

2019 DRAFTING REQUEST**Assembly Amendment (AA-AB356)**

For: **Jim Ott (608) 266-0486** Drafter: **eshea**
 By: **Ginger** Secondary Drafters:
 Date: **1/8/2020** May Contact:

Same as LRB:

Submit via email: **YES**
 Requester's email: **Rep.OttJ@legis.wisconsin.gov**
 Carbon copy (CC) to: **elisabeth.shea@legis.wisconsin.gov**
zachary.wyatt@legis.wisconsin.gov
peggy.hurley@legis.wisconsin.gov

Pre Topic:

No specific pre topic given

Topic:

OWI for recreational vehicles; various changes

Instructions:

See attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	eshea 1/8/2020	swinder 1/9/2020			
/P1	zwyatt 1/23/2020	swinder 1/23/2020	lparisi 1/9/2020		
/1			mbarman 1/23/2020	mbarman 1/23/2020	

FE Sent For:

<END>

Shea, Elisabeth

From: Hurley, Peggy
Sent: Wednesday, December 11, 2019 1:37 PM
To: Shea, Elisabeth
Subject: FW: AB 356

Importance: High

Follow Up Flag: Follow up
Flag Status: Flagged

Hi Lis!

I hope you are doing well! Ginger in Representative Ott's office would like to discuss an amendment to AB 356; this email chain has my summary of a discussion held between Senator Jacque, the DNR folks, Rep. Ott, and myself before the holiday and Matt O'Brien's responses to it. As you will see, some of the items are already, essentially, drafting instructions and some remain to be settled.

Are you available to get together tomorrow afternoon, Friday morning, or next Monday or Tuesday?

Peggy



Peggy J. Hurley

Staff Attorney, Wisconsin Legislative Council
608.504.5724 | peggy.hurley@legis.wisconsin.gov
One East Main Street, Suite 401, Madison, WI 53703

From: Mueller, Virginia <Virginia.Mueller@legis.wisconsin.gov>
Sent: Wednesday, December 11, 2019 11:26 AM
To: Hurley, Peggy <Peggy.Hurley@legis.wisconsin.gov>
Subject: FW: AB 356
Importance: High

Hi Peggy,

Please look this over and let's talk

Thank you

Ginger

From: Ruby, Erin A - DNR <Erin.Ruby@wisconsin.gov>
Sent: Wednesday, December 11, 2019 7:08 AM
To: Mueller, Virginia <Virginia.Mueller@legis.wisconsin.gov>
Subject: FW: AB 356

Good morning, Ginger!

Please find below – in red – Matt O'Brien's responses to Peggy's list of items to be considered in an amendment.

We welcome the opportunity to review any draft amendment.

Many thanks!
Erin

We are committed to service excellence.

Visit our survey at <http://dnr.wi.gov/customersurvey> to evaluate how I did.

Erin Ruby
Phone: (608) 266-7566
Erin.Ruby@wisconsin.gov

From: OBrien, Matthew M - DNR <MatthewM.OBrien@wisconsin.gov>
Sent: Tuesday, December 10, 2019 11:01 PM
To: Ruby, Erin A - DNR <Erin.Ruby@wisconsin.gov>
Subject: RE: AB 356

Below in red. Sorry for the length, but this is incredibly technical and a 40 page bill. Advise with questions or concerns; we are very interested in reviewing any amendment drafts, thanks.

We are committed to service excellence.

Visit our survey at <http://dnr.wi.gov/customersurvey> to evaluate how I did.

Lt. Matt O'Brien
Conservation Warden | Law Enforcement Policy Officer
Bureau of Law Enforcement
Wisconsin Department of Natural Resources
Office Phone: (608) 266-3244
matthewm.obrien@wisconsin.gov



From: Ruby, Erin A - DNR
Sent: Thursday, December 5, 2019 4:20 PM
To: OBrien, Matthew M - DNR
Subject: FW: AB 356

We are committed to service excellence.

Visit our survey at <http://dnr.wi.gov/customersurvey> to evaluate how I did.

Erin Ruby
Phone: (608) 266-7566
Erin.Ruby@wisconsin.gov

From: Mueller, Virginia <Virginia.Mueller@legis.wisconsin.gov>
Sent: Monday, December 2, 2019 2:05 PM
To: Ruby, Erin A - DNR <Erin.Ruby@wisconsin.gov>
Subject: FW: AB 356

Hi Erin,

Peggy sent this over last week, however I thought we should all enjoy Thanksgiving but it is back to work.

Could you guys just take a look at this and let me know if it works for you?

Please call with any questions.

Ginger

From: Hurley, Peggy <Peggy.Hurley@legis.wisconsin.gov>
Sent: Monday, November 25, 2019 4:34 PM
To: Mueller, Virginia <Virginia.Mueller@legis.wisconsin.gov>
Subject: AB 356

Hi Ginger,

As we discussed last week, I am forwarding for your review and approval a list of items your office would like to see addressed in an amendment to 2019 AB 356. I am not sure whether you want Senator Jacque's office to make the formal request for an amendment or whether you wanted to do it, so I am starting with your office. You may want to forward these suggestions to Senator Jacque's office and to DNR for their review and approval or changes, as well.

