

SB337



Serving the
Lodging Industry
for Over 100 Years

January 30, 2002

TO: The Senate Environmental Resources Committee

FROM: Trisha A. Pugal, CAE
President, CEO

RE: **Concerns Regarding SB337
Minors Wearing PFD's in Boats**

The Wisconsin Innkeepers Association, representing over 1200 hotels, motels, resorts, inns, and bed and breakfasts throughout Wisconsin would like to share our concerns relating to SB337 requiring minors to wear Personal Floatation Devices (PFD's).

Many lodging properties on lakes or rivers have boats available to rent or loan to their guests. While they have Personal Floatation Devices for the boats, they have no control over when guests actually wear them.

Our concern is a lack of clarification in SB337 relating to liability. Who is liable if a minor does not actually wear a PFD as required?

Clarification is needed that a boat owner who rents or loans boats and who has PFD's available for those who advise minors would be in the boats, would not be held liable if the minor does not actually wear it.

We would be happy to provide further information should you wish for more.

Thank-you for your consideration.

1025 S. Moorland Rd.
Suite 200
Brookfield, WI 53005
262/782-2851
Fax# 262/782-0550
wia@execpc.com
<http://www.lodging-wi.com>

cc: WIA Executive Committee
2002 Legislative/Tourism Committee Chairman
Janet Swandby & Todd Pierce

TAP/jmp/1/30/02



Wisconsin Child Fatality Review Team

January 31, 2002

Senator James Baumgart, Chair
Senate Environmental Resources Committee
306 South Capitol
Madison WI 53703

Dear Senator Baumgart:

Attached is a copy of testimony submitted on behalf of the Wisconsin Child Fatality Review Team in support of SB337. I have also attached a copy of the CFRT mission/purpose statement as well as a roster of members.

I appreciate your attention to this testimony.

Sincerely,

Handwritten signature of William H. Perloff in cursive, with the initials "amr" written below the name.

William H. Perloff, M.D., Ph.D.
Chair

Attachments

amr

Senate Environmental Resources Committee
Senator James Baumgart - Chairman
Room 300 SE
9:30 AM

Child Fatality Review Team
SB337
Position: In Support

Mr. Chairperson, Members of the Committee I am Dr. William H. Perloff, Chairman of the Child Fatality Review Team. The State of Wisconsin Child Fatality Review Team (CFRT) is in support of SB 337.

We feel that the proposal to require children to wear PFD's is a positive step in the prevention of child fatalities. While child fatalities related to water activities occur in many different environments, this bill has the potential to decrease the number of child boating related fatalities in Wisconsin.

The Child Fatality Review Team has no preference as to the exact age that this bill should apply to but believe that any age between 12 and 16 would be acceptable. Boaters above 12 years of age are generally recognized to have the ability to don a personal flotation device in a crisis situation, where those 12 and under are less likely to be able to do so.

We believe that this proposal would also be consistent with the National Transportation Safety Boards recommendation to reduce child fatalities.

While the CFRT recommends that all children learn how to swim as a preventative measure to water related child fatalities, we also realize that this bill is the best option currently available to reduce the boating related fatalities.

WISCONSIN STATEWIDE CHILD FATALITY REVIEW TEAM

Purpose

The goal of the state child fatality review team is to reduce preventable childhood deaths in Wisconsin. The statewide team will gather information on unexpected and accidental child deaths in Wisconsin and use the information gathered to:

1. advise the legislature and state agencies on the need for modifications to law, policy or practice
2. educate the public regarding the incidence and causes of child deaths, and specific steps the public can take to prevent future deaths
3. identify training needs and make training resources available to statewide professional organizations, advocacy groups and others.
4. facilitate the development of local/regional teams.

Members

- The Attorney General or designee
- The Secretary of the Department of Health and Family Services or designee
- The Superintendent of Public Schools or designee
- The Secretary of the Department of Transportation or designee
- The Secretary of the Department of Natural Resources or designee
- A representative from the Wisconsin District Attorney's Association
- Law Enforcement Representative
- Child Protective Service Representative
- Epidemiologist
- Medical Examiner/Coroner
- Pediatrician
- Statewide Child Advocacy Representation

Staff: DOJ/CJA grant coordinator
 Rep from DHFS Center for Health Statistics

02/22/01

**WISCONSIN CHILD FATALITY REVIEW TEAM
APPOINTED BY ATTORNEY GENERAL JAMES E. DOYLE**

NAME	PHONE/FAX NUMBER	
William H. Perloff, M.D., Ph.D. 9527 N. Bay Drive Baileys Harbor, WI 54202-9504 (CHAIR) E-Mail: wperloff@dcwis.com	920/839-9282 FAX: 920/839-9565	
Anne Arnesen, Executive Director Wisconsin Council on Children and Families 16 North Carroll Street Madison, WI 53703 E-Mail: aarnesen@facstaff.wisc.edu	608/284-0580 Ext. 310 FAX: 608/284-0583	
Richard Aronson Chief Medical Officer Public Health Dept. of Health & Family Services One West Wilson - 243 Madison, WI 53707 E-Mail: aronra@dhfs.state.wi.us	608/266-5818 FAX: 608/266-3125	
Susan N. Dreyfus, Administrator Division of Children & Family Services Wisconsin Dept. of Health and Family Services One West Wilson Street, RM 650 Madison, WI 53707 E-Mail: dreyfsn@dhfs.state.wi.us	608/267-3905 FAX: 608/266-6836	
Thomas B. Eagon Portage County District Attorney City-County Building 1516 Church Street Stevens Point, WI 54481-3598 E-Mail: eagont@co.portage.wi.us	715/346-1300 FAX: 715/346-1236	
Bill Engfer Chief, Recreation Enforcement & Education Wisconsin Dept. of Natural Resources 101 S Webster Street PO Box 7921 Madison, WI 53707-7921 E-Mail: engfew@dnr.state.us	608/266-0859 FAX: 608/266-3696	
John Evans Wisconsin Department of Transportation 120B Hill Farms State Office Building PO Box 7910 Madison, WI 53707-7910 E-Mail: john.evans@dot.state.wi.us	608/266-3048 FAX: 608/267-0441	
Jeffrey M. Jentzen, M.D. Milwaukee County Medical Examiner 933 West Highland Avenue Milwaukee, WI 53233 E-Mail: jjentzen@aol.com	414/223-1200 FAX: 414/223-1237	

**WISCONSIN CHILD FATALITY REVIEW TEAM
APPOINTED BY ATTORNEY GENERAL JAMES E. DOYLE**

NAME	PHONE/FAX NUMBER	
Trudy A. Karlson, Ph.D. 110 North Allen Madison, WI 53705 E-Mail: trudy@n@chsra.wisc.edu	608/233-4526 FAX: 608/	
Kitty Kocol, Executive Director Wisconsin Department of Justice Office of Crime Victim Services 123 W. Washington Ave. PO Box 7951 Madison, WI 53707-7951 E-Mail: kocolkm@doj.state.wi.us	608/266-0109 FAX: 608/264-6368	
John Larson WI Coroners & Medical Examiners Assn. c/o Marathon County Coroner 500 Forest Street Wausau, WI 54403 E-Mail: jmlarson@mail.co.marathon.wi.us	715/261-1199 FAX: 715/261-1515	
Linda Caldart-Olson WI DPI/Student Services 125 South Webster Street PO Box 7841 Madison, WI 53707 E-Mail: linda.caldart-olson@dpi.state.wi.us	608/ 266-8857 FAX: 608/267-3746	
Peggy Peterson (ADVISORY MEMBER) Wisconsin Dept. of Health & Family Services One West Wilson Street - 172 Madison, WI 53707 E-Mail: PETERPL@dhfs.state.wi.us	608/267-7812 FAX: 608/261-4972	
Robin Ross Consumer Product Safety 15417 W National PMB 131 New Berlin, WI 53151 E-Mail: rross@CPSC.gov	262/679-8546 FAX: 262/679-8548	
Eric A. Runaas, Sheriff Rock County Sheriff's Department 200 East US Hwy. 14 Janesville, WI 53545	608/757-8000 FAX: 608/757-7997	
Roger Tepe Brown County Human Services Department 111 North Jefferson Street Green Bay, WI 54301 E-Mail: TepeRC@co.brown.wi.us	920/448-6010 FAX: 920/448-6166	
Ann Rulseh (CFRT STAFF) Wisconsin Department of Justice Children's Justice Act/OCVS 123 W. Washington Avenue PO Box 7951 Madison, WI 53707-7951 E-Mail: rulseham@doj.state.wi.us	608/266-3934 FAX: 608/264-6368	

Revised October 2001

Wisconsin Department of Natural Resources
Testimony on SB 337
Testimony by John Lacenski

Position: In Support

Mr. Chairperson, Members of the Committee I am John Lacenski, Boating Law Administrator with the Department of Natural Resources. The Department is appearing in support of SB 337.

This proposal would require all persons under the age of 16 to wear a personal flotation device while they are in a boat that is less than 26 feet in length while it is being operated, unless the person is in a cabin or below deck.

This bill has the potential to decrease the number of boating fatalities in Wisconsin by increasing the number of boaters wearing personal flotation devices. We feel that the bill would receive better support from the boating public if the age limit were amended to state "under the age of 13"

Boaters above 12 years of age are generally recognized to have the ability to don a personal flotation device in a crisis situation, where those 12 and under are less likely to be able to do so. In fact, in a survey of 1,900 Wisconsin boaters, 74% stated that they would not be opposed to requiring children under 12 to wear personal flotation devices.

This "under the age of 13" restriction would also be consistent with a pending federal regulation and with the current laws in 24 other states. Nine other states have set their age limit at a lower level. The National Transportation Safety Board has also recommended that the remaining states adopt mandatory personal flotation device legislation for children.

I would also suggest that the committee consider amending the wording of the proposed (c) by stating:

30.62 (3) (c) The operator of a boat may not allow any ~~No~~ person who is under the age of ~~16~~ 13 ~~may be~~ in a boat that is less than 26 feet in length while the boat is being operated ~~without~~ unless that person is wearing a personal flotation device that is a type I, type II, type III, or type V personal flotation device, as specified under 33 CFR part 175, subpart B, unless the person is in a cabin space or below deck.

This amendment would be consistent with the other boating statutes which make the operator responsible for the safety of the passengers in the boat as opposed to making the child the responsible party.



