or less, a municipality may enact such an ordinance unless the portion of the STH to be affected has been closed to ATVs based on DOT's finding that it is unsafe to operate ATVs on that portion of the STH. For any highway other than a STH, the distance open for ATV access may not be more than five miles.

The bill prohibits a municipality from enacting an ordinance that allows the operation of ATVs for residential or lodging access on the roadway or shoulder of any freeway or interstate and on any highway that is located in a state park or state forest if ATV operation is prohibited in the park or forest. Under the bill, an access ordinance must impose a speed limit of 25 miles per hour and must require that the ATV be operated as far on the right as possible.

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

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

1 **SECTION 1.** 23.33 (1) (im) of the statutes is created to read:

2 23.33 (1) (im) “Lodging establishment” means any of the following:

3 1. A bed and breakfast establishment, as defined in s. 254.61 (1).

4 2. A hotel, as defined in s. 254.61 (3).

5 3. A tourist rooming house, as defined in s. 254.61 (6).

6 4. A campground.

7 **SECTION 2.** 23.33 (4) (b) of the statutes is amended to read:

8 23.33 (4) (b) *Other highways; operation restricted.* No person may operate an
9 all-terrain vehicle on a highway except as authorized under pars. (d) ~~and (e)~~ to (f)
10 or as authorized by rules promulgated by the department and approved by the
11 department of transportation.

12 **SECTION 3.** 23.33 (4) (f) of the statutes is created to read:

13 23.33 (4) (f) *Operation for purpose of access.* A person may operate an
14 all-terrain vehicle on a portion of the roadway or shoulder of a highway for the

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1 purpose of residential access or for the purpose of access to and from a lodging
2 establishment if the operation is in compliance with an ordinance enacted under sub.
3 (11r).

4 **SECTION 4.** 23.33 (5) (a) of the statutes is renumbered 23.33 (5) (a) 1. and
5 amended to read:

6 23.33 (5) (a) 1. No person under 12 years of age may operate an all-terrain
7 vehicle unless he or she is operating the all-terrain vehicle for an agricultural
8 purpose and he or she is under the supervision of a person over 18 years of age or
9 unless he or she is operating a small all-terrain vehicle on an all-terrain vehicle trail
10 designated by the department and he or she is accompanied by his or her parent. No
11 person who is under 12 years of age may operate an all-terrain vehicle which is an
12 implement of husbandry on a roadway under any circumstances. No person who is
13 under 12 years of age may operate an all-terrain vehicle on a roadway under the
14 authorization provided under sub. (4) (d) 6. under any circumstances. No person who
15 is under 12 years of age may rent or lease an all-terrain vehicle. For purposes of this
16 ~~paragraph~~ subdivision, supervision does not require that the person under 12 years
17 of age be subject to continuous direction or control by the person over 18 years of age.

18 **SECTION 5.** 23.33 (5) (a) 2. of the statutes is created to read:

19 23.33 (5) (a) 2. No person who is under 16 years of age may operate an
20 all-terrain vehicle on a roadway or a shoulder of a highway as authorized under sub.
21 (4) (f) under any circumstances.

22 **SECTION 6.** 23.33 (5) (b) 1. of the statutes is amended to read:

23 23.33 (5) (b) 1. No person who is at least 12 years of age and who is born on or
24 after January 1, 1988, may operate an all-terrain vehicle unless he or she holds a

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1 valid safety certificate issued by this state or another state or by a province of
2 Canada.

3 **SECTION 7.** 23.33 (5) (b) 2. of the statutes is amended to read:

4 23.33 (5) (b) 2. Any person who is required to hold an all-terrain vehicle safety
5 certificate while operating an all-terrain vehicle shall carry the certificate on the
6 all-terrain vehicle and shall display the certificate to a law enforcement officer on
7 request. ~~Persons enrolled in a safety certification program approved by the~~
8 ~~department may operate an all-terrain vehicle in an area designated by the~~
9 ~~instructor.~~

10 **SECTION 8.** 23.33 (5) (c) of the statutes is amended to read:

11 23.33 (5) (c) *Exceptions.* Paragraphs (a) and (b) do not apply to a person who
12 operates an all-terrain vehicle exclusively on land under the management and
13 control of the person's immediate family. ~~Paragraphs (a) and (b) do not apply to a~~
14 ~~person at least 12 years of age but under 16 years of age who holds a valid certificate~~
15 ~~issued by another state or a province of Canada.~~