Items:

1. In each category of recreational vehicles, please amend the monetary penalty for a first offense or refusal to be \$475. This is fine; the range was too narrow to be meaningful compared to the administrative overhead of implementation. I know Jacque's office had heartburn about this; if it's going to cause an irreparable obstacle, then leave the bill as is. This falls into "nice to have" where all parties agree, but not "worth fighting about" or "impossible for DNR to implement." Discuss with Ginger; based on the amount of other changes we are looking at, perhaps strategically we should leave this off the table. I'd leave this as is in exchange for removing occupational licensing ☺
2. In each category of recreational vehicles, please strike through the provisions subjecting a person under the drinking age to a \$50 forfeiture for a refusal. The forfeiture should stay for absolute sobriety/underage operation but the penalty for refusal should be the same regardless of the offender's age. Correct. See 23.33(13)(b)4. Assigns a penalty for absolute sobriety violation (4c)(a)1. ALSO modifies the refusal penalty violation (4p)(e), as to persons under age 21, down to \$50. I believe striking the (4p)(e) reference in that section would remedy the issue, because then everyone—regardless of age—is subject to the same general refusal penalty. LRB will probably also want to delete the phrase "and who has not attained the age of 21" because it will be irrelevant; that limiting language is up in the absolute sobriety prohibition itself. *SNOWMO → AB 7/5610*
3. Please review definitions in each chapter to ensure that identical words are used unless a different meaning is intended. Yes. Compare 23.33(1)(ib), 30.50(4n), and 350.01(9b) with 23.335(1)(km); phrases are reorganized but are substantively identical. Creates confusion. Compare 23.33(1)(jk), which does not include the OHM refusal law, with 23.335 (1)(zet), which includes all four vehicles. The snowmobile "intoxicated operating law" definition refers to 23.335(1)(km) for the OHM law, which I believe should actually be (L). Again, this should be complete and identical across all for vehicle sections so we don't miss anything or have errors. *NO*
4. Throughout the bill, eliminate the phrase "public premises" and simply state that, in circumstances where revocation of a person's privilege to operate a motor vehicle is indicated, the court shall order the revocation of the person's privilege to operate a motor vehicle. Yes, thanks.
5. **I am not entirely sure this is where the discussion landed; my notes indicate two options:** Option A. Amend the provisions throughout the bill allowing a court to authorize the person to operate a recreational vehicle on land under the management and control of the person's family if the court finds that it is essential for the purpose of engaging in an

occupation or trade by replacing them with provisions allowing the court to authorize a person to operate a recreational vehicle only on land identified by the court in its order as essential for the purpose of engaging in an occupation or trade. This option would allow a person to operate a recreational vehicle on, say, any farm where the person is employed, regardless of who owns the farm.

Option B. Amend the provisions by inserting language indicating that the land may be owned by the person, his or her immediate family, or a corporation or other entity primarily owned or managed by the person or his or her immediate family.

DNR preference 1: Remove occupational authorization provisions entirely; these are VERY DIFFICULT to administer in a world where no initial license is given, and don't seem to have the same socio-economic nexus that motor vehicle operation entails. I'd rather this be such an issue that a follow-on bill address it later, rather than create it out the gates. This would only require about 4 sentences to be deleted from the current draft, but would save a bucket on headaches.

DNR preference 2: First step is to take the term "land under the management and control of the person's immediate family," as defined for 23.33 in 23.33(1)(if), and extend that into 23.335 to resolve some of the issues (just create the same definition in 23.335; the term already exists in 350 as well). There are two other issues that will need resolution across all three land-based sections of the definition.

1. How does the law want to view family corporate farms, where the corporation—not the person—owns the land. Current language in that definition (23.33(1)(if)) would exclude those corporate bodies. DNR is okay with that but that may limit the usefulness/intent of the occupational licensing. Goes back to DNR preference 1.
2. The current definition would generally exclude all non-familial 3rd party businesses, such as large corporate farms. DNR is okay with that, but it may limit the usefulness and create a fairness problem. IE. If I'm lucky enough to own my own farm, then I can get an occupational privilege to drive around on it. If I'm not lucky enough to own, but I just work at a farm, then I can't get this privilege. Very unfair outcome. Relatedly, the boating occupational provision is much broader, by just saying "essential for the purpose of engaging in an occupation or trade," which is incredibly broad. DNR obviously prefers the more limited, narrowly-tailored language, but the treatment of occupational licensing throughout the bill is inconsistent and does not have a clear policy approach. Goes back to DNR preference 1.

Related issue but relevant if occupational privileges are going to stay; motor vehicle OWIs that trigger recreational vehicle privilege revocation do not appear to have any ability to get occupational licensing. These seems inconsistent. Additionally, occupational licensing seems to only be available for the vehicle type associated with the original violation, despite the fact that all recreational vehicle operating privileges will be revoked. This seems inconsistent. See DNR preference 1. *fix this*