To: Members of the Wisconsin State Senate Committee on Environmental Resources

From: Elizabeth Schumacher, Legislative Counsel

Date: Thursday, January 31, 2002

Re: **Oppose SB 337, Requiring Persons Under the Age of 16 to Wear Personal Flotation Device in Boats Under 26 Feet in Length**

On behalf of the State Medical Society of Wisconsin, I would urge members of the Senate Committee on Environmental Resources to oppose the adoption of Senate Bill 337 as it is presently written.

While the SMS supports legislation mandating the use of personal flotation devices by minors, we feel that any state legislation should equal or exceed federal law on the same subject. It is our understanding that a change in the Federal Regulations, scheduled to become effective in February 2002, will void the age provision in SB 337.

A pending change to 33 CFR 175, subpart B, will require every child under the age of 13 to wear a personal flotation device (PFD) while aboard a recreational vessel under way and while not below decks or in an enclosed cabin. SB 337 sets the age required to wear a PFD at 16 or younger. We feel that aligning state law to match federal regulations will result in a much higher compliance rate among Wisconsin boaters.

The SMS would fully support an amended language SB 337, reducing the mandated age to 13 years or age or younger.

Thank you.

FEB 15 2002



Personal Watercraft Industry Association
1819 L Street NW, Suite 700
Washington, DC 20036-3830
202-721-1621 Fax: 202-721-1626

February 11, 2002

The Honorable Jim Baumgart
Wisconsin State Senate
Room 306 South, State Capitol
P.O. Box 7882
Madison, 53707-7882

RE: Support for SB 337

Dear Chairman Baumgart and Honorable Committee Members:

On behalf of the Personal Watercraft Industry Association (PWIA), I would like to offer our strong support for SB 337, which is currently being considered in the Senate Environmental Resources Committee.

The Personal Watercraft Industry Association (PWIA) is a national trade association that represents the five major manufacturers of personal watercraft (PWC): Bombardier (Sea-Doo), Yamaha (Waverunner), Kawasaki (Jet Ski), Polaris (Genesis), and Honda. As an affiliate of the National Marine Manufacturers Association, PWIA is a leading promoter of boating safety initiatives and environmentally friendly technology in the recreational boating industry. Our industry has worked to ensure that millions of Americans can continue to enjoy a favorite outdoor pastime with a minimal effect on our environment.

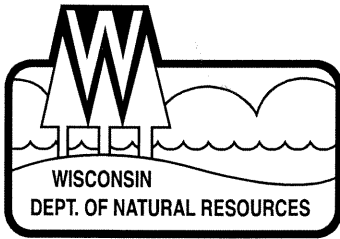
This measure will help provide children 16 years old and under an extra measure of protection by requiring them to wear a United States Coast Guard (U.S.C.G.) approved Personal Flotation Devices (PFD) when above deck on a vessel less than 26 feet in length. PWIA has long advocated strong boating education and safety measures, including the use of U.S.C.G. approved Type I, II, III, or V PFD's for all boaters. In fact, a central tenet of PWIA's Model Legislation, which has been adopted in 26 states, precludes anyone from operating a personal watercraft unless each person on board is wearing a U.S.C.G. approved PFD.

Please vote YES on SB 337 to help ensure that Wisconsin's young people are afforded the greatest measure of safety while they enjoy the State's lakes, rivers and coastlines. Thank you for your time and consideration.

Sincerely,

A handwritten signature in black ink that reads "Monita W. Fontaine". The signature is written in a cursive, flowing style.

Monita W. Fontaine, Esq.
Executive Director



State of Wisconsin \ DEPARTMENT OF NATURAL RESOURCES

Scott McCallum, Governor
Darrell Bazzell, Secretary

101 S. Webster St.
Box 7921
Madison, Wisconsin 53707-7921
Telephone 608-266-2621
FAX 608-267-3579
TTY 608-267-6897

March 1, 2002

Senator James Baumgart
Capital Room 306 South
Madison, WI 53707

Subject: Federal Regulation Requiring Children to Wear Life Jackets

Dear Senator Baumgart,

We were notified on February 27, 2002 that the U. S. Coast Guard adopted a new federal regulation that requires children under the age of 13 that are onboard recreational vessels that are underway, to wear personal flotation devices unless they are below decks or in an enclosed cabin. This rule is effective on March 29, 2002. I am bringing this matter to your attention because your committee is currently studying similar legislation for the state.

This new regulation creates a conflict between state and federal law on some of the state's most popular waterways. This regulation is applicable on the Federal Navigable waters of the state where jurisdiction is shared jointly between the state and federal governments. Besides Lake Michigan, Lake Superior and the Mississippi River these joint jurisdiction waters include such popular boating waterways as Big Green Lake, Black River, Castle Rock Lake, Chippewa River, Lake Delton, Fox River, Kinnickinnic River, Koshkonong Lake, Menominee River, Pentenwell Flowage, St. Croix River, Wisconsin River, Wolf River, and the Winnebago system of lakes. This conflict between state and federal law on these waterways will be a source of confusion to the state's boaters as there will be different regulations on different water bodies even within the same county.

Due to this upcoming conflict I would be willing to work with your committee to discuss the proposed bills under consideration that would create a similar requirement under state law. The federal regulation does contain a section that allows the state to preempt the federal age requirement if they establish a different age limit under state statute. This state established limit would then apply to all waters of the state. We feel that consistency is very important for Wisconsin's boaters and the tourists that recreate on our waterways. I hope that you agree that it is important to the state's boaters to resolve this conflict in the regulations before the start of this upcoming boating season.

Sincerely,

John Lacenski
Boating Law Administrator
(608) 264-8970

required by this part. You must furnish all of the information required by each form as indicated by the headings on the form and the instructions for the form, and as required by this part. You must file each form in accordance with its instructions.

(b) You may request forms from the ATF Distribution Center, P.O. Box 5950, Springfield, Virginia 22153-5950, or by accessing the ATF web site (<http://www.atf.treas.gov/>).

Par. 18. Amend § 46.72 by:

a. Revising the definition of "Appropriate ATF officer".

b. Removing the definitions of "Associate Director (Compliance Operations)", "Region", and "Regional Director".

The revision reads as follows:

§ 46.72 Meaning of terms.

* * * * *

Appropriate ATF officer. An officer or employee of the Bureau of Alcohol, Tobacco and Firearms (ATF) authorized to perform any functions relating to the administration or enforcement of this part by ATF Order 1130.28, Delegation of the Director's Authorities in 27 CFR parts 45 and 46.

* * * * *

§ 46.73 [Amended]

Par. 19. Remove the words "Regional regulatory administrators" from § 46.73 and add, in substitution, the words "An appropriate ATF officer".

Par. 20. Revise § 46.78 to read as follows:

§ 46.78 Action by appropriate ATF officer.

The appropriate ATF officer must act upon each claim for payment (without interest) of an amount equal to the tax paid or determined filed under this subpart and must notify the claimant. Claims and supporting data involving customs duties will be forwarded to the Commissioner of Customs with a summary statement of such officer's findings.

Par. 21. Revise § 46.79 to read as follows:

§ 46.79 Supervision.

Before payment is made under this subpart in respect of the tax, or tax and duty, on tobacco products, or cigarette papers or tubes rendered unmarketable or condemned by a duly authorized official, such tobacco products, or cigarette papers or tubes must be destroyed by suitable means under the supervision of an appropriate ATF officer who will be assigned for that purpose by another appropriate ATF officer. However, if the destruction of

such tobacco products, or cigarette papers or tubes has already occurred, and if the appropriate ATF officer who acts on the claim is satisfied with the supervision of such destruction, ATF supervision will not be required.

§ 46.81 [Removed and reserved]

Par. 22. Remove and reserve § 46.81.

Par. 23. Amend § 46.143 by:

a. Adding a new definition of "Appropriate ATF officer".

b. Removing the definitions of "ATF officer" and "Regional Director (compliance)".

The addition reads as follows:

§ 46.143 Meaning of terms.

* * * * *

Appropriate ATF officer. An officer or employee of the Bureau of Alcohol, Tobacco and Firearms (ATF) authorized to perform any functions relating to the administration or enforcement of this part by ATF Order 1130.28, Delegation of the Director's Authorities in 27 CFR Parts 45 and 46.

* * * * *

§ 46.150 [Amended]

Par. 24. Remove the words "of the region in which the distributor is located" from the first sentence of § 46.150(c).

§§ 46.153, 46.164, and 46.165 [Amended]

Par. 25. Add the word "appropriate" before the words "ATF officer" each place they appear in the following places:

a. The heading and text of § 46.153;

b. Section 46.164; and

b. Section 46.165.

Par. 26. Amend § 46.163 by:

a. Adding a definition of

"Appropriate ATF officer".

b. Removing the definition of "ATF officer".

The addition reads as follows:

§ 46.163 Meaning of terms.

* * * * *

Appropriate ATF officer. An officer or employee of the Bureau of Alcohol, Tobacco and Firearms (ATF) authorized to perform any functions relating to the administration or enforcement of this part by ATF Order 1130.28, Delegation of the Director's Authorities in 27 CFR Parts 45 and 46.

* * * * *

Par. 27. Remove the words "ATF Order 1130.24, Delegation Order—Delegation of the Director's Authorities in Subpart C and Subpart I of 27 CFR part 46" from the definition of "appropriate ATF officer" in § 46.192(a) and add, in substitution, the words "ATF Order 1130.28, Delegation of the

Director's Authorities in parts 45 and 46".

§ 46.270 [Removed and reserved]

Par. 28. Remove and reserve § 46.270.

Signed: November 13, 2001.

Bradley A. Buckles,

Director.

Timothy E. Skud,

Acting Deputy Assistant Secretary, Regulatory, Tariff and Trade Enforcement.

[FR Doc. 02-4386 Filed 2-26-02; 8:45 am]

BILLING CODE 4810-31-P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 175

[USCG-2000-8589]

RIN 2115-AG04

Wearing of Personal Flotation Devices (PFDs) by Certain Children Aboard Recreational Vessels

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard is requiring that children under age 13 aboard recreational vessels wear personal flotation devices (PFDs), or lifejackets. During 1995-1998, 105 children under 13 died in the water, 66 of them by drowning. This rule should reduce the number of children who drown because they were not wearing lifejackets.

