



State of Wisconsin

LEGISLATIVE REFERENCE BUREAU

1 EAST MAIN, SUITE 200
P. O. BOX 2037
MADISON, WI 53701-2037

LEGAL SECTION: (608) 266-3561
REFERENCE SECTION: (608) 266-0341
FAX: (608) 264-6948

STEPHEN R. MILLER
CHIEF

April 27, 2010

MEMORANDUM

To: Representative Molepske

From: Mary Gibson-Glass, Sr. Legislative Attorney, (608) 267-3215

Subject: Technical Memorandum to **2009 AB 841** (LRB-4163/1) by **DOT**

We received the attached technical memorandum relating to your bill. This copy is for your information and your file.

If you wish to discuss this memorandum or the necessity of revising your bill or preparing an amendment, please contact me.

CORRESPONDENCE / MEMORANDUM

State of Wisconsin

Date: April 27, 2010

To: Legislative Reference Bureau

From: Richard Kleist
DMV Legislative Liaison, Department of Transportation

Subject: Technical Note for Assembly Bill 841 relating to intoxicated operation of all-terrain vehicles, snowmobiles, motorboats, and motor vehicles, the calculation of the amount of moneys to be expended from the snowmobile account in the conservation fund for certain activities relating to snowmobile trails and routes, and providing penalties.

The provisions in this proposal are written under s. 23.33, Wis. Stats., relating to ATVs, Subchapter V of Chapter 30, Stats., relating to the regulation of boating, and Chapter 350, Wis. Stats., relating to snowmobiles. As none of the provisions of this proposal include language under Chapter 343, Wis. Stats., relating to operator's licenses, there are several technical omissions or inconsistencies.

While the proposal includes provisions for revocation of a person's motor vehicle operating privilege for convictions for operating a particular recreational vehicle while intoxicated or refusing a chemical test for intoxication, no provisions were included for the issuance of an occupational driver license for operation for purposes described in s. 343.10, Wis. Stats., during the period of the revocation.

Convictions for operating while intoxicated in a motor vehicle under s. 346.63(1) are convictions used when the Department considers whether to revoke a person's operating privilege as a habitual traffic offender. There is no indication of a desire to have recreational vehicle operating while intoxicated convictions considered for purposes of a person being found to be a habitual traffic offender.

Also, currently a person convicted of operating while intoxicated in a motor vehicle is required to complete an alcohol assessment and any education or treatment recommended as a result of the alcohol assessment. This proposal does not require an alcohol assessment and education or treatment in conjunction with the motor vehicle operating privilege revocation resulting from two or more convictions for operating a recreational vehicle while intoxicated.

2009 Wisconsin Act 100 included a provision under s. 343.21(1)(jr), requiring persons convicted of operating while intoxicated in a motor vehicle to pay an additional \$140 for reinstatement of their operating privilege after revocation. This proposal would seem to be inconsistent in that area as the additional fee is not required.

Federal regulation 49CFR part 383.5 defines a "motor vehicle" as a vehicle, machine, tractor, trailer, or semitrailer propelled or drawn by mechanical power used on highways, except that such term does not include a vehicle, machine, tractor, trailer, semitrailer operated exclusively on a rail. Currently there are other proposed legislative bills that would allow ATVs to be legally driven on highways. Should one of those proposals become law, an ATV could be legally

viewed as a motor vehicle under the Federal Code and a conviction for operating an ATV while intoxicated might cause a person with a Commercial Driver License to have that license disqualified for one year under Federal Regulation 49CFR, part 383.51. As second such conviction would cause the person's commercial operating privilege to be disqualified for life.

We appreciate your attention to these technical concerns.

Richard Kleist, WisDOT-DMV
(608) 266-1449