6. In s. 30.80(6)(a)1., do not strike ", a local ordinance in conformity with s. 30.681(1)(a) or (b)" Instead, add "a local ordinance in conformity with [relevant cross-reference]" to the first offense penalty sections for the other types of recreational vehicles. This issue needs to be flagged for LRB to sort out. My original question was about whether or not local ordinances could still penalize OWI; drafter intent was "yes," which is fine, and numerous definitions capture the local ordinances in conformity with (intoxicated operation of xyz, refusal law, etc.) The draft as is appears to be consistent across vehicle types in this respect (omitting reference to local ordinance in the 1st offense section), which appears consistent with the treatment of motor vehicle OWI penalties. However, since boating had it, deleting it certainly seemed odd. A note somewhere in the LRB bill analysis that identifies such language as surplussage may be helpful in combating an alternative intent discussion that tries to draw significance from its deletion. So, consistency across all chapters is important. I don't think we need it, but LRB should sort out why it was there in the first place. Relatedly, since local ordinances can still prohibit OWI, conviction reporting to the Dept. is critical. I believe the boating OWI section creates a different clerk-conviction reporting schema than the one housed in ATV/OHM/Snow (see 23.33(13)(dm) "Reporting convictions to the department" language). Recommend the language—whatever LRB feels best—is the same across chapters. *different...? douse check not different*

7. Please review the use of a "triggering event" (i.e., date of violation or date of conviction") for purposes of counting in the revocation provisions and in the penalty provisions. Should the date of conviction be used consistently? Seems like *date of conviction*

we should have a consistent "event date." I believe the penalty sections have this done properly and consistent with motor vehicle law (based on convictions, not violations). So it appears the motor vehicle privilege section should be amended from "violated" to the same conviction language. See 23.33(4y)2.

*724
land other vehicles*

I think that's it! I apologize, but I will be out of the office until next Monday. Please let me know if I can be of additional assistance to you.

Peggy



Peggy J. Hurley

Staff Attorney, Wisconsin Legislative Council

608.504.5724 | peggy.hurley@legis.wisconsin.gov

One East Main Street, Suite 401, Madison, WI 53703

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRBa0857/P1dn

EHS:...

skw

DATE

AB 356 did not include any changes with respect to fixing the absolute sobriety provision for snowmobiles (increasing the age from 19 to 21) because that is being fixed in AB 7 / SB 10. However, those bills do not remove the \$50 penalty for a refusal for a person under age 21. This amendment removes this penalty for all other recreational vehicles so that all refusals, regardless of age, have the same penalty (between \$400 and \$550 for a first offense under the bill). Do you want to address the snowmobile refusal penalty for a person under 21 in this amendment? An alternative would be an amendment to those bills to remove the penalty.

The amendment makes the fix to allow a person who has lost their motor vehicle operating privilege to continue to operate a recreational vehicle, including a motorboat, on private land for the purpose of engaging in an occupation or trade. (See the change to page 26, line 18.) Should this type of occupational operation of a motorboat be limited to private property, given that most navigable water in the state is public?

DNR noted a difference between the clerk-conviction reporting schema for boating (s. 30.80 (6) (cm)) and the ones for the other recreational vehicles (ss. 23.33 (13) (dm), 23.335 (23) (h), and 350.11 (3) (cm)). However, I see no differences among those provisions so I made no changes.

Elisabeth Shea
Senior Legislative Attorney
(608) 504-5885
elisabeth.shea@legis.wisconsin.gov



PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION
ASSEMBLY AMENDMENT ,
TO ASSEMBLY BILL 356

D-NOTE

In 1/8
Due 1/9

1 At the locations indicated, amend the bill as follows:

2 1. Page 5, line 6: delete lines 6 to 12.

3 2. Page 5, line 18: delete lines 18 to 21 and substitute:

4 "SECTION 5. 23.33 (1) (jk) of the statutes is created to read:

5 23.33 (1) (jk) "Recreational vehicle and boating refusal law" means the
6 all-terrain or utility terrain vehicle refusal law, the off-highway motorcycle
7 refusal law, as defined in s. 23.335 (1) (tm), the boating refusal law, as defined in s.
8 30.50 (2c), or the snowmobiling refusal law, as defined in s. 350.01 (17m).".

9 3. Page 7, line 14: delete the material beginning with "As part of the order" and
10 ending with "trade." on page 7, line 17 and substitute: "As part of the order, the court
11 may authorize the person to operate a recreational vehicle exclusively on private

1 land and not on highways if the court finds that such operation is essential for the
2 purpose of engaging in an occupation or trade.”.

3 **4.** Page 7, line 21: delete “on public premises”.

4 **5.** Page 7, line 24: delete “violated” and substitute “was convicted of a violation
5 of”.

6 **6.** Page 8, line 9: delete lines 9 to 11 and substitute:

7 “2. No person may operate an all-terrain vehicle or utility terrain vehicle
8 during the time that the person’s motor vehicle operating privilege is suspended or
9 revoked for a conviction counted under s. 343.307 (1) unless a court order authorizes
10 the person to operate an all-terrain vehicle or utility terrain vehicle exclusively on
11 private land and not on highways because the court finds that such operation is
12 essential for the purpose of engaging in an occupation or trade.”.

13 **7.** Page 8, line 13: delete lines 13 to 15 and substitute:

14 “23.33 (13) (b) 1. Except as provided under subds. 2. and 3. to 5., a person who
15 violates sub. (4c) (a) 1., 2., or 2m. or, (4p) (e), or a local ordinance in conformity with
16 sub. (4c) (a) 1., 2., or 2m. shall forfeit not less than \$150 \$400 nor more than \$300
17 \$550.”.