DATES: This final rule is effective March 29, 2002.

ADDRESSES: Comments and material received from the public, as well as documents mentioned in this preamble as being available in the docket, are part of docket USCG-2000-8589 and are available for inspection or copying at the Docket Management Facility, U.S. Department of Transportation, room PL-401, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find this docket on the Internet at <http://dms.dot.gov>.

FOR FURTHER INFORMATION CONTACT: If you have questions on this final rule, call Carl Perry, Coast Guard, telephone: 202-267-0979. If you have questions on viewing the docket, call Dorothy Beard, Chief, Dockets, Department of Transportation, telephone 202-366-5149.

SUPPLEMENTARY INFORMATION:

Regulatory History

On May 1, 2001, we published in the *Federal Register* [66 FR 21717] a notice of proposed rulemaking (NPRM) entitled, "Wearing of Personal Flotation Devices (PFDs) by Certain Children Aboard Recreational Vessels". We received 46 letters commenting on the proposed rule. No public hearing was requested and none was held.

The NPRM followed two published notices of request for comments, both titled "Recreational Boating Safety—Federal Requirements for Wearing Personal Flotation Devices," under the docket number CGD 97-059. This first appeared in the *Federal Register* on September 25, 1997 [62 FR 50280]; the second, which extended the comment period, on March 20, 1998 [63 FR 13586]. The comments received in response to these notices were discussed in the NPRM [66 FR 21717].

After summarizing the comments received in response to the NPRM, we consulted the National Boating Safety Advisory Council (NBSAC) at its meeting in October 2001 regarding the results. NBSAC recommended that we proceed to publish a final rule, as proposed.

Background and Purpose

The number of deaths by drowning of children under 13 has decreased from 26 in 1995 to 11 in 1998. A review of statistics on recreational-boating accidents during 1998 showed that the rate of children drowning in States that require children to wear lifejackets (1.22 such drownings for every 1000 accidents) is lower than that of States that do not (1.31 such drownings for every 1000 accidents).

By late 1995, 26 States had enacted statutes requiring children to wear lifejackets while aboard recreational vessels. The requirements, however, were not consistent nationwide, affecting children of different ages, while aboard vessels of different sizes, and engaged in different activities. By late 1999, 36 States had enacted statutes requiring children to wear lifejackets while aboard recreational vessels. The requirements, however, still were not consistent nationwide. They varied by the age for wearing: from under age 18, when the vessel operator is under 18, to under age 6. They varied in other particulars, too: on the sizes of vessels (more than 26 feet in length; or less than 65 feet, 26 feet, 19 feet, 18 feet, or 16 feet in length); whether the vessels were under way, in motion, or not specified; and whether the children were on open decks, below decks, or in enclosed cabins.

To improve boating safety and encourage greater uniformity of boating laws, we are instating a requirement that children under 13 wear lifejackets approved by the Coast Guard while aboard vessels under way, except when the children are below decks or in enclosed cabins. We are nevertheless proposing to adopt the ages at or below which the States require children to wear lifejackets within those States. The existence of a Federal requirement for children to wear lifejackets under specific circumstances, even one that adopts States' thresholds of age, will encourage States to establish their own requirements for children and will draw the several requirements into greater uniformity nationwide.

Discussion of Comments and Changes

By the close of the comment period on August 30, 2001, we received 46 comments from the following categories:

- 11 recreational boaters;
- 7 governmental agencies;
- 3 representatives of the boating industry;
- 1 general business;
- 1 boating organization;
- 2 safety organizations; and

The National Transportation Safety Board (NTSB). Twenty-two comments supported the rule as proposed, eight supported it with changes, and sixteen opposed it.

Most of the comments that supported the rule as proposed stated that the rule would be a positive step toward reducing drownings and toward a uniform requirement across the States. Two comments indicated that requiring children to wear PFDs would make boating safer and more pleasant for parents because parents themselves often wear PFDs, again to influence children. Parents also know that mishaps happen quickly and that they cannot always watch children on a boat so use of PFDs increases their sense of safety. In separate comments, two agencies in North Carolina stated that that State's data on drownings indicate that most children who drowned there were not wearing PFDs at the time of the incidents.

Eight comments either suggested helpful changes or stated that they could support the rule, or at least not object to it if certain changes were made.

Two comments requested that the rule allow the use of automatic, inflatable PFDs or safety harnesses on all vessels or at least on every vessel more than 21 feet in length.

But the proposed rule did not intend to prohibit the use of inflatable PFDs for

children. The Coast Guard has already approved automatic, hybrid, inflatable PFDs for children, which means these PFDs meet the requirements of this final rule. Once the Coast Guard has approved automatic, fully inflatable PFDs for children to wear, such devices will also meet these requirements. This rule also does not prohibit the use of a safety harness, but does not allow safety harnesses to substitute for wearable PFDs. The Coast Guard has decided not to revise this rule to take account of these two comments, because the rule anticipates them.

One comment suggested limiting the rule to children on boats less than 18 feet that are under way or making way, while another suggested limiting it to children on the decks of vessels more than 65 feet.

The Coast Guard has no data indicating any specific length above which children become safe even without wearing lifejackets. Therefore, we have retained the wearing requirement as proposed without any such length.

Several comments asked the Coast Guard to lower the age limit because many 12-year-olds are better swimmers than many adults. One comment suggested that the age be lowered to 6 years old when a vessel is not under way. Another comment recommended exempting those children who have passed a swimming course or a swimming-proficiency test.

In a study of Recreational Boating Safety Study from 1993, NTSB recommended that the Coast Guard work with the National Association of State Boating Law Administrators (NASBLA) and the American Academy of Pediatrics to develop "a uniform component of standards that establishes an age at or below which all children should be required by all States to wear personal flotation devices while in recreational boats." NTSB proposed this strategy instead of one that would set specific Federal age-based requirements for wearing PFDs. The Coast Guard, these two organizations, and others endorsed mandatory use of lifejackets for children 12 and under. The other organizations were the National Safety Council, NBSAC, the U.S. Coast Guard Auxiliary, the National Water Safety Congress, the National Recreational Boating Safety Coalition, the National Safe Boating Council, the National Marine Manufacturers Association, the PFD Manufacturers Association, the American Medical Association, the American Camping Association, and the National Safe Kids Campaign. At least 14 States selected the same age-based requirements for children to wear

lifejackets, either under 13 years or 12 years and under, which squares with the recent recommendations of NBSAC and NTSB.

Therefore, we have retained in this final rule the age-based requirement as proposed. The Coast Guard has decided to not preempt the States from setting their own wearing requirements different than the Federal ones.

Another comment suggested that the current wording of "appropriate PFDs" is too vague and requested that the "appropriate" be replaced with "a Type I, II, III, or V PFD."

In the preamble to the NPRM [66 FR 21717], under paragraph 2 of the discussion of the proposed rule for section 175.15, we stated that the proposed requirement would be to wear lifejackets approved by the Coast Guard. We agree with the comment and have revised this section to read, " * * * appropriate PFDs approved by the Coast Guard."

In its comment, the NTSB requested that the Coast Guard reconsider allowing States to set their own age-based requirements, even if lower than 12 years old. The NTSB urged the Coast Guard to establish a uniform standard for the mandatory use of PFDs for all children under age 13. According to NTSB, a national standard would help parents and law-enforcement agencies by minimizing confusion about which children must wear PFDs in which States. Another comment also asked that the rule preempt the different age-based requirements from State to State.

Again, the Coast Guard has decided not to preempt the States from setting their own wearing requirements different from the Federal ones.

Seven of the sixteen opposing comments stated that mandatory use of lifejackets is a State issue.

One comment expressed concern that Federal action would interfere with individual State efforts to mandate use of PFDs. It and another suggested that each State be allowed to continue drafting laws tailored to its own distinct waters and boating community. Another comment stated that the low number of children's drownings that appear in national statistics indicate that States are handling the issue properly. Two others disapproved of a Federal requirement because it would create confusion at a time when most States already require that children wear lifejackets. One of those, from the Virginia Department of Game and Inland Fisheries, stated that, because under the proposed rule States would continue to enforce existing age limits, it is "unclear how [that rule] would encourage greater uniformity of boating

laws." It added that Virginia's own data on boating accidents did not support imposing the requirement on "potentially hundreds of thousands of 'recreational vessel users'."

This final rule acknowledges the law-enforcement efforts of the many States that already require children under specific ages to wear lifejackets while on board recreational vessels and, by adopting the ages for wearing lifejackets within those States, does not interfere with those efforts. It adds authority for boarding officers of the Coast Guard, enforcing Federal law, to support those efforts. Further, it encourages other States to undertake their own such efforts and yet does so without imposing a Federal mandate.

Other opposing comments stated that national statistics do not warrant a Federal rule, and one suggested that the Coast Guard focus on education rather than regulation. Another questioned whether the Coast Guard's own statistics supported the rule. It stated that some entries in the Boating Accident Reporting Database (BARD) first report deaths as due to drownings, which coroners later conclude were actually due to carbon-monoxide poison. Another responded that the data indicate that the rule would not have saved most children who drowned; and it concluded that age 12 "is certainly too old."

The Coast Guard has fostered and will continue to foster safety in recreational boating through education and public awareness. However, we disagree with the comments implying that our boarding officers should not be authorized to support States' law-enforcement officers from enforcing requirements for children to wear lifejackets within the States with such requirements. Further, the nationwide requirement for children to wear lifejackets will encourage other States to enact such requirements. Its applying "under 13" agrees with recommendations from NBSAC and the NTSB. Therefore, we have retained the age-based requirement as proposed.

Other comments objecting to the rule noted the Coast Guard's limited funds for enforcement. One stated that because most States already have a mandated age limit, generally 12, the Coast Guard would be wasting valuable man-hours handing out citations like parking tickets. It also voiced concern that the citations could lead to higher insurance costs for individual boaters. Another stated that a Federal rule would be ineffective because there would be no added funding for enforcement.

In the preamble to the NPRM, under paragraph 1 of the Regulatory

Evaluation discussing the costs of the proposed rule, we stated that, " * * * the Coast Guard already trains its Boarding Officers to check safety equipment." The Coast Guard has decided that the proposed rule anticipates these comments and adopts that rule, unchanged in these respects, as final.