16 **SECTION 9.** 23.33 (5) (d) of the statutes is amended to read:

17 23.33 (5) (d) *Safety certification program established.* The department shall
18 establish or supervise the establishment of a program of instruction on all-terrain
19 vehicle laws, including the intoxicated operation of an all-terrain vehicle law,
20 regulations, safety and related subjects. The department shall establish by rule an
21 instruction fee for this program. The department shall issue certificates to persons
22 successfully completing the program. An instructor conducting the program of
23 instruction under this paragraph shall collect the fee from each person who receives
24 instruction. The department may determine the portion of this fee, which may not
25 exceed 50%, that the instructor may retain to defray expenses incurred by the

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1 instructor in conducting the program. The instructor shall remit the remainder of
2 the fee or, if nothing is retained, the entire fee to the department. The department
3 shall issue a duplicate certificate of accomplishment to a person who is entitled to a
4 duplicate certificate of accomplishment and who pays a fee of \$2.75. Persons enrolled
5 in a safety certification program approved by the department may operate an
6 all-terrain vehicle in an area designated by the instructor.

7 **SECTION 10.** 23.33 (11) (b) of the statutes is amended to read:

8 23.33 (11) (b) If a county, town, city, or village adopts an ordinance regulating
9 all-terrain vehicles, its clerk shall immediately send a copy of the ordinance to the
10 department, to the state traffic patrol, and to the office of any law enforcement
11 agency of the municipality or county, town, city, or village having jurisdiction over
12 any highway designated as an all-terrain vehicle route of the highways to which the
13 ordinance is applicable.

14 **SECTION 11.** 23.33 (11m) (e) 2. of the statutes is amended to read:

15 23.33 (11m) (e) 2. Subsections (3), (3g), (4) (a) to (e), (4c) to (4x), (6), (7), (10),
16 (12), and (13).

17 **SECTION 12.** 23.33 (11r) of the statutes is created to read:

18 23.33 (11r) ORDINANCES FOR ACCESS TO RESIDENCES AND LODGING. (a) *Definition.*
19 In this subsection, “municipality” means county, town, city, or village.

20 (b) *On state trunk highways.* 1. Subject to subds. 3. and 4. and pars. (cm) and
21 (cr), a municipality may enact an ordinance allowing the operation of all-terrain
22 vehicles on a roadway and shoulder of a state trunk highway for any portion of the
23 highway that is within the jurisdiction of the municipality for the purpose of
24 traveling the shortest distance that is necessary to go between a residence and the
25 all-terrain vehicle route or all-terrain vehicle trail that is closest to that residence.

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1 2. Subject to subds. 3. and 4. and pars. (cm) and (cr), a municipality may enact
2 an ordinance allowing the operation of all-terrain vehicles on a roadway and
3 shoulder of a state trunk highway for any portion of the highway that is within the
4 jurisdiction of the municipality for the purpose of traveling the shortest distance that
5 is necessary to go between a lodging establishment and the all-terrain vehicle route
6 or all-terrain vehicle trail that is closest to that lodging establishment if the
7 municipality also enacts or has in effect an ordinance enacted under subd. 1.

8 3. A county or town may not enact an ordinance under subd. 1. or 2. that will
9 allow the operation of all-terrain vehicles on a roadway and shoulder of a portion of
10 a state trunk highway that is more than one-quarter mile in length unless the county
11 or town has first received specific authorization from the department of
12 transportation to allow the operation of all-terrain vehicles on the roadway and
13 shoulder of that portion of the state trunk highway.

14 4. A county or town may enact an ordinance under subd. 1. or 2. that will allow
15 the operation of all-terrain vehicles on a roadway and shoulder of a portion of a state
16 trunk highway that is one-quarter mile in length or less if the operation of
17 all-terrain vehicles on the roadway and shoulder has not been prohibited by rule by
18 the department of transportation based on a finding by the department of
19 transportation that such operation is unsafe.

20 (c) *On other highways.* 1. Subject to pars. (cm) and (cr), a municipality may
21 enact an ordinance allowing the operation of all-terrain vehicles on a roadway and
22 shoulder of a highway that is not a state trunk highway for any portion of the
23 highway that is within the jurisdiction of the municipality for the purpose of
24 traveling a distance of not more than 5 miles to go between a residence and the
25 all-terrain vehicle route or all-terrain vehicle trail that is closest to that residence.