History: 1985 a. 29; 1987 a. 200, 353, 399, 403; 1989 a. 31, 275, 359; 1991 a. 39, 303, 315; 1993 a. 16, 105, 119, 405; 1995 a. 27 ss. 1350 to 1351, 9126 (19); 1995 a. 436, 448; 1997 a. 27, 248, 283; 1999 a. 9; 2001 a. 16, 90, 106, 109; 2003 a. 30, 97, 251, 326; 2005 a. 25, 253, 481; 2007 a. 20 ss. 664m to 666m, 9121 (6) (a); 2007 a. 27, 209; 2009 a. 85, 175, 252, 367; 2011 a. 35, 51, 208, 258; 2013 a. 15, 20, 67, 83; 2013 a. 165 s. 114; 2013 a. 173, 224, 316; 2015 a. 55, 89, 170, 210; 2017 a. 59, 87, 161, 193, 365; 2019 a. 11, 68.

Cross-reference: See also ch. NR 64, Wis. adm. code.

18 **8.** Page 9, line 10: delete lines 10 to 12 and substitute:

19 “23.33 (13) (b) 6. A person who violates sub. (4c) (a) 3. ~~or (4p) (e) and who has~~
20 ~~not attained the age of 21~~ shall forfeit ~~not more than~~ \$50.”.

History: 1985 a. 29; 1987 a. 200, 353, 399, 403; 1989 a. 31, 275, 359; 1991 a. 39, 303, 315; 1993 a. 16, 105, 119, 405; 1995 a. 27 ss. 1350 to 1351, 9126 (19); 1995 a. 436, 448; 1997 a. 27, 248, 283; 1999 a. 9; 2001 a. 16, 90, 106, 109; 2003 a. 30, 97, 251, 326; 2005 a. 25, 253, 481; 2007 a. 20 ss. 664m to 666m, 9121 (6) (a); 2007 a. 27, 209; 2009 a. 85, 175, 252, 367; 2011 a. 35, 51, 208, 258; 2013 a. 15, 20, 67, 83; 2013 a. 165 s. 114; 2013 a. 173, 224, 316; 2015 a. 55, 89, 170, 210; 2017 a. 59, 87, 161, 193, 365; 2019 a. 11, 68.

Cross-reference: See also ch. NR 64, Wis. adm. code.

1 **9.** Page 13, line 23: delete the material beginning with that line and ending
2 with page 14, line 3 and substitute:

3 “**SECTION 27.** 23.335 (1) (km) of the statutes is created to read:

4 23.335 (1) (km) “Intoxicated operating law” means the intoxicated operation
5 of an all-terrain or utility terrain vehicle law, as defined in s. 23.33 (1) (ic), the
6 intoxicated operation of an off-highway motorcycle law, the intoxicated boating law,
7 as defined in s. 30.50 (4m), or the intoxicated snowmobiling law, as defined in
8 s.350.01 (9c).”.

9 **10.** Page 14, line 6: delete lines 6 to 22 and substitute:

10 “**SECTION 30.** 23.335 (1) (zer) of the statutes is created to read:

11 23.335 (1) (zer) “Recreational vehicle” means an all-terrain vehicle, as defined
12 in s. 340.01 (2g), a utility terrain vehicle, as defined in s. 23.33 (1) (ng), an
13 off-highway motorcycle, a recreational motorboat, as defined in s. 30.50 (9m), or a
14 snowmobile, as defined in s. 340.01 (58a).

15 **SECTION 31.** 23.335 (1) (zet) of the statutes is created to read:

16 23.335 (1) (zet) “Recreational vehicle and boating refusal law” means the
17 all-terrain or utility terrain vehicle refusal law, as defined in s. 23.33 (1) (jm), the
18 off-highway motorcycle refusal law, the boating refusal law, as defined in s. 30.50
19 (2c), or the snowmobiling refusal law, as defined in s. 350.01 (17m).”.

20 **11.** Page 16, line 14: delete the material beginning with “As part of the order”
21 and ending with “trade.” on page 16, line 17 and substitute, “As part of the order, the
22 court may authorize the person to operate a recreational vehicle exclusively on
23 private land and not on highways if the court finds that such operation is essential
24 for the purpose of engaging in an occupation or trade.”.

1 **12.** Page 16, line 21: delete “on public premises”.

2 **13.** Page 16, line 24: delete “violated” and substitute “was convicted of a
3 violation of”.

4 **14.** Page 17, line 9: delete lines 9 to 11 and substitute:

5 ^{2b.} **2.** No person may operate an off-highway motorcycle during the time that the
6 person’s motor vehicle operating privilege is suspended or revoked for a conviction
7 counted under s. 343.307 (1) unless a court order authorizes the person to operate
8 an off-highway motorcycle exclusively on private land and not on highways because
9 the court finds that such operation is essential for the purpose of engaging in an
10 occupation or trade.”.

11 **15.** Page 17, line 13: delete lines 13 to 15 and substitute:

12 “23.335 (23) (c) 1. Except as provided under subs. 2., 3., and 4. to 5., a person
13 who violates sub. (12) (a) 1., 2., or 2m. or (h) or a local ordinance in conformity with
14 sub. (12) (a) 1., 2., or 2m. shall forfeit not less than \$150 \$400 nor more than \$300
15 \$550.”.

History: 2015 a. 170; 2017 a. 59, 161; 2019 a. 9, 11, 34, 68.