Three comments voiced concern that the proposed rule did not consider how uncomfortable lifejackets can be for children, especially those boating in hot, humid climates. One of the three stated that children wearing lifejackets in those climates could suffer heat stroke and argued that the rule would discriminate against children who are under 13 but who are good, even excellent, swimmers. Another added that the Coast Guard could reduce the number of drownings more effectively if it focused educational campaigns on adults who use canoes and johnboats to go fishing or bird watching. These people view boating only as a means to doing the primary activity, so they may not be as aware of boating safety as boaters with children on board.

Some models and types of lifejackets are more comfortable than others, and designs are ever-evolving. Voluntary swimming is not the same as involuntary swimming after falling overboard or after a collision. Again, the Coast Guard has fostered and will continue to foster recreational boating safety through education and public awareness, even where boating is involved but where it is not the primary activity. The Coast Guard adopts the proposed rule, unchanged in these respects, as final.

Other comments stated that the decision whether to place a child in a lifejacket should belong to the parents or guardians and that the government cannot protect people from their own poor judgment.

The final rule does not preclude parents and guardians from the exercise of good judgment, but it does prohibit the operator of the boat from getting under way until each child onboard is wearing a lifejacket. The rule is likely to have the same effect on the judgment of parents and guardians as laws that require the use of seatbelts and special seats for children in cars. Even if "government cannot protect people from their own poor judgment," it can protect some people from some others' poor judgment. The Coast Guard adopts the proposed rule, unchanged in these respects, as final.

Regulatory Evaluation

This final rule is not a "significant regulatory action" under section 3(f) of

Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget (OMB) has not reviewed it under that Order. It is not "significant" under the regulatory policies and procedures of the Department of Transportation (DOT)[44 FR 11040 (February 26, 1979)].

A final Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT follows:

1. Cost of Rule

This rule imposes no costs on the boating public. Existing rules require the carriage of an appropriate lifejacket for each passenger. Costs to the Government are non-existent as well because the Coast Guard already trains its Boarding Officers to check safety equipment when boarding recreational vessels.

2. Benefit of Rule

This rule is appropriate because, even though statistics on boating accidents show that the actual numbers of children under 13 that drowned in recent years were relatively small (14 in 1998, 14 in 1999, and 7 in 2000), these few drownings were avoidable. The rule should reduce the number of children under 13 that drown every year because they are not wearing lifejackets.

This rule affects only those States that have not enacted requirements for children to wear lifejackets. In those States, there were 7 fatal drownings and 1 moderate and 3 critical near-drowning injuries of children under 13 from 1996 through 2000. These injuries and drownings might have been prevented if the children had worn lifejackets. (These numbers may overstate the number of lives that could have been saved if the children had worn lifejackets: Narratives in accident reports may fail to disclose circumstances in which the victims were pinned, for example, and would have drowned anyway. Yet they may

also understate the number of lives that could have been saved: Many accidents go unreported entirely.)

A memorandum from the Office of the Secretary of Transportation, dated January 29, 2002, sets the benefit of averting an accidental fatality in regulatory analyses at \$3.0 million. Another memorandum from that Office, dated January 8, 1993, advises agencies within the Department to classify injuries as minor, moderate, serious, severe, critical, or fatal. The latter memorandum also assigns to each degree of injury averted a certain percentage of the value of society's willingness to pay to avert a fatality. To calculate the value of society's willingness to pay to avert each degree of injury, we multiplied \$3.0 million by the percentage assigned to each degree of injury averted.

If we consider a 100% rate of compliance with a requirement for children to wear lifejackets, we can calculate the retrospective benefits of this rule as below:

BENEFIT OF AVERTING ACCIDENTAL INJURIES AND FATALITIES FOR STATES WITHOUT EXISTING REGULATIONS

Severity category of injury	Benefit of averting an accidental injury or fatality	Number of injuries (1996-2000)	Benefit if accidental injuries and fatalities are averted
Minor	(\$3,000,000)(0.0020)= \$6,000	0	(\$6,000)(0)= 0.
Moderate	(\$3,000,000)(0.0155)= \$46,500	1	(\$46,500)(1) = \$46,500.
Serious	(\$3,000,000)(0.0575)= \$172,500	0	(\$172,500)(0) = 0.
Severe	(\$3,000,000)(0.1875)= \$562,500	0	(\$562,500)(0) = 0.
Critical	(\$3,000,000)(0.7625)= \$2,287,500	3	(\$2,287,500)(3) = \$6,862,500.
Fatal	(\$3,000,000)(1.000)= \$3,000,000	7	(\$3,000,000)(7) = \$21,000,000.
Total	11	\$27,909,000.

The total value of injuries and fatalities averted for 1996-2000 would have been \$27,909,000. Therefore, the average annual value of injuries and fatalities averted would have been \$5,581,800, calculated as (\$27,909,000)/(5 years).

Small Entities

Under the Regulatory Flexibility Act [5 U.S.C. 601-612], we have considered whether this final rule will have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

This Federal requirement for children under 13 to wear lifejackets applies to operators of recreational vessels on waters subject to the jurisdiction of the

United States (as defined in 33 CFR 2.05-30). It will continue to apply to operators of recreational vessels owned in the United States, while operating on the high seas (as defined in 33 CFR 2.05-1). Further, since this requirement adopts the ages at or below which States require children to wear lifejackets, operators of recreational vessels either in States with such requirements or on navigable waters of the United States outside States altogether are subject to it.

Because the Regulatory Flexibility Act does not apply to individuals, the Coast Guard certifies under 5 U.S.C. 605(b) that this rule does not have a significant economic impact on a substantial number of small entities.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 [Public Law 104-121], we have offered to assist small

entities in understanding this final rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule affects your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact Carlton Perry, Project Manager, Office of Boating Safety, by telephone at 202-267-0979, or by e-mail at cperry@comdt.uscg.mil.

Small businesses may also send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal rules to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247).

Collection of Information

This final rule calls for no new collection of information under the Paperwork Reduction Act of 1995 [44 U.S.C. 3501–3520].

Federalism

We have analyzed this final rule under Executive Order 13132 and have determined that, because the Federal requirement for children under 13 to wear lifejackets will not supersede or preempt any State's comparable requirement, this rule does not have implications for federalism under that Order. The Federal requirement applies only in States without comparable requirements.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 [2 U.S.C. 1531–1538] governs the issuance of Federal rules that impose unfunded mandates. An unfunded mandate is a requirement that a State, local, or tribal government, or the private sector incur direct costs without the Federal Government's having first provided the funds to pay those costs. This final rule does not impose an unfunded mandate.

Taking of Private Property

This final rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Reform of Civil Justice

This final rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this final rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule. Nor does it create an environmental risk to health or risk to safety that may disproportionately affect children; on the contrary, it advances the welfare of children.

Indian Tribal Governments

This final rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes,

or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

We have analyzed this final rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that Order, because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs within OMB as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Environment

We have considered the environmental impact of this final rule and concluded that, under figure 2–1, paragraph (34)(a), of Commandant Instruction M16475.1D, this rule is categorically excluded from further environmental documentation. The rule requires that certain children aboard recreational vessels wear lifejackets. A Determination of Categorical Exclusion is available in the docket where indicated under ADDRESSES.

List of Subjects in 33 CFR Part 175

Marine Safety.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 175 as follows:

1. The citation of authority for part 175 continues to read as follows:

Authority: 46 U.S.C. 4302; 49 CFR 1.46.

2. Amend § 175.3 by adding the following definition in alphabetical order to read as follows:

§ 175.3 Definitions

* * * * *

State means a State or Territory of the United States of America, whether a State of the United States, American Samoa, the Commonwealth of the Northern Marianas Islands, the District of Columbia, Guam, Puerto Rico, or the United States Virgin Islands.

* * * * *

3. Amend § 175.15 by removing from paragraph (b) the term "PFD's" and adding in its place the term "PFDs," and by adding a new paragraph (c), to read as follows:

§ 175.15 Personal flotation devices required.

* * * * *

(c) No person may use a recreational vessel unless each child under 13 years old aboard is wearing an appropriate PFD approved by the Coast Guard; or

(1) Each child not wearing such a PFD is below decks or in an enclosed cabin; or

(2) The vessel is not under way.

4. Add a new § 175.25 to subpart B, to read as follows:

§ 175.25 Adoption of States' requirements for children to wear personal flotation devices.

(a) This section applies to every operator of a recreational vessel on waters within the geographical boundaries of any State that has established by statute a requirement under which children must wear PFDs approved by the Coast Guard while aboard recreational vessels.

(b) If the applicable State's statute establishes an age under which children must wear PFDs, that age, instead of the age provided in § 175.15(c) of this part, applies within the geographical boundaries of that State.

Dated: February 15, 2002.

Terry M. Cross,

Rear Admiral, U.S. Coast Guard, Assistant Commandant for Operations.

[FR Doc. 02–4633 Filed 2–26–02; 8:45 am]

BILLING CODE 4910–15–U

DEPARTMENT OF TRANSPORTATION**Saint Lawrence Seaway Development Corporation****33 CFR Part 401**

[Docket No. SLSDC 2002–11358]

RIN 2135–AA13

Seaway Regulations and Rules: Ballast Water

AGENCY: Saint Lawrence Seaway Development Corporation, DOT.

ACTION: Final rule.

