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

4 (3) ALL-TERRAIN VEHICLES AND SNOWMOBILES. Except as provided in this
5 subsection, the intoxicated operation of a sport recreational vehicle law is applicable
6 to the operation of an all-terrain vehicle and a snowmobile upon frozen waters and
7 upon all property, whether the property is publicly or privately owned and whether
8 or not a fee is charged for the use of that property. The intoxicated operation of a sport
9 recreational vehicle law does not apply to the operation of an all-terrain vehicle or
10 a snowmobile on private land that is not designated as an all-terrain vehicle trail
11 or a snowmobile trail unless an accident involving personal injury occurs as the
12 result of the operation of the all-terrain vehicle or snowmobile or the all-terrain
13 vehicle or snowmobile was operated on the private land without the consent of the
14 owner of that land.

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

The bill makes the following changes:

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

2. The provisions describing the applicability of the intoxicated operation of a sport recreational vehicle law are combined with respect to all-terrain vehicles and snowmobiles. The law will be applicable upon frozen waters and upon all property, whether the property is publicly or privately owned and whether or not a fee is charged for the use of that property. The factual question of whether property is held out to the public for use of an all-terrain vehicle is eliminated. The law will not apply to the operation of an all-terrain vehicle or a snowmobile on private land not designated as an all-terrain vehicle trail or as a snowmobile trail unless an accident involving personal injury occurs as the result of the operation of the all-terrain vehicle or snowmobile *or* the

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all-terrain vehicle or the snowmobile was operated on the private land without the consent of the owner of that land.

1 **350.58 Implied consent.** A person who engages in the operation of a sport
2 recreational vehicle or commercial motorboat in or on those areas enumerated in s.
3 350.56 is considered to have given consent to provide one or more samples of his or
4 her breath, blood, or urine for the purpose of authorized analysis as required under
5 s. 350.60. A person who engages in the operation of a sport recreational vehicle or
6 commercial motorboat within this state is considered to have given consent to submit
7 to one or more chemical tests of his or her breath, blood, or urine for the purpose of
8 authorized analysis as required under s. 350.60.

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

9 **350.60 Chemical tests. (1) REQUIREMENT.** (a) *Samples; submission to tests.*
10 A person shall provide one or more samples of his or her breath, blood, or urine for
11 the purpose of authorized analysis if he or she is arrested for a violation of the
12 intoxicated operation of a sport recreational vehicle law or the intoxicated operation
13 of a commercial motorboat law, and if he or she is requested to provide the sample
14 by a law enforcement officer. A person shall submit to one or more chemical tests of
15 his or her breath, blood, or urine for the purpose of authorized analysis if he or she
16 is arrested for a violation of the intoxicated operation of a sport recreational vehicle
17 law or the intoxicated operation of a commercial motorboat law, and if he or she is
18 requested to submit to the test by a law enforcement officer.

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

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

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

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

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

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

21 (c) *Unconscious person.* A person who is unconscious or otherwise not capable
22 of withdrawing consent is presumed not to have withdrawn consent under this
23 subsection, and if a law enforcement officer has probable cause to believe that the
24 person violated the intoxicated operation of a sport recreational vehicle law or the
25 intoxicated operation of a commercial motorboat law, one or more chemical tests may

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1 be administered to the person without a request under par. (a) and without providing
2 information under par. (b).

3 (2) CHEMICAL TESTS. (a) *Test facility.* Upon the request of a law enforcement
4 officer, a test facility shall administer a chemical test of breath, blood, or urine for
5 the purpose of authorized analysis. A test facility shall be prepared to administer
6 2 of the 3 chemical tests of breath, blood, or urine for the purpose of authorized
7 analysis. The department may enter into agreements for the cooperative use of test
8 facilities.

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

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

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

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1 hospital where blood is withdrawn have immunity from civil or criminal liability as
2 provided under s. 895.53.

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

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

20 (b) *Optional test.* If a person is arrested for a violation of the intoxicated
21 operation of a sport recreational vehicle law or the intoxicated operation of a
22 commercial motorboat law and if the person is not requested to provide a sample or
23 to submit to a test under sub. (1) (a), the person may request the test facility to
24 administer a chemical test of his or her breath or, at his or her own expense,
25 reasonable opportunity to have any qualified person administer a chemical test of his

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1 or her breath, blood, or urine for the purpose of authorized analysis. If a test facility
2 is unable to perform a chemical test of breath, the person may request the test facility
3 to administer the designated chemical test under sub. (2) (b) or the additional
4 chemical test under sub. (2) (c).