16 **16.** Page 18, line 10: delete lines 10 to 12 and substitute:

17 “23.335 (23) (c) 6. A person who violates sub. (12) (a) 3. ~~or (h) and who has not~~
18 ~~attained the age of 21~~ shall forfeit ~~not more than \$50.~~”.

History: 2015 a. 170; 2017 a. 59, 161; 2019 a. 9, 11, 34, 68.

19 **17.** Page 23, line 5: delete lines 5 to 11.

20 **18.** Page 25, line 25: delete the material beginning with “As part of the order”
21 and ending with “trade.” on page 26, line 2 and substitute: “As part of the order, the
22 court may authorize the person to operate a recreational vehicle exclusively on

1 private land and not on highways if the court finds that such operation is essential
2 for the purpose of engaging in an occupation or trade.”

Deleted the material beginning with "on public premises" and ending with "s. 23.33 (1)(j)", as line 7.

3 **19.** Page 26, line 6: delete "on public premises".

4 **20.** Page 26, line 8: delete "violated" and substitute "was convicted of a
5 violation of".

6 **21.** Page 26, line 18: delete lines 18 to 20 and substitute:

7 2. No person may operate a recreational motorboat during the time that the
8 person's motor vehicle operating privilege is suspended or revoked for a conviction
9 counted under s. 343.307 (1) unless a court order authorizes the person to operate
10 a recreational motorboat exclusively on private land because the court finds that
11 such operation is essential for the purpose of engaging in an occupation or trade.”

12 **22.** Page 27, line 2: delete lines 2 to 5 and substitute:

13 "30.80 (6) (a) 1. Except as provided under subs. 2. to 5., a person who violates
14 s. 30.681 (1) (a) or (b), s. 30.684 (5), or a local ordinance in conformity with s. 30.681
15 (1) (a) or (b) ~~or the refusal law~~ shall forfeit not less than ~~\$150~~ \$400 nor more than \$300
16 \$550.”

History: 1973 c. 302; 1975 c. 208, 365, 422; 1979 c. 296 ss. 1 to 3; 1985 a. 243, 331; 1985 a. 332 s. 251 (1); 1989 a. 31, 145; 1995 a. 448; 1997 a. 198, 283; 2001 a. 109; 2005 a. 356; 2009 a. 55; 2015 a. 89.

17 **23.** Page 28, line 14: delete lines 14 to 16 and substitute:

18 "30.80 (6) (a) 6. A person who violates s. 30.681 (1) (bn) ~~or a local ordinance in~~
19 ~~conformity with s. 30.681 (1) (bn)~~ shall forfeit \$50.”

History: 1973 c. 302; 1975 c. 208, 365, 422; 1979 c. 296 ss. 1 to 3; 1985 a. 243, 331; 1985 a. 332 s. 251 (1); 1989 a. 31, 145; 1995 a. 448; 1997 a. 198, 283; 2001 a. 109; 2005 a. 356; 2009 a. 55; 2015 a. 89.

20 **24.** Page 34, line 3: delete lines 3 to 9.

21 **25.** Page 36, line 6: delete the material beginning with "As part of the order"
22 and ending with "trade." on page 36, line 9 and substitute: "As part of the order, the

↑ - STEY

1 court may authorize the person to operate a recreational vehicle exclusively on
2 private land and not on highways if the court finds that such operation is essential
3 for the purpose of engaging in an occupation or trade.”

the material beginning with "on public premises" and ending with "s. 23.33 (1)(jd)" on line 14.

4 **26.** Page 36, line 13: delete "on public premises".

5 **27.** Page 36, line 16: delete "violated" and substitute "was convicted of a
6 violation of".

7 **28.** Page 37, line 1: delete lines 1 to 3 and substitute:

8 ^(b) **2.** No person may operate a snowmobile during the time that the person's
9 motor vehicle operating privilege is suspended or revoked for a conviction counted
10 under s. 343.307 (1) unless a court order authorizes the person to operate a
11 snowmobile exclusively on private land and not on highways because the court finds
12 that such operation is essential for the purpose of engaging in an occupation or
13 trade.”

14 **29.** Page 37, line 5: delete lines 5 to ⁷ and substitute:

15 “350.11 (3) (a) 1. Except as provided under subds. 2. ~~and 3.~~ to 5., a person who
16 violates s. 350.101 (1) (a), (b), or (bm) ~~or~~, s. 350.104 (5), or a local ordinance in
17 conformity with s. 350.101 (1) (a), (b), or (bm) shall forfeit not less than \$400 nor more
18 than \$550.”

History: 1971 c. 277; 1973 c. 218; 1975 c. 365; 1987 a. 399; 1991 a. 269; 1993 a. 119, 436; 1995 a. 417, 448; 1997 a. 27, 283; 2001 a. 109; 2003 a. 97.

Cross-reference: See s. 23.50 concerning enforcement procedures.

(END)

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRBa0857/P1dn
EHS:skw

January 9, 2020

AB 356 did not include any changes with respect to fixing the absolute sobriety provision for snowmobiles (increasing the age from 19 to 21) because that is being fixed in AB 7 / SB 10. However, those bills do not remove the \$50 penalty for a refusal for a person under age 21. This amendment removes this penalty for all other recreational vehicles so that all refusals, regardless of age, have the same penalty (between \$400 and \$550 for a first offense under the bill). Do you want to address the snowmobile refusal penalty for a person under 21 in this amendment? An alternative would be an amendment to those bills to remove the penalty.