SUMMARY: The Saint Lawrence Seaway Development Corporation (SLSDC) and the St. Lawrence Seaway Management Corporation (SLSMC) of Canada, under international agreement, jointly publish and presently administer the St. Lawrence Seaway Regulations and Rules (Practices and Procedures in Canada) in their respective jurisdictions. Under agreement with the SLSMC, the SLSDC is amending the joint regulations to make compliance with applicable Great Lakes shipping industry codes for



12-9-01

**WISCONSIN LEGISLATIVE COUNCIL
REPORT TO THE LEGISLATURE**

**Legislation on Recodification of Operating While Intoxicated
and Safety Laws Pertaining to Motor Vehicle, All-Terrain
Vehicle, Boat or Snowmobile Operation**

- Assembly Bill 667 and Senate Bill 335, Relating to the Intoxicated Operation of an All-Terrain Vehicle, Motorboat or Snowmobile
- Assembly Bill 668 and Senate Bill 336, Relating to Safety Training for All-Terrain Vehicle and Motorboat Operation
- Assembly Bill 669 and Senate Bill 337, Relating to Requiring That Personal Flotation Devices be Worn by Certain Underaged Persons in Certain Boats
- Assembly Bill 670 and Senate Bill 338, Relating to Intoxicated Operation of a Motor Vehicle and Providing a Penalty

December 5, 2001

RL 2001-01

**LEGISLATION ON
RECODIFICATION OF OPERATING WHILE INTOXICATED AND
SAFETY LAWS PERTAINING TO MOTOR VEHICLE, ALL-TERRAIN
VEHICLE, BOAT OR SNOWMOBILE OPERATION**

Prepared by:
Don Salm and Ronald Sklansky, Senior Staff Attorneys
December 5, 2001

CONTENTS

PART I - KEY PROVISIONS OF LEGISLATION..... 3

PART II - COMMITTEE ACTIVITY 5

A. Assignment..... 5

B. Summary of Meetings..... 5

PART III - RECOMMENDATIONS..... 7

A. Assembly Bill 667 and Senate Bill 335..... 7

B. Assembly Bill 668 and Senate Bill 336 10

C. Assembly Bill 669 and Senate Bill 337..... 11

D. Assembly Bill 670 and Senate Bill 338..... 12

APPENDIX 1 - COMMITTEE AND JOINT LEGISLATIVE COUNCIL VOTES..... 17

APPENDIX 2 - LIST OF JOINT LEGISLATIVE COUNCIL MEMBERS 19

APPENDIX 3 - LIST OF COMMITTEE MEMBERS..... 21

APPENDIX 4 - COMMITTEE MATERIALS LIST 23

PART I

KEY PROVISIONS OF LEGISLATION

The proposals recommended by the Special Committee on Recodification of Operating While Intoxicated and Safety Laws Pertaining to Motor Vehicle, All-Terrain Vehicle, Boat or Snowmobile Operation do the following:

Assembly Bill 667 and Senate Bill 335 accomplish all of the following:

- Consolidate statutory provisions regarding the intoxicated operation of all-terrain vehicles (hereafter, "ATVs"), motorboats and snowmobiles into one subchapter of the statutes. In general, a number of policies expressed in the Motor Vehicle Code with respect to the issue of operating a motor vehicle while intoxicated are applied to the operation of ATVs, motorboats and snowmobiles, which are collectively referred to as "sport recreational vehicles" and "commercial motorboats."
- Create a definition of the term "under the influence of an intoxicant."
- Expand the areas to which the law applies.
- Authorize a court 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.

Assembly Bill 668 and Senate Bill 336 amend current law relating to ATVs and motorboats in order to make them consistent with the current law applicable to snowmobiles, providing that no person who is at least 12 years of age and who is born on or after January 1, 1986, may operate an ATV or a motorboat without a valid safety certificate.

Assembly Bill 669 and Senate Bill 337 prohibit a person who is under the age of 16 from riding in a boat that is less than 26 feet in length without wearing a personal flotation device unless the person is in a cabin space or below the deck. Current law generally provides that every boat must carry at least one personal flotation device prescribed by federal regulations for each person on board or being attended by the boat. The flotation devices must be placed so as to be readily accessible and available to all persons on the boat.

Assembly Bill 670 and Senate Bill 338 accomplish all of the following:

- Create a definition of the terms "intoxicant" and "under the influence of an intoxicant" for use in the Motor Vehicle Code and the Criminal Code.
- Create a license suspension provision applicable to persons who are convicted of tampering with an ignition interlock device.
- Clarify that pretrial discovery is not available in a refusal hearing.

- Expand the areas to which the law applies.
- Authorize a court to impose a restitution requirement upon a person who causes property damage due to the intoxicated operation of a motor vehicle.

PART II

COMMITTEE ACTIVITY

A. ASSIGNMENT

The Joint Legislative Council established the Special Committee and appointed the Cochairs by a June 13, 2000 mail ballot. The Special Committee was directed to study current statutes relating to operating a vehicle while under the influence of an intoxicant or drug and to reorganize, simplify, modernize and clarify these statutes and make minor substantive changes necessary to effect these goals. In addition, the Special Committee was directed to study, with respect to an ATV, a boat or a snowmobile, whether enforcement mechanisms need to be increased or created to ensure compliance with the law.

The membership of the Special Committee, appointed by an August 14, 2000 mail ballot, consisted of 2 Senators, 7 Representatives and 10 Public Members. A list of the committee membership is set forth in Appendix 3.

B. SUMMARY OF MEETINGS

The Special Committee held four meetings at the State Capitol in Madison on the following dates:

September 27, 2000
November 21, 2000
December 21, 2000
February 6, 2001

At the September 27, 2000 meeting, the Special Committee reviewed various memos prepared by the staff relating to the current laws on operation of a motor vehicle, ATV, boat or snowmobile while under the influence of an intoxicant or a drug, or both. The committee also engaged in a general discussion of the direction of the committee and suggested some possible specific changes in the statutes relating to the study committee's topic.

At the November 21, 2000 meeting, the Special Committee heard testimony from conservation wardens Mike McKenzie and Dave Youngquist on problems and issues relating to enforcement of the operating while intoxicated (OWI) laws out in the field. After a general discussion of possible changes in the laws relating to drunken operation of ATVs, boats and snowmobiles, the committee reviewed WLC: 0011/1, relating to the intoxicated operation of an all-terrain vehicle, motorboat or snowmobile, and suggested changes in the draft for consideration at the next meeting.

At the December 21, 2000 meeting, the Special Committee reviewed drafts relating to sport recreational vehicles, safety training, flotation devices and operation of a motor vehicle while intoxicated (WLC: 0011/2, 0021/1, 0024/1 and 0032/1, respectively). The committee also reviewed Memo No. 11, *Additional Suggestions for Recodification of Statutes Relating to Operating a Motor Vehicle While Intoxicated* (December 14, 2000), and suggested changes in

the drafts based on those suggestions. Finally, the committee reviewed suggestions in a letter from committee member Barry Cohen, dated November 16, 2000, and agreed to include various parts of those suggestions in the drafts.

At its February 6, 2001 meeting, the Special Committee reviewed the remaining drafts and voted to recommend WLC: 0024/2, relating to wearing of flotation devices to the Joint Legislative Council for introduction in the 2001-02 Session of the Legislature. The Special Committee directed that WLC: 0011/3 and WLC: 0032/2 be prepared in final form, incorporating committee amendments, and be sent to the members for final approval by mail ballot.

PART III

RECOMMENDATIONS

This part of the report provides background information on, and a description of, the bills recommended by the Special Committee on Recodification of Operating While Intoxicated and Safety Laws Pertaining to Motor Vehicle, All-Terrain Vehicle, Boat or Snowmobile Operation for introduction in the 2001-02 Session of the Legislature.

A. ASSEMBLY BILL 667 AND SENATE BILL 335

Assembly Bill 667 and Senate Bill 335, relating to the intoxicated operation of an all-terrain vehicle, motorboat or snowmobile.

1. Background

Under current Wisconsin law, statutory provisions relating to the intoxicated operation of ATVs, motorboats and snowmobiles are found, in major part, in separate chapters of the statutes (ATVs in ch. 23, Stats., motorboats in ch. 30, Stats., and snowmobiles in ch. 350, Stats.), and have, to a certain extent, differing substantive and procedural provisions as well as differing penalties.

2. Description of the Bills

In general, the bills consolidate the treatment of the intoxicated operation of ATVs, motorboats and snowmobiles and applies a number of the policies expressed in the Motor Vehicle Code with respect to the issue of operating a motor vehicle while intoxicated to the operation of these vehicles, which are collectively referred to in the bills as "sport recreational vehicles" and "commercial motorboats." Specifically, the bills:

a. Provide that no operator of an ATV, a motorboat or a snowmobile may refuse to comply with orders or instructions of a law enforcement officer, resist a law enforcement officer by failing to stop, or flee from a law enforcement officer. *Current law* provides that no operator of an ATV, a boat or a snowmobile may refuse to stop after being requested or signaled to do so by a law enforcement officer. Under the bills, the penalties for these increasingly serious offenses range from a forfeiture not exceeding \$40 for the first offense and not exceeding \$100 for the second or subsequent conviction within a year to a fine of not less than \$1,100 nor more than \$10,000 and imprisonment for not more than seven years and six months. These provisions are taken directly from ss. 346.04 and 346.17, Stats., in the Motor Vehicle Code, relating to obedience to traffic officers, signs and signals and to fleeing from an officer.

b. Create a definition section for the purpose of the new subchapter on intoxicated operation of sport recreational vehicles and commercial motorboats. Included in the definitions is a definition of the term "under the influence of an intoxicant." The term is defined to mean a condition in which a person's ability to operate a sport recreational vehicle or a commercial motorboat, because of the consumption or use of an intoxicant, is impaired to

the extent that the person is less able to exercise the clear judgment and steady hand necessary to handle and control a sport recreational vehicle or commercial motorboat. This definition codifies language contained in Wisconsin Criminal Jury Instructions, s. 2663, with respect to a person operating a motor vehicle while under the influence of an intoxicant. The new standard replaces the phrase "incapable of safe operation" that currently applies to ATVs, motorboats and snowmobiles. In addition, the bills add to the definition of the term "intoxicant" by including the term "a vapor releasing substance."

c. Uniformly provide that persons under the age of 21 must maintain absolute sobriety when operating any type of sport recreational vehicle or commercial motorboat. Under *current law*, a person under the age of 19 may not operate an ATV or a snowmobile if the person has alcohol in his or her system. Also, under current law, a person under the age of 21 may not operate a motorboat if the person has alcohol in his or her system.

d. Make use of the definition of the term "prohibited alcohol concentration," as used in the Motor Vehicle Code, in the new subchapter. Thus, in general, no person may operate a sport recreational vehicle, or cause injury to another person by operation of a sport recreational vehicle with alcohol concentrations listed below:

- (1) If the person has one or no prior convictions within 10 years prior to the arrest for the current violation, an alcohol concentration of 0.1 or more.
- (2) If the person has two prior convictions within 10 years prior to the arrest for the current violation, an alcohol concentration of 0.08 or more.
- (3) If the person has three or more prior convictions within 10 years prior to the arrest for the current violation, an alcohol concentration of more than 0.02.