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

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

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

19 (5) **REFUSAL.** No person may refuse a lawful request to provide one or more
20 samples of his or her breath, blood, or urine or to submit to one or more chemical tests
21 under sub. (1). A person shall not be considered to refuse to provide a sample or to
22 submit to a chemical test if it is shown by a preponderance of the evidence that the
23 refusal was due to a physical inability to provide the sample or to submit to the test
24 due to a physical disability or disease unrelated to the use of an intoxicant. Issues

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1 in any action for which the penalties under s. 350.74 (1) may be imposed for a
2 violation of sub. (1) or this subsection are limited to:

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

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

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

12 (c).

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

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

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

18 **350.62 Report arrest to department.** If a law enforcement officer arrests
19 a person for a violation of the intoxicated operation of a sport recreational vehicle law,
20 the intoxicated operation of a commercial motorboat law, or the refusal law, the law
21 enforcement officer shall notify the department of the arrest as soon as practicable.

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

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1 **350.64 Officer's action after arrest for operating a sport recreational**
2 **vehicle or commercial motorboat while under influence of intoxicant.** A
3 person arrested for a violation of s. 350.52 (1) (a) or (b) or a local ordinance in
4 conformity with those paragraphs or s. 350.52 (2) (a) or (b) may not be released until
5 12 hours have elapsed from the time of his or her arrest or unless a chemical test
6 administered under s. 350.60 (1) (a) shows that the person has an alcohol
7 concentration of less than 0.02, but the person may be released to his or her attorney,
8 spouse, relative, or other responsible adult at any time after arrest.

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

9 **350.66 Public education program.** (1) The department shall promulgate
10 rules to provide for a public education program to:

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

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

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

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

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

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

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

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

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

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

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

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

1 **350.70 Liability of landowners.** Section 895.52 applies to this subchapter.

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

2 **350.72 Local ordinances.** A county, town, city, or village may enact an
3 ordinance that is imposed, in strict conformity with one or more provisions of this
4 subchapter for which the penalty for a violation is a forfeiture.

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

5 **350.74 Penalties. (1) PENALTIES RELATED TO PROHIBITED OPERATION OF A SPORT**
6 **RECREATIONAL VEHICLE OR COMMERCIAL MOTORBOAT; INTOXICANTS; REFUSAL.** (a) Except
7 as provided under pars. (b) to (f), a person who violates s. 350.52 (1) (a) or (b) or the
8 refusal law shall forfeit not less than \$150 nor more than \$300 and shall have his or
9 her privilege to operate a sport recreational vehicle or commercial motorboat revoked
10 for one year.

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

19 (c) Except as provided in pars. (f) and (g) and subject to sub. (7), a person who
20 violates s. 350.52 (1) (a) or (b) and who, within 10 years prior to the arrest for the

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1 current violation, was convicted 2 times previously under the intoxicated operation
2 of a sport recreational vehicle law, the intoxicated operation of a commercial
3 motorboat law, or the refusal law shall be fined not less than \$600 nor more than
4 \$2,000, shall be imprisoned for not less than 30 days nor more than one year in the
5 county jail, and shall have his or her privilege to operate a sport recreational vehicle
6 or commercial motorboat revoked for 3 years.

7 (d) Except as provided in pars. (f) and (g) and subject to sub. (7), a person who
8 violates s. 350.52 (1) (a) or (b) and who, within 10 years prior to the arrest for the
9 current violation, was convicted 3 times previously under the intoxicated operation
10 of a sport recreational vehicle law, the intoxicated operation of a commercial
11 motorboat law, or the refusal law shall be fined not less than \$600 nor more than
12 \$2,000, shall be imprisoned for not less than 60 days nor more than one year in the
13 county jail, and shall have his or her privilege to operate a sport recreational vehicle
14 or commercial motorboat revoked for 4 years.

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

23 (f) If there was a minor passenger under 16 years of age in or on the vehicle at
24 the time of the violation that gave rise to the conviction under s. 350.52 (1) (a) or (b),
25 the applicable minimum and maximum forfeitures, fines, or imprisonment under

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1 par. (a), (b), (c), (d), or (e) for the conviction are doubled. An offense under s. 350.52
2 (1) (a) or (b) that subjects a person to a penalty under par. (c), (d), or (e) when there
3 is a minor passenger under 16 years of age in the sport recreational vehicle or
4 commercial motorboat is a felony and the place of imprisonment shall be determined
5 under s. 973.02.