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1 2. Subject to pars. (cm) and (cr), a municipality may enact an ordinance
2 allowing the operation of all-terrain vehicles on a roadway and shoulder of a
3 highway that is not a state trunk highway for any portion of the highway that is
4 within the jurisdiction of the municipality for the purpose of traveling a distance of
5 not more than 5 miles to go between a lodging establishment and the all-terrain
6 vehicle route or all-terrain vehicle trail that is closest to that lodging establishment
7 if the municipality also enacts or has in effect and ordinance enacted under subd. 1.

8 (cm) *On highways in state parks and forests.* A municipality may not enact an
9 ordinance under par. (b) or (c) that will allow the operation of all-terrain vehicles on
10 roadways or shoulders of highways that are located within a state park or state forest
11 if the operation of all-terrain vehicles is prohibited within the state park or state
12 forest.

13 (cr) *On interstates and freeways.* A municipality may not enact an ordinance
14 under par. (b) or (c) that will allow the operation of all-terrain vehicles on a roadway
15 or shoulder of a freeway that is a part of the federal system of interstate and defense
16 highways or on a roadway or shoulder of any other freeway.

17 (ct) *Speed limits.* An ordinance enacted under par. (b) or (c) shall limit the speed
18 of an all-terrain vehicles being operated as authorized under this subsection to speed
19 limits not in excess of 25 miles per hour.

20 (cv) *Right side of roadway.* An ordinance enacted under par. (b) or (c) shall
21 require that the operation of all-terrain vehicles as authorized under this subsection
22 be as far on the right of the roadway or shoulder as is practicable.

23 (d) *Model ordinances.* The department and the off-the-road vehicle council
24 shall jointly prepare model ordinances as examples of ordinances that a municipality
25 may enact under this subsection.

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1 **SECTION 13.** 23.50 (1) of the statutes is amended to read:

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

12 **SECTION 14.** 23.50 (3) of the statutes is amended to read:

13 23.50 (3) All actions in municipal court to recover forfeitures, plus costs, fees,
14 and surcharges imposed under ch. 814, for violations of local ordinances enacted by
15 any local authority in accordance with s. 23.33 (11) (am) or (11r) or 30.77 shall utilize
16 the procedure in ch. 800. The actions shall be brought before the municipal court
17 having jurisdiction. Provisions relating to citations, arrests, questioning, releases,
18 searches, deposits, and stipulations of no contest in ss. 23.51 (1m), (3), and (8), 23.53,
19 23.54, 23.56 to 23.64, 23.66, and 23.67 shall apply to violations of such ordinances.

20 **SECTION 15.** 23.53 (1) of the statutes is amended to read:

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

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1 except that the uniform traffic citation created under s. 345.11 may be used by a
2 traffic officer employed under s. 110.07 in enforcing s. 167.31 or by an officer of a law
3 enforcement agency of a municipality or county or a traffic officer employed under
4 s. 110.07 in enforcing s. 287.81. In accordance with s. 345.11 (1m), the citation shall
5 not be used for violations of ch. 350 relating to highway use. The citation may be used
6 for violations of local ordinances enacted by any local authority in accordance with
7 s. 23.33 (11) (am) or (11r) or 30.77.

8 **SECTION 16.** 23.56 (1) of the statutes is amended to read:

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

16 **SECTION 17.** 23.57 (1) (intro.) of the statutes is amended to read:

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

23 **SECTION 18.** 23.58 of the statutes is amended to read:

24 **23.58 Temporary questioning without arrest.** After having identified
25 himself or herself as an enforcing officer, an enforcing officer may stop a person in

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

11 **SECTION 19.** 23.62 (1) (intro.) of the statutes is amended to read:

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

19 **SECTION 20.** 800.02 (2) (b) of the statutes is amended to read:

20 800.02 (2) (b) Except for parking violations, in traffic regulation actions in
21 municipal court, the uniform traffic citation specified in s. 345.11 shall be used in lieu
22 of the citation form specified in par. (a). In actions for violations of local ordinances
23 enacted in accordance with s. 23.33 (11) (am) or (11r) or 30.77, the citation form
24 specified in s. 23.54 shall be used in lieu of the citation form specified in par. (a).

25 (END)