It should be noted that instead of using the term "injury" as is used in the drunk driving statutes [s. 346.63 (2), Stats.], the new subchapter refers to "bodily harm" which is defined in s. 350.50 (7), Stats., to mean physical pain or injury, illness or any impairment of physical condition. This definition is adopted from a provision in the Criminal Code, s. 939.22 (4), Stats. Finally, the 10 year look back period does not extend beyond January 1, 1998.

e. Apply the decision of the Wisconsin Supreme Court in *County of Jefferson v. Renz*, 231 Wis. 2d 293 (1999), by specifying that a law enforcement officer may require a preliminary breath screening test (PBST) if there is a "reasonable suspicion" rather than "probable cause" to believe that a violation has occurred. In addition, the bills specify that the result of a PBST also may be used as evidence of the presence of an intoxicant in a person. *Current law* provides that a PBST is not admissible in any action or proceeding except to show probable cause for an arrest, if the arrest is challenged, or to prove that a chemical test was properly required or requested.

f. Combine the provisions describing applicability of the intoxicated operation of a sport recreational vehicle law and a commercial motorboat law as those provisions apply to ATVs and snowmobiles. Under the bills, the law will be applicable upon frozen water 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 law will not apply to the operation of an ATV

or a snowmobile on private land not designated as an ATV trail or as a snowmobile trail unless an accident involving personal injury occurs as a result of the operation of the ATV or snowmobile or the ATV or the snowmobile was operated on the private land without the consent of the owner of that land.

g. Reduce the alcohol concentration level that will authorize immediate release after arrest for a sport recreational vehicle or a commercial motorboat OWI violation from the current level of 0.05 or less to less than 0.02.

h. Require the Department of Natural Resources (DNR) to distribute to a motorboat registrant an educational pamphlet on the intoxicated operation of a sport recreational vehicle law.

i. Consolidate the statutory intoxicated use provisions for ATVs, motorboats and snowmobiles, with the result that a conviction for the intoxicated use of one vehicle will count as a prior conviction when repeat offender penalties are applied to a person convicted of the intoxicated use of another type of vehicle. 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.

j. Follow 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 the bills, a county, town, city or village may enact an ordinance, for which a forfeiture may be imposed, in strict conformity with the new subchapter. 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.

k. Apply the forfeiture range for a first offense OWI motor vehicle violation (not less than \$150 nor more than \$300) to all operators of sport recreational vehicles and commercial motorboats. In contrast, *current law* provides that a first offense involving intoxicated operation of a snowmobile will result in a forfeiture of not less than \$400 nor more than \$550. The bills also provide that a violator will have his or her operating privilege revoked for a period of one to five years depending on the repeater status of the violator. Operation during revocation 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.

l. Apply certain intoxicating boating law provisions to all sport recreational vehicles and commercial motorboats and increase the maximum period of imprisonment to a period of seven years and six months in accordance with similar provisions in 1997 Wisconsin Act 283 (truth in sentencing). Under *current law*, with respect to ATVs and snowmobiles, a second offense within five years and third or subsequent offenses within five years will result in additional penalties. However, the intoxicated boating law also adds two additional

categories of increased penalties for a person who has been convicted four times within five years or five or more times within five years. In addition, the bills increase the current five-year look-back period 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, 1998, will not be counted.

m. Authorize a court 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.

n. Incorporate various current statutory provisions applicable to motor vehicle OWI 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 was 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 a commercial motorboat had an alcohol concentration of 0.17 to 0.199, 0.20 to 0.249 or 0.25 or above, respectively. Unlike the law relating to the operation of motor vehicles, the bills provide that the increased penalties 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.

o. Apply to motorboats the current statutory provision requiring a conviction relating to the use of an ATV or snowmobile to be reported to DNR.

p. Apply the motor vehicle OWI 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. *Current law* provides that an operator of a motor vehicle who violates various OWI provisions must pay a driver improvement surcharge in the amount of \$355 in addition to the fine or forfeiture, penalty assessment, jail assessment and crime laboratories and drug law enforcement assessment.

q. Create an effective date of *January 1, 2003* for the bills.

B. ASSEMBLY BILL 668 AND SENATE BILL 336

Assembly Bill 668 and Senate Bill 336, relating to safety training for all-terrain vehicle and motorboat operation.

1. Background

Current law provides that a person who is at least 12 years old and less than 16 years old may operate an ATV under the following circumstances:

- a. If the person has a safety certificate from DNR.
- b. If the person is accompanied by another person who is over 18 years of age.

- c. If the person, with a physical disability, is on a roadway and has a hunting permit and a safety certificate.
- d. If the person is operating an implement of husbandry on a roadway if the person has a safety certificate.
- e. If the person holds a valid certificate from another state or Canadian province.
- f. If the person is on land exclusively under the control of the person's immediate family.

With respect to a motorboat, current law provides that a person at least 12 years old and less than 16 years old may operate a motorboat if the person is accompanied by a parent, guardian or person at least 18 years of age who is designated by a parent or guardian or if the person has a safety certificate from DNR.

The snowmobile law was amended in the 1999 Session of the Legislature to provide that, beginning on January 1, 2001, any person, at least 12 years of age and born on or after January 1, 1985, must hold a valid snowmobile safety certificate in order to operate the snowmobile. The only exception to this provision is if the person operates the snowmobile upon lands owned or leased by a parent or guardian. The requirement to obtain a safety certificate applies to all persons, at least 12 years old and born on or after January 1, 1985, regardless of the person's age.

2. Description of the Bills

In general, the bills amend the law relating to ATVs and motorboats in order to make the law consistent with the law applicable to snowmobiles. Thus, the bills provide that no person at least 12 years of age and born on or after January 1, 1986, may operate an ATV or a motorboat without a valid safety certificate. As in current law, the bills exempt from this requirement an operator of an ATV who holds a valid certificate from another state or Canadian province or who operates the ATV on land exclusively under the control of the person's immediate family. The provisions of the bills take effect on *January 1, 2002*.

C. ASSEMBLY BILL 669 AND SENATE BILL 337

Assembly Bill 669 and Senate Bill 337, relating to requiring that personal flotation devices be worn by certain underaged persons in certain boats.

1. Background

Current law generally provides that every boat must carry at least one personal flotation device prescribed by federal regulations for each person on board or being attended by the boat. The flotation devices must be placed so as to be readily accessible and available to all persons on the boat.

2. Description of the Bills

The bills prohibit a person, under the age of 16, from riding in a boat that is less than 26 feet in length without wearing a personal flotation device unless the person is in a cabin space or below the deck.

D. ASSEMBLY BILL 670 AND SENATE BILL 338

Assembly Bill 670 and Senate Bill 338, relating to intoxicated operation of a motor vehicle and providing a penalty.

1. Background

Current law treats the issue of operating a motor vehicle while intoxicated using various terms, often inconsistently. The terms used are “intoxicant,” “alcohol,” “controlled substance,” “controlled substance analog” and “other drug.” In the following section of the statutes, the terms “alcohol,” “a controlled substance” and “controlled substance analog” are used: ss. 343.10, 343.16, 343.30, 343.305, 343.44 and 346.637, Stats. Other sections of the statutes make use of these terms plus the term “other drug”: ss. 343.303, 343.305, 343.31, 343.315, 344.576, 346.63 and 346.65, Stats. In addition, the term “intoxicant” is intermittently used throughout the OWI and OWI-related statutes.

2. Description of the Bills

In general, the bills create a definition of the terms “intoxicant” and “under the influence of an intoxicant” for use in the Motor Vehicle Code and the Criminal Code. The term “intoxicant” is defined to mean any of the following:

- a. Alcohol, a controlled substance, a controlled substance analog, any other drug or a vapor releasing substance.
- b. Any combination of alcohol, a controlled substance, a controlled substance analog, any other drug or a vapor releasing substance.

Thus, the use of the definition of the term “intoxicant” in the statutes will indicate consistently that a person may be considered intoxicated due to the individual impacts or the combined impacts of alcohol, a controlled substance, a controlled substance analog, any other drug or a vapor releasing substance.

The bills also create a definition of the term “under the influence of an intoxicant” by codifying the language of Wisconsin Criminal Jury Instruction, s. 2663. Rather than using two standards, as under current law, the bills apply the definition to the operation of a motor vehicle when the consumption of any intoxicant is involved. Again, the term “intoxicant” is defined to mean alcohol, a controlled substance, a controlled substance analog, any other drug or a vapor releasing substance or any combination of these items. The Criminal Jury Instruction states that the phrase “under the influence of an intoxicant” means that a driver’s ability to operate a vehicle is impaired because of the consumption of an alcoholic beverage. It specifies that: “Not every person who has consumed alcoholic beverages is ‘under the

influence' as that term is used here. What must be established is that the person has consumed a sufficient amount of alcohol to cause him to be less able to exercise the clear judgment and steady hand necessary to handle and control a motor vehicle. It is not required that impaired ability to operate be demonstrated by particular acts of unsafe driving. What is required is that the person's ability to safely control his vehicle be impaired." [See Wis. JI-CRIMINAL, s. 2663.]

With respect to operating a motor vehicle while under the influence of a drug, the Wisconsin Criminal Jury Instructions state that one element of this offense requires that the defendant drove or operated a motor vehicle while under the influence of a drug to a degree which rendered the defendant incapable of safely driving. [See Wis. JI-CRIMINAL, s. 2666.]

Under the bills, "under the influence of an intoxicant" is defined to mean a condition in which a person's ability to operate a motor vehicle, because of the consumption or use of an intoxicant, is impaired to the extent that the person is less able to exercise the clear judgment and steady hand necessary to handle and control a motor vehicle.