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

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

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

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

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

18 **(2) OPERATION DURING REVOCATION OR SUSPENSION.** No person whose operating
19 privilege has been revoked under sub. (1) (a) to (f) or suspended under s. 350.76 (4)
20 may operate a sport recreational vehicle or commercial motorboat during the period
21 of revocation. Any person who violates this subsection shall be fined not more than
22 \$2,500 and imprisoned for not more than one year in the county jail.

23 **(3) CAUSING BODILY HARM OR PROPERTY DAMAGE; INTOXICANTS.** A person who
24 violates s. 350.52 (2) by causing bodily harm shall be fined not less than \$300 nor

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1 more than \$2,000 and may be imprisoned for not less than 30 days nor more than one
2 year in the county jail.

3 (4) PROPERTY DAMAGE^{CS} When sentencing a person convicted for a violation of
4 s. 350.52 (1) or (2), a court may order the payment of restitution, using the applicable
5 procedures under s. 800.093 or 973.20, if the violation resulted in damage to the
6 property of a person other than the defendant.

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

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

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

16 2. If the violation results in bodily harm to another, or causes damage to the
17 property of another, as defined in s. 939.22 (28), the person shall be fined not less than
18 \$1,000 nor more than \$10,000 and may be imprisoned for not more than 3 years.

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

22 4. If the violation results in the death of another, the person shall be fined not
23 less than \$1,100 nor more than \$10,000 and may be imprisoned for not more than
24 7 years and 6 months.

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

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

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

10 2. The intoxicated boating law and refusal law, as defined in s. 30.50 (4m) and
11 (9x), 1999 stats.

12 3. The intoxicated snowmobiling law and refusal law, as defined in s. 350.01
13 (9c) and (10r), 1999 stats.

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

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

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

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1 **(9) INTOXICANTS; ASSESSMENT.** In addition to any other penalty or order, a person
2 who violates s. 350.52 (1) or (2) or 350.60 (5), or who violates s. 940.09 or 940.25 if
3 the violation involves the operation of a sport recreational vehicle or commercial
4 motorboat, shall be ordered by the court to submit to and comply with an assessment
5 by an approved public treatment facility for an examination of the person's use of
6 intoxicants. The assessment order shall comply with s. 343.30 (1q) (c) 1. a. to c.
7 Intentional failure to comply with an assessment ordered under this subsection
8 constitutes contempt of court and is punishable under ch. 785.

9 **(10) CERTIFICATE OF SATISFACTORY COMPLETION OF SAFETY COURSE.** In addition to
10 any other penalty or order, a person who violates s. 350.52 (1) or (2), 350.60 (5),
11 940.09, or 940.25, and the violation involves the operation of a motorboat or a
12 commercial motorboat, shall be ordered by the court to obtain a certificate of
13 satisfactory completion of a safety course under s. 30.74 (1) (a). If the person has a
14 valid certificate at the time that the court imposes sentence, the court shall
15 permanently revoke the certificate and order the person to obtain a certificate of
16 satisfactory completion of a safety course under s. 30.74 (1) (a).

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

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

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

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penalties are applied to a person convicted of the intoxicated use of another type of vehicle.

2. The definition of the term "intoxicated operation of an all-terrain vehicle law" includes a local ordinance in conformity with the provisions prohibiting intoxicated operation and the causing of injury while under the influence of an intoxicant. The definitions of the similar terms relating to motorboats and snowmobiles do not include a local ordinance in conformity with the prohibition against causing injury. The bill follows the format of the current statutory definition of "intoxicated operation of an all-terrain vehicle law" by including a local ordinance in conformity with the prohibitions against both intoxicated operation and the causing of injury. Under proposed s. 350.72, a county, town, city or village may enact an ordinance, for which a forfeiture may be imposed, in strict conformity with subch. II of ch. 350. The effect of this definitional format is that if a person is found guilty of causing injury by intoxicated use under a local ordinance, that conviction will count as a repeat offense for purposes of determining the penalty imposed on a repeat offender.