The amendment makes the fix to allow a person who has lost their motor vehicle operating privilege to continue to operate a recreational vehicle, including a motorboat, on private land for the purpose of engaging in an occupation or trade. (See the change to page 26, line 18.) Should this type of occupational operation of a motorboat be limited to private property, given that most navigable water in the state is public?

DNR noted a difference between the clerk-conviction reporting schema for boating (s. 30.80 (6) (cm)) and the ones for the other recreational vehicles (ss. 23.33 (13) (dm), 23.335 (23) (h), and 350.11 (3) (cm)). However, I see no differences among those provisions so I made no changes.

Elisabeth Shea
Senior Legislative Attorney
(608) 504-5885
elisabeth.shea@legis.wisconsin.gov

Wyatt, Zachary

From: Shea, Elisabeth
Sent: Thursday, January 23, 2020 8:39 AM
To: Wyatt, Zachary
Subject: FW: Draft review: LRB a0857/P1

Importance: High

Any chance you could do these changes for me today? These are in response to my D-Note on a0857/P1, and it looks like changes are only needed regarding 2 items.

Lis

From: Hurley, Peggy <Peggy.Hurley@legis.wisconsin.gov>
Sent: Wednesday, January 22, 2020 2:30 PM
To: Shea, Elisabeth <Elisabeth.Shea@legis.wisconsin.gov>
Cc: Mueller, Virginia <Virginia.Mueller@legis.wisconsin.gov>
Subject: FW: Draft review: LRB a0857/P1
Importance: High

Hi Lis,

The Ott office is ready to go with the amendment. Please see my notes and make the necessary changes before creating the /1. The Ott office requests a RUSH on this project; please let me know if you have any questions or concerns.

Peggy



Peggy J. Hurley
Staff Attorney, Wisconsin Legislative Council
608.504.5724 | peggy.hurley@legis.wisconsin.gov
One East Main Street, Suite 401, Madison, WI 53703

From: Hurley, Peggy
Sent: Friday, January 17, 2020 9:52 AM
To: Mueller, Virginia <Virginia.Mueller@legis.wisconsin.gov>
Subject: RE: Draft review: LRB a0857/P1

Good morning, Ginger!

Please see my comments in red.

In response to the DN,

Par. 1.: DNR preference would be to correct the snowmobile absolute sobriety provisions to ensure this proposal creates a uniform schema across all vehicle types, rather than perpetuating a problem/inconsistency. So, glue AB 7 into this bill, and then also create the treatment of 350 that would align the absolute sobriety penalties to the other three

sections (boat/snow/atv). However, if AB 7 is so tainted that incorporation would kill this bill, then we will have to do without. I would incorporate the provisions of AB 7 into the amendment and add the absolute sobriety provisions; if both bills pass there isn't any problem with identical treatment of a statute in more than one bill.

Par 2.: DNR would agree that limiting motorboat operation to private property means very few waterways would be available for occupational authorization. However, this amendment establishes uniformity across all 4 vehicle types, which is good. Also, the ATV/UTV/OHM/Sno sections all limit occupational licensing to places where the public is not (IE. private property that is not a highway). Since all navigable waters function as defacto highways and are used by the public, the policy treatment is identical for motorboats under this amendment. DNR would not recommend any changes to the amendment draft but does agree that the motorboat occupational authorization is incredibly limited, albeit consistent with ensuring dangerous drivers remain off of public thoroughfares (land or water based). Agreed.

Par 3.: I see no changes necessary either; not sure what came to mind when identifying that the first time, perhaps it was related to the local ordinance/muni court piece that this draft has already corrected. Agreed.

Other drafting irregularity

- It still appears as though the term "intoxicated operating law," as used in all chapters in this draft, refers to the OHM OWI law as defined under "23.335(1)(km)". This seems incorrect, and should instead be "23.335(1)(L)" I agree. The bill creates s. 23.335(1)(L), defining "intoxicated vehicle law" for chapter 23, but I think the cross-reference in the other recreational chapters should be to s. 23.335(1)(L), which defines "intoxicated operation of an off-highway motorcycle law." I am not entirely sure it is necessary to cross-reference, within a chapter or a section, a definition from that same chapter or section, but I leave that to Lis' discretion as the drafter.



Peggy J. Hurley

Staff Attorney, Wisconsin Legislative Council
608.504.5724 | peggy.hurley@legis.wisconsin.gov
One East Main Street, Suite 401, Madison, WI 53703

From: Mueller, Virginia <Virginia.Mueller@legis.wisconsin.gov>

Sent: Thursday, January 16, 2020 4:30 PM

To: Hurley, Peggy <Peggy.Hurley@legis.wisconsin.gov>

Subject: FW: Draft review: LRB a0857/P1

Hi Peggy,

Attached is what we got back from DNR.

Ginger

From: Ruby, Erin A - DNR <Erin.Ruby@wisconsin.gov>

Sent: Thursday, January 16, 2020 7:23 AM

To: Mueller, Virginia <Virginia.Mueller@legis.wisconsin.gov>; Havey, Mike <Mike.Havey@legis.wisconsin.gov>

Cc: Kennedy, Sean P - DNR <seanp.kennedy@wisconsin.gov>

Subject: FW: Draft review: LRB a0857/P1

Good morning, Ginger and Mike!