In addition to these changes, the bills:

a. Provide that, for a conviction and a refusal that arise out of the same incident or occurrence, the periods of time within which a person will not be eligible for an occupational license will run concurrently or, if an eligibility period has begun to run for a refusal, the latter period will operate as an offset to the period of ineligibility under s. 343.30, Stats. *Current law* provides that a person who is convicted of driving or operating a motor vehicle while under the influence of an intoxicant or other drug or while maintaining a prohibited alcohol concentration will be subject to revocation of his or her operating privilege and a specified period of time within which the person is not eligible to obtain an occupational license. [s. 343.30 (1q) (b), Stats.] Similarly, s. 343.305 (10) (b), Stats., provides that a person who improperly refuses to take a test to determine the presence of alcohol or other drugs will be subject to a revocation of the person's operating privilege and a specified period of time within which the person is not eligible to obtain an occupational license.

b. Create a license suspension provision applicable to persons who are convicted of tampering with an ignition interlock device (IID), either under the general tampering provisions in s. 347.413, Stats., or the tampering language in s. 343.10, Stats. As with the *current law* relating to IID tampering, this suspension applies to whoever commits the tampering violation (i.e., the operator subject to the IID restriction or anyone else tampering with the device). Except when an occupational license is involved, the suspension period and the provision making the operator liable for an occupational license at any time is the same as that currently applicable to a first offense OWI violator. If the violator is an OWI violator who has an occupational license, the provisions of the occupational license statute determine future eligibility for such a license.

c. Apply the decision of the Wisconsin Supreme Court in *County of Jefferson v. Renz*, 231 Wis. 2d 293 (1999), by providing that a law enforcement officer may require a PBST if there is a *reasonable suspicion*, rather than probable cause, to believe that a violation has occurred. The bills also provide that the result of a PBST may be used as evidence of the

presence of an intoxicant in a person in an action or proceeding. *Current law* provides that a PBST is not admissible in any action or proceeding except to show probable cause for arrest, if the arrest is challenged, or to prove that a chemical test was properly required or requested.

d. Require that when a chemical test specimen is requested, the person to be tested is notified that he or she does not have the right to contact an attorney prior to testing. *Current law* requires a law enforcement officer to provide a person specified notifications at the time the specimen is requested. The new information regarding the right to contact an attorney adds to the list of specified items in the notice. The bills also clarify that pretrial discovery is not available in a refusal hearing. This change reverses the holding in *State v. Schoepp*, 204 Wis. 2d 266 (Ct. App. 1996).

e. Amend current law to provide that an OWI arrestee must be released when he or she has an alcohol concentration of less than 0.02. *Current law* provides for such release when the person has an alcohol concentration less than 0.04.

f. Specify that the statutes relating to reckless and drunken driving are applicable upon highways, all premises and frozen water. Under current s. 346.61, Stats., statutory provisions relating to reckless and drunken driving are applicable upon highways, all premises held out to the public for use of their motor vehicles, all premises provided by employers to employees for the use of their motor vehicles and all premises provided to tenants of rental housing in buildings of four or more units for the use of their motor vehicles, whether the premises are publicly or privately owned and whether or not a fee is charged for their use. An exception exists for private parking areas at farms or single-family residences.

g. Replace the currently undefined term "injury" with the term "bodily harm" and defines "bodily harm" to mean physical pain or injury, illness or any impairment of physical condition. This definition is based on the definition of "bodily harm" in the Criminal Code [s. 939.22 (4), Stats.]. Also, the bills create a definition of the term "great bodily harm" based on the definition in s. 939.22 (14), Stats. Under *current law*, a person may not cause *injury* while operating a motor vehicle while under the influence of an intoxicant or other drug. [s. 346.63 (2) and (6), Stats.]

h. Authorize a court to impose a restitution requirement upon a person who causes property damage due to the intoxicated operation of a motor vehicle.

i. Increase the maximum term of imprisonment for a person with five or more suspensions, revocations and convictions related to intoxicated operation from five years to seven years and six months. The increase is similar to adjustments in maximum sentences made in 1997 Wisconsin Act 283 (truth in sentencing).

j. Provide 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. *Current law* provides that if a person is convicted of operating a motor vehicle while intoxicated, and if a minor passenger under 16 years of age was in or on a vehicle at the time of the violation, the applicable minimum and maximum forfeitures, fines or imprisonment for the convictions are doubled. Also, the applicable minimum and maximum

finer are doubled, tripled or quadrupled if the operator of the motor vehicle had an alcohol concentration of 0.17 to 0.199, 0.20 to 0.249, or 0.25 or above, respectively.

k. Revise current law to provide that a violation of the absolute sobriety provision will result in a forfeiture of \$50. A similar change is made in the absolute sobriety requirement applicable to commercial motor vehicle drivers, increasing the forfeiture from \$10 to \$50. *Current law* provides that a person under the legal drinking age must forfeit \$10 if the person drove or operated a motor vehicle while the person had an alcohol concentration of more than 0.0 but not more than 0.1. If a minor passenger under 16 years of age was in the motor vehicle, the forfeiture is \$20.

l. Revise current law to provide that, with respect to imprisonment, a violator may be imprisoned for not more than one year in the county jail, but that the violator will be required to remain in the county jail for not less than a 48-hour consecutive period. *Current law* provides that a person who causes injury while operating a motor vehicle under the influence of an intoxicant or drug must be fined not less than \$300 nor more than \$2,000 or may be imprisoned for not less than 30 days nor more than one year in the county jail.

m. Create a new provision providing that a certified copy of a blood alcohol analysis is admissible as evidence in a municipal court trial. A defendant may compel the personal appearance of the blood analyst and the person who drew the defendant's blood if the defendant makes a written request to the court no later than 10 days before trial. The court may approve a later request for such personal appearances.

n. Creates a definition of the term "intoxicant" for purposes of the Criminal Code. The definition is the same as that used in s. 340.01 (52d), Stats., as created in the bills, for purposes of the Motor Vehicle Code. In addition, the term "under the influence of an intoxicant" as defined in the Criminal Code [s. 939.22 (42), Stats.] is amended to conform to the definition of that same term in s. 340.01 (73e), as created in the bill.

o. Clarify that the offense of driving or operating a motor vehicle while under the influence of an intoxicant or with a prohibited alcohol concentration is not an included offense of the following crimes: causing bodily harm while intoxicated; homicide by intoxicated use of a vehicle; or injury by intoxicated use of a vehicle.

p. Establish an effective date of *January 1, 2003*.

Committee and Joint Legislative Council Votes

At its December 21, 2000 meeting, the Special Committee voted to recommend WLC: 0021/1 to the Joint Legislative Council for introduction in the 2001-02 Session of the Legislature. The Special Committee also voted to recommend WLC: 0024/2 at its February 6, 2001 meeting. Finally, by a mail ballot dated February 23, 2001, the Special Committee voted to recommend WLC: 0011/4 and WLC: 0032/3 to the Joint Legislative Council for introduction in the 2001-02 Session of the Legislature. The votes on the four bills were as follows:

- WLC: 0021/1, relating to safety training for all-terrain vehicle and motorboat operation: Ayes, 13 (Sen. Burke; Reps. Freese, Ainsworth, Black, Huber and Leibham; and Public Members Cohen, Gavronski, Hammer, Harding, Hargarten, Langdon and Madson); Noes, 0; Absent, 4 (Sen. Huelsman; Rep. Staskunas; and Public Members Allen and Roiger); and Not Voting, 2 (Rep. Stone; and Public Member McAdams).
- WLC: 0011/4, relating to the intoxicated operation of an all-terrain vehicle, motorboat or snowmobile: Ayes, 17 (Sen. Burke; Rep. Freese; Sen. Huelsman; Reps. Ainsworth, Black, Huber, Leibham and Staskunas; and Public Members Allen, Gavronski, Hammer, Harding, Hargarten, Langdon, Madson, McAdams and Roiger); Noes, 1 (Public Member Cohen); and Not Voting, 1 (Rep. Stone).
- WLC: 0024/2, relating to wearing of flotation devices: Ayes, 16 (Sen. Burke; Rep. Freese; Sen. Huelsman; Reps. Ainsworth, Huber, Staskunas and Stone; and Public Members Allen, Cohen, Gavronski, Hammer, Harding, Langdon, Madson, McAdams and Roiger); Noes, 1 (Rep. Leibham); and Absent, 2 (Rep. Black and Public Member Hargarten).
- WLC: 0032/3, relating to operating a motor vehicle while intoxicated: Ayes, 16 (Sen. Burke; Rep. Freese; Sen. Huelsman; Reps. Black, Huber, Leibham and Staskunas; and Public Members Allen, Gavronski, Hammer, Harding, Hargarten, Langdon, Madson, McAdams and Roiger); Noes, 2 (Rep. Ainsworth; and Public Member Cohen); and Not Voting, 1 (Rep. Stone).

At its March 14, 2001 meeting, the Joint Legislative Council voted to introduce the four bills as follows:

Sen. Chvala moved, seconded by Rep. Stone, that WLC: 0011/4, relating to the intoxicated operation of an all-terrain vehicle, motorboat or snowmobile, be introduced by the Joint Legislative Council. The motion passed on a roll call vote as follows: Ayes, 19 (Sens. Risser, Baumgart, Burke, Chvala, Darling, Grobschmidt, Panzer, Robson, Rosenzweig and Zien;

and Reps. Rhoades, Black, Bock, Foti, Freese, Gard, Huber, Lehman and Stone); Noes, 0; and Absent, 3 (Sen. George; and Reps. Jensen and Krug).

[Sen. George and Rep. Jensen asked that the record reflect that had they been present, they would have voted in favor of WLC: 0011/4.]

Sen. Chvala moved, seconded by Rep. Stone, that WLC: 0021/1, relating to safety training for all-terrain vehicle and motor boat operation, be introduced by the Joint Legislative Council. The motion passed on a roll call vote as follows: Ayes, 19 (Sens. Risser, Baumgart, Burke, Chvala, Darling, Grobschmidt, Panzer, Robson, Rosenzweig and Zien; and Reps. Rhoades, Black, Bock, Foti, Freese, Gard, Huber, Lehman and Stone); Noes, 0; and Absent, 3 (Sen. George; and Reps. Jensen and Krug).

[Sen. George and Rep. Jensen asked that the record reflect that had they been present, they would have voted in favor of WLC: 0021/1.]

Sen. Chvala moved, seconded by Rep. Black, that WLC: 0024/2, relating to wearing of flotation devices, be introduced by the Joint Legislative Council. The motion passed on a roll call vote as follows: Ayes, 12 (Sens. Risser, Baumgart, Burke, Chvala, Grobschmidt, Robson and Rosenzweig; and Reps. Black, Bock, Freese, Huber and Stone); Noes, 7 (Sens. Darling, Panzer and Zien; and Reps. Rhoades, Foti, Gard and Lehman); and Absent, 3 (Sen. George; and Reps. Jensen and Krug).