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

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

5. Under current law, with respect to all-terrain vehicles and snowmobiles, a second offense within 5 years and third or subsequent offenses within 5 years will result in additional penalties. However, the intoxicated boating law adds 2 additional categories of increased penalties for a person who has been convicted 4 times within 5 years or 5 or more times within 5 years. The bill applies the intoxicated boating law provisions to all sport recreational vehicles and commercial motorboats and increases the maximum period of imprisonment to a period of 7 years and 6 months in accordance with similar provisions in 1997 Wisconsin Act 283. In addition, the 5-year look-back period in current law is increased to 10 years for the purpose of reviewing prior convictions. However, the increased look-back period will be phased in so that convictions occurring prior to January 1, 1997 will not be counted. See SECTION 68 of the bill relating to the initial applicability of the provisions of the bill.

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

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

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

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

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

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

11 (b) If the forfeiture is imposed by a municipal court, the court shall transmit
12 the amount to the treasurer of the county, city, town, or village, and that treasurer
13 shall make payment of 38.5% of the amount to the state treasurer as provided in s.
14 66.0114 (1) (bm). The treasurer of the city, town, or village shall transmit the
15 remaining 61.5% of the amount to the treasurer of the county.

16 (3) All moneys collected from the operator improvement surcharge that are
17 transmitted to the county treasurer under sub. (2) (a) or (b), except the amounts that

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1 the county treasurer is required to transmit to the state treasurer under sub. (2) (a)
2 or (b), shall be retained by the county treasurer and disbursed to the county
3 department under s. 51.42 for services under s. 51.42 for operators referred through
4 assessment.

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

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

10 **SECTION 60.** 350.99 of the statutes is renumbered 350.21, and 350.21 (1), as
11 renumbered, is amended to read:

12 350.21 (1) Whoever is concerned in the commission of a violation of this ~~chapter~~
13 subchapter for which a forfeiture is imposed is a principal and may be charged with
14 and convicted of the violation although he or she did not directly commit it and
15 although the person who directly committed it has not been convicted of the violation.

16 **SECTION 61.** 800.001 of the statutes is amended to read:

17 **800.001 Definition.** In this chapter, "general statutory counterpart
18 ordinance" means an ordinance which prohibits conduct which is the same as or
19 similar to conduct prohibited by state statute, but does not include an ordinance
20 enacted by a local authority in accordance with s. 30.77 ~~or~~, 349.06, or 350.72.

21 **SECTION 62.** 800.02 (2) (b) of the statutes is amended to read:

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1 800.02 (2) (b) Except for parking violations, in traffic regulation actions in
2 municipal court, the uniform traffic citation specified in s. 345.11 shall be used in lieu
3 of the citation form specified in par. (a). In actions for violations of local ordinances
4 enacted in accordance with s. 23.33 (11) (am) ~~or, 30.77, or 350.72~~, the citation form
5 specified in s. 23.54 shall be used in lieu of the citation form specified in par. (a).

6 **SECTION 63.** 885.235 (1m) and (4) of the statutes are amended to read:

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

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

25 **SECTION 64.** 938.343 (9) of the statutes is amended to read:

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1 938.343 (9) If the violation is one under s. 23.33 or subch. II of ch. 350, or under
2 an ordinance enacted in conformity with s. 23.33 or enacted under s. 350.72,
3 concerning the use of all-terrain vehicles, order the juvenile to enroll and participate
4 in an all-terrain vehicle safety course.

5 **SECTION 65.** 940.09 (1m) and (3) of the statutes are amended to read:

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

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

23 **SECTION 66.** 940.25 (1m) and (3) of the statutes are amended to read:

24 940.25 (1m) A person may be charged with and a prosecutor may proceed upon
25 an information based upon a violation of sub. (1) (a) or (b) or both, sub. (1) (a) or (bm)

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

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

14 **SECTION 67.** 967.055 (2) (b) of the statutes is amended to read:

15 967.055 (2) (b) Notwithstanding s. 971.29, if the prosecutor seeks to dismiss
16 or amend a charge regarding the operation of any type of motorboat under s. ~~30.681~~
17 ~~(1)~~ 350.52 (1) or a local ordinance in conformity therewith, a charge under s. ~~30.681~~
18 ~~(2)~~ 350.52 (2), a charge under s. ~~30.684 (5)~~ 350.60 (5) or a local ordinance in
19 conformity therewith or a charge under s. 940.09 or 940.25 if the offense involved the
20 use of ~~a~~ any type of motorboat, except a sailboat operating under sail alone, the
21 prosecutor shall apply to the court. The application shall state the reasons for the
22 proposed amendment or dismissal. The court may approve the application only if the
23 court finds that the proposed amendment or dismissal is consistent with the public's
24 interest in deterring the operation of motorboats by persons who are under the
25 influence of an intoxicant, a controlled substance, a controlled substance analog or