Please find following Matt O'Brien's feedback on the draft amendment.

The Department very much appreciates your willingness to work with us on this bill. If we can be of assistance moving forward, let me know.

Thanks!
Erin

We are committed to service excellence.

Visit our survey at <http://dnr.wi.gov/customersurvey> to evaluate how I did.

Erin Ruby
Phone: (608) 266-7566
Erin.Ruby@wisconsin.gov

From: OBrien, Matthew M - DNR <MatthewM.OBrien@wisconsin.gov>
Sent: Wednesday, January 15, 2020 7:06 PM
To: Ruby, Erin A - DNR <Erin.Ruby@wisconsin.gov>
Subject: RE: Draft review: LRB a0857/P1

Lots of good progress here, thanks.

In response to the DN,

Par. 1.: DNR preference would be to correct the snowmobile absolute sobriety provisions to ensure this proposal creates a uniform schema across all vehicle types, rather than perpetuating a problem/inconsistency. So, glue AB 7 into this bill, and then also create the treatment of 350 that would align the absolute sobriety penalties to the other three sections (boat/snow/atv). However, if AB 7 is so tainted that incorporation would kill this bill, then we will have to do without.

Par 2.: DNR would agree that limiting motorboat operation to private property means very few waterways would be available for occupational authorization. However, this amendment establishes uniformity across all 4 vehicle types, which is good. Also, the ATV/UTV/OHM/Sno sections all limit occupational licensing to places where the public is not (IE. private property that is not a highway). Since all navigable waters function as defacto highways and are used by the public, the policy treatment is identical for motorboats under this amendment. DNR would not recommend any changes to the amendment draft but does agree that the motorboat occupational authorization is incredibly limited, albeit consistent with ensuring dangerous drivers remain off of public thoroughfares (land or water based).

Par 3.: I see no changes necessary either; not sure what came to mind when identifying that the first time, perhaps it was related to the local ordinance/muni court piece that this draft has already corrected.

Other drafting irregularity

- It still appears as though the term "intoxicated operating law," as used in all chapters in this draft, refers to the OHM OWI law as defined under "23.335(1)(km)". This seems incorrect, and should instead be "23.335(1)(L)"

Please convey our appreciation for the efforts on this; I know it's six pages of amendment, but the cleanup, consistency, and simplicity will go a long way to letting us focus on implementing the program rather than trying to sort the program out. I feel this amendment puts the base draft in a really good spot that has DNR excited about the public safety progress it represents.

Absent any other curve balls beyond what's already been discussed and the above thoughts, I don't know that DNR needs to see this again. Up to the author. Time is getting tight.

Thanks.

We are committed to service excellence.

Visit our survey at <http://dnr.wi.gov/customersurvey> to evaluate how I did.

Lt. Matt O'Brien
Conservation Warden | Law Enforcement Policy Officer
Bureau of Law Enforcement
Wisconsin Department of Natural Resources
Office Phone: (608) 266-3244
matthewm.obrien@wisconsin.gov



dnr.wi.gov

From: Ruby, Erin A - DNR
Sent: Saturday, January 11, 2020 2:53 PM
To: OBrien, Matthew M - DNR
Subject: FW: Draft review: LRB a0857/P1

Here is the draft amendment from Rep. Ott's office. Can you take a look and let me know your thoughts?

Thanks!
Erin

We are committed to service excellence.

Visit our survey at <http://dnr.wi.gov/customersurvey> to evaluate how I did.

Erin Ruby
Phone: (608) 266-7566
Erin.Ruby@wisconsin.gov

From: Rep.OttJ <Rep.OttJ@legis.wisconsin.gov>
Sent: Friday, January 10, 2020 3:46 PM
To: Ruby, Erin A - DNR <Erin.Ruby@wisconsin.gov>
Subject: FW: Draft review: LRB a0857/P1

Hey Erin,

This is the amendment to AB 356. Can you take a look at this and let us know if we have any issues?

Mike

From: LRB.Legal <lrblegal@legis.wisconsin.gov>
Sent: Thursday, January 09, 2020 2:59 PM
To: Rep.OttJ <Rep.OttJ@legis.wisconsin.gov>
Subject: Draft review: LRB a0857/P1

Following is the PDF version of draft LRB a0857/P1 and drafter's note.



INSERT

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION
ASSEMBLY AMENDMENT ,
TO ASSEMBLY BILL 356

INS 1-2

1 At the locations indicated, amend the bill as follows:

2 **1.** Page 5, line 6: delete lines 6 to 12.

3 **2.** Page 5, line 18: delete lines 18 to 21 and substitute:

4 **“SECTION 5.** 23.33 (1) (jk) of the statutes is created to read:

5 23.33 (1) (jk) “Recreational vehicle and boating refusal law” means the
6 all-terrain or utility terrain vehicle refusal law, the off-highway motorcycle
7 refusal law, as defined in s. 23.335 (1) (tm), the boating refusal law, as defined in s.
8 30.50 (2c), or the snowmobiling refusal law, as defined in s. 350.01 (17m).”.