[Sen. George asked that the record reflect that had he been present, he would have voted in favor of WLC: 0024/2. Rep. Jensen asked that the record reflect that had he been present, he would have voted against WLC: 0024/2.]

Sen. Chvala moved, seconded by Rep. Stone, that WLC: 0032/3, relating to operating a motor vehicle while intoxicated, be introduced by the Joint Legislative Council. The motion passed on a roll call vote as follows: Ayes, 19 (Sens. Risser, Baumgart, Burke, Chvala, Darling, Grobschmidt, Panzer, Robson, Rosenzweig and Zien; and Reps. Rhoades, Black, Bock, Foti, Freese, Gard, Huber, Lehman and Stone); Noes, 0; and Absent, 3 (Sen. George; and Reps. Jensen and Krug).

[Sen. George and Rep. Jensen asked that the record reflect that had they been present, they would have voted in favor of WLC: 0032/3.]

JOINT LEGISLATIVE COUNCIL
s. 13.81, Stats.

Cochair
FRED A. RISSER
Senate President
5008 Risser Road
Madison, WI 53705-1365

JAMES BAUMGART
1419 North 16th Street
Sheboygan, WI 53081-3257

BRIAN BURKE
Cochair, Joint Comt. on Finance
2029 North 51st Street
Milwaukee, WI 53208-1747

CHARLES J. CHVALA
Senate Majority Leader
1 Coach House Drive
Madison, WI 53714-2718

ALBERTA DARLING
*Ranking Minority Member, Joint
Comt. on Finance*
1325 West Dean Road
River Hills, WI 53217-2537

SPENCER BLACK
5742 Elder Place
Madison, WI 53705-2516

PETER BOCK
4710 West Bluemound Road
Milwaukee, WI 53208-3648

STEVEN M. FOTI
Assembly Majority Leader
1117 Dickens Drive
Oconomowoc, WI 53066-4316

STEPHEN J. FREESE
Speaker Pro Tempore
310 East North Street
Dodgeville, WI 53533-1200

Cochair
KITTY RHOADES
Representative
708 4th Street
Hudson, WI 54016-1643

JUDITH ROBSON
2411 East Ridge Road
Beloit, WI 53511-3922

PEGGY ROSENZWEIG
6236 Upper Parkway North
Wauwatosa, WI 53213-2430

DAVID ZIEN
1716 63rd Street
Eau Claire, WI 54703-6857

SENATORS
GARY R. GEORGE
President Pro Tempore
1100 West Wells St., #1711
Milwaukee, WI 53233-2326

RICHARD GROBSCHMIDT
912 Lake Drive
South Milwaukee, WI 53172-1736

MARY PANZER
Senate Minority Leader
635 Tamarack Drive West
West Bend, WI 53095-3653

REPRESENTATIVES
JOHN GARD
Cochair, Joint Comt. on Finance
481 Aubin St., PO Box 119
Peshtigo, WI 54157-0119

GREGORY HUBER
*Ranking Minority Member, Joint
Comt. on Finance*
406 South 9th Avenue
Wausau, WI 54401-4541

SCOTT R. JENSEN
Assembly Speaker
850 South Springdale Road
Waukesha, WI 53186-1402

SHIRLEY KRUG
Assembly Minority Leader
6105 West Hope Avenue
Milwaukee, WI 53216-1226

MICHAEL LEHMAN
1317 Honeysuckle Road
Hartford, WI 53027-2614

JEFF STONE
7424 West Forest Home Ave.
Greenfield, WI 53220-3358

This 22-member committee consists of the majority and minority party leadership of both houses of the Legislature, the cochairs and ranking minority members of the Joint Committee on Finance, and 5 Senators and 5 Representatives appointed as are members of standing committees.

**RECODIFICATION OF OPERATING WHILE INTOXICATED AND
SAFETY LAWS PERTAINING TO MOTOR VEHICLE, ALL-TERRAIN VEHICLE, BOAT
OR SNOWMOBILE OPERATION, SPECIAL COMMITTEE ON**

Cochair
BRIAN BURKE
Senator
2029 North 51st Street
Milwaukee, WI 53208-1747

JOHN AINSWORTH
W6382 Waukechon Road
Shawano, WI 54166-7042

SPENCER BLACK
5742 Elder Place
Madison, WI 53705-2516

ROGER ALLEN
Assistant City Attorney
City-County Building, #401
210 Martin Luther King, Jr. Blvd.
Madison, WI 53703-3345

BARRY S. COHEN
Attorney, Barry S. Cohen, S.C.
N9661 Willow Road
Elkhart Lake, WI 53020-1640

MICHAEL GAVRONSKI
Managing Member
Tri County Distributors, LLC
3010 Zuehlke Drive
Appleton, WI 54911-8798

TOM HAMMER
Professor, Marquette Law School
1103 W. Wisconsin Ave., Box
1881
Milwaukee, WI 53201-1881

SENATOR
JOANNE HUELSMAN
235 West Broadway, Ste. 210
Waukesha, WI 53186-4832
REPRESENTATIVES

GREGORY HUBER
406 South 9th Avenue
Wausau 54401-4541

JOE LEIBHAM
60 Lincoln Avenue
Sheboygan, WI 53081-2934
PUBLIC MEMBERS

PATRICK HARDING
Toxicology Section
State Laboratory of Hygiene
2601 Agriculture Dr., PO Box 7996
Madison, WI 53707-7996

STEPHEN HARGARTEN
Physician, Froedtert Memorial
Lutheran Hospital
9200 W. Wisconsin Ave.
Milwaukee, WI 53226-3596

JAMES M. LANGDON
Member, Snowmobile Recreation
Council
3860 Sunnywood Drive
DeForest, WI 53532-2877

Cochair
STEPHEN J. FREESE
Representative
310 East North Street
Dodgeville, WI 53533-1200

ANTHONY STASKUNAS
2010 South 103rd Court
West Allis, WI 53227-1259

JEFF STONE
7424 West Forest Home Avenue
Greenfield, WI 53220-3358

STEVE MADSON
Assistant District Attorney
Brown Co. DA's Office
300 E. Walnut, P.O. Box 23600
Green Bay, WI 54305-3600

TOM MCADAMS
Assistant District Attorney
Milwaukee Co. DA's Office
821 W. State St., Safety Room 405
Milwaukee, WI 53233-1427

MIKE ROIGER
Retired Rural Mail Carrier
N5085 Bens Lane
Medford, WI 54451-9341

STUDY ASSIGNMENT: The Committee is directed to study current statutes relating to operating a vehicle while under the influence of an intoxicant or drugs. The Committee is to reorganize, simplify, modernize and clarify these statutes and make minor substantive changes necessary to effect these goals. In addition, the Committee is directed to study, with respect to an all-terrain vehicle, a boat or a snowmobile, whether enforcement mechanisms need to be increased or created to ensure compliance with the law. The Special Committee shall report its recommendations to the Joint Legislative Council by January 1, 2001.

Established by a May 18, 2000 mail ballot; Cochairs appointed by a June 13, 2000 mail ballot; and members appointed by an August 14, 2000 mail ballot.

19 MEMBERS: 2 Senators; 7 Representatives and 10 Public Members.

LEGISLATIVE COUNCIL STAFF: Ron Sklansky, Senior Staff Attorney; Don Salm, Senior Staff Attorney; and Julie Learned, Support Staff.

Committee Materials List

September 27, 2000 Meeting

Memo No. 1, Review of **Laws** Relating to **Operating While Intoxicated and Safety Laws Pertaining to Motor Vehicle, All-Terrain Vehicle, Boat or Snowmobile Operation** (9-19-00)

Memo No. 2, Chart Setting Forth the **Penalties for Drunk Driving and Related Offenses** (9-19-00)

Memo No. 3, **Intoxicated Operation of All-Terrain Vehicles, Boats and Snowmobiles** (9-20-00)

November 21, 2000 Meeting

Memo No. 4, **Safety Instruction and Age of Operation** Relating to All-Terrain Vehicles, Boats and Snowmobiles (10-30-00)

Memo No. 5, **Suggested Amendments to the Statutes** Related to the Operation of All-Terrain Vehicles, Boats and Snowmobiles (11-13-00)

Memo No. 6, **Information Requested Relating to Hit and Run Crashes** by Crash Severity and Alcohol Involvement; Persons Involved in Alcohol-Related Crashes by Role and Drinking Status; and Persons Involved in Alcohol-Related Crashes by Role and Injury Severity (11-10-00)

Memo No. 7, Analysis of **Current Law Prohibiting "Hit and Run" Motor Vehicle Accidents** and Comparison of Current Penalties for "Hit and Run" With Penalties for Drunk Driving (11-10-00)

Memo No. 8, **State Excise Taxes on Intoxicating Liquor and Beer** (11-10-00)

Memo No. 9, **Suggestions for Recodification of Statutes** Relating to Operating a Motor Vehicle While Intoxicated (11-13-00)

Memo No. 10, **Information Regarding Recreational Vehicles Requested From the Department of Natural Resources** (11-13-00)

Statement, National Marine Manufacturers Association (11-2-00)

WLCS: 0011/1, relating to recreational vehicles

December 21, 2000 Meeting

Memo No. 11, **Additional Suggestions for Recodification of Statutes Relating to Operating a Motor Vehicle While Intoxicated** (12-14-00)

WLCS: 0011/2, relating to recreational vehicles

WLCS: 0021/1, relating to safety training for all-terrain vehicle and motorboat operation

WLCS: 0024/1, relating to wearing of flotation devices

WLCS: 0032/1, relating to operating a motor vehicle while intoxicated

Memo, Suggestions for Recodification of OWI Statutes, distributed by Public Member Barry Cohen (11-16-00)

February 6, 2001 Meeting

Memo No. 12, Meaning of the Term "Clear Proceeds" as Used in Wisconsin Constitution, Article X, Section 2 (1-30-01)

1999 Senate Bill 508, relating to causing property damage by operating a motor vehicle while under the influence of an intoxicant or other drug [See Sections 16, 18, 26 and 33.]

WLC: 0011/3, relating to the intoxicated operation of an all-terrain vehicle, motorboat or snowmobile

WLC: 0024/2, relating to wearing of flotation devices

WLC: 0032/2, relating to operating a motor vehicle while intoxicated

Email message, from Committee Member James Langdon, relating to the places of applicability of the intoxicated operation of a sport recreational vehicle law