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1 any combination of an intoxicant, controlled substance and controlled substance
2 analog, under the influence of any other drug to a degree which renders him or her
3 incapable of operating a motorboat safely, or under the combined influence of an
4 intoxicant and any other drug to a degree which renders him or her incapable of
5 operating ~~a~~ any type of motorboat safely.

SECTION 68. Initial applicability.

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

12 **SECTION 69. Effective date.** This act takes effect on January 1, 2003.

13 (END)

Insert 15-10 (page 1 of 2)

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

subch. I of ch.

349.03 (1) (intro.) Chapters 341 to 348 and 350 shall be uniform in operation throughout the state.

No local authority may enact or enforce any traffic regulation unless such regulation:

History: 1971 c. 234, 277; 1973 c. 86, 87, 336; 1979 c. 59; 1981 c. 20, 165; 1983 a. 535; 1985 a. 194; 1987 a. 3, 27; 1989 a. 105; 1993 a. 113; 1999 a. 150 s. 672.

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

History: 1971 c. 234, 277; 1973 c. 86, 87, 336; 1979 c. 59; 1981 c. 20, 165; 1983 a. 535; 1985 a. 194; 1987 a. 3, 27; 1989 a. 105; 1993 a. 113; 1999 a. 150 s. 672.

Insert 15-10 (page 2 of 2)

Section #. 349.06 (1) (a) of the statutes is amended to read:

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

History: 1971 c. 277, 278, 307; 1973 c. 336; 1975 c. 248; 1981 c. 20; 1987 a. 3, 27; 1993 a. 198, 256; 1995 a. 44; 1997 a. 190, 277.

subch. I of ch.

(end of insert)

LRB-2892/2dn
TNF: King

DRAFTER'S NOTE

Under current law, if the motor vehicle operating privilege of a person holding a commercial driver license is suspended or revoked for operating a non-commercial motor vehicle while intoxicated, the person may apply for an occupational license to operate commercial motor vehicles. Under this bill, if a person's operating privilege ~~for sport recreational vehicles and commercial motorboats~~ is revoked for operating a sport recreational vehicle while intoxicated, ^(please italicize) the person may not operate sport recreational vehicles or commercial motorboats during the revocation period.

Do you want to exclude operating privilege revocation for commercial motorboats in those cases involving operating a sport recreational vehicle while intoxicated? And exclude operating privilege revocation for sport

recreational vehicles in those cases involving operating
a commercial motorboat while intoxicated,

TNF

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-2892/2dn
TNF:kmg:kjf

November 28, 2001

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

Timothy N. Fast
Senior Legislative Attorney
Phone: (608) 266-9739
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State of Wisconsin

LEGISLATIVE REFERENCE BUREAU

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LEGAL SECTION: (608) 266-3561
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November 28, 2001

MEMORANDUM

To: Legislative Council - JLC

From: Timothy N. Fast, Senior Legislative Attorney

Re: LRB-2892/2 Intoxicated operation of sport recreational vehicles

The attached draft was prepared at your request. Please review it carefully to ensure that it is accurate and satisfies your intent. If it does and you would like it jacketed for introduction, please indicate below for which house you would like the draft jacketed and return this memorandum to our office. If you have any questions about jacketing, please call our program assistants at 266-3561. Please allow one day for jacketing.

~~_____~~ JACKET FOR ASSEMBLY _____ JACKET FOR SENATE

If you have any questions concerning the attached draft, or would like to have it redrafted, please contact me at (608) 266-9739 or at the address indicated at the top of this memorandum.

If the last paragraph of the analysis states that a fiscal estimate will be prepared, the LRB will request that it be prepared after the draft is introduced. You may obtain a fiscal estimate on the attached draft before it is introduced by calling our program assistants at 266-3561. Please note that if you have previously requested that a fiscal estimate be prepared on an earlier version of this draft, you will need to call our program assistants in order to obtain a fiscal estimate on this version before it is introduced.

Please call our program assistants at 266-3561 if you have any questions regarding this memorandum.