9 **3.** Page 7, line 14: delete the material beginning with “As part of the order” and
10 ending with “trade.” on line 17 and substitute “As part of the order, the court may
11 authorize the person to operate a recreational vehicle exclusively on private land and

1 not on highways if the court finds that such operation is essential for the purpose of
2 engaging in an occupation or trade.”.

3 **4.** Page 7, line 21: delete “on public premises”.

4 **5.** Page 7, line 24: delete “violated” and substitute “was convicted of a violation
5 of”.

6 **6.** Page 8, line 9: delete lines 9 to 11 and substitute:

7 “2. No person may operate an all-terrain vehicle or utility terrain vehicle
8 during the time that the person’s motor vehicle operating privilege is suspended or
9 revoked for a conviction counted under s. 343.307 (1) unless a court order authorizes
10 the person to operate an all-terrain vehicle or utility terrain vehicle exclusively on
11 private land and not on highways because the court finds that such operation is
12 essential for the purpose of engaging in an occupation or trade.”.

13 **7.** Page 8, line 13: delete lines 13 to 15 and substitute:

14 “23.33 (13) (b) 1. Except as provided under subds. 2. and 3. to 5., a person who
15 violates sub. (4c) (a) 1., 2., or 2m. or, (4p) (e), or a local ordinance in conformity with
16 sub. (4c) (a) 1., 2., or 2m. shall forfeit not less than \$150 \$400 nor more than \$300
17 \$550.”.

18 **8.** Page 9, line 10: delete lines 10 to 12 and substitute:

19 “23.33 (13) (b) 6. A person who violates sub. (4c) (a) 3. or (4p) (e) and who has
20 not attained the age of 21 shall forfeit not more than \$50.”.

21 **9.** Page 13, line 23: delete the material beginning with that line and ending
22 with page 14, line 3 and substitute:

23 “**SECTION 27.** 23.335 (1) (km) of the statutes is created to read:

1 23.335 (1) (km) “Intoxicated operating law” means the intoxicated operation
2 of an all-terrain or utility terrain vehicle law, as defined in s. 23.33 (1) (ic), the
3 intoxicated operation of an off-highway motorcycle law, the intoxicated boating law,
4 as defined in s. 30.50 (4m), or the intoxicated snowmobiling law, as defined in
5 s.350.01 (9c).”.

6 **10.** Page 14, line 6: delete lines 6 to 22 and substitute:

7 **“SECTION 30.** 23.335 (1) (zer) of the statutes is created to read:

8 23.335 (1) (zer) “Recreational vehicle” means an all-terrain vehicle, as defined
9 in s. 340.01 (2g), a utility terrain vehicle, as defined in s. 23.33 (1) (ng), an
10 off-highway motorcycle, a recreational motorboat, as defined in s. 30.50 (9m), or a
11 snowmobile, as defined in s. 340.01 (58a).

12 **SECTION 31.** 23.335 (1) (zet) of the statutes is created to read:

13 23.335 (1) (zet) “Recreational vehicle and boating refusal law” means the
14 all-terrain or utility terrain vehicle refusal law, as defined in s. 23.33 (1) (jm), the
15 off-highway motorcycle refusal law, the boating refusal law, as defined in s. 30.50
16 (2c), or the snowmobiling refusal law, as defined in s. 350.01 (17m).”.

17 **11.** Page 16, line 14: delete the material beginning with “As part of the order”
18 and ending with “trade.” on line 17 and substitute “As part of the order, the court may
19 authorize the person to operate a recreational vehicle exclusively on private land and
20 not on highways if the court finds that such operation is essential for the purpose of
21 engaging in an occupation or trade.”.

22 **12.** Page 16, line 21: delete “on public premises”.

23 **13.** Page 16, line 24: delete “violated” and substitute “was convicted of a
24 violation of”.

1 **14.** Page 17, line 9: delete lines 9 to 11 and substitute:

2 “b. No person may operate an off-highway motorcycle during the time that the
3 person’s motor vehicle operating privilege is suspended or revoked for a conviction
4 counted under s. 343.307 (1) unless a court order authorizes the person to operate
5 an off-highway motorcycle exclusively on private land and not on highways because
6 the court finds that such operation is essential for the purpose of engaging in an
7 occupation or trade.”.

8 **15.** Page 17, line 13: delete lines 13 to 15 and substitute:

9 “23.335 (23) (c) 1. Except as provided under subds. 2., 3., and 4. to 5., a person
10 who violates sub. (12) (a) 1., 2., or 2m. or (h) or a local ordinance in conformity with
11 sub. (12) (a) 1., 2., or 2m. shall forfeit not less than \$150 \$400 nor more than \$300
12 \$550.”.

13 **16.** Page 18, line 10: delete lines 10 to 12 and substitute:

14 “23.335 (23) (c) 6. A person who violates sub. (12) (a) 3. ~~or (h) and who has not~~
15 ~~attained the age of 21~~ shall forfeit not more than \$50.”.

105 of 16

16 **17.** Page 23, line 5: delete lines 5 to 11.

17 **18.** Page 25, line 25: delete the material beginning with “As part of the order”
18 and ending with “trade.” on page 26, line 2, and substitute “As part of the order, the
19 court may authorize the person to operate a recreational vehicle exclusively on
20 private land and not on highways if the court finds that such operation is essential
21 for the purpose of engaging in an occupation or trade.”.

22 **19.** Page 26, line 6: delete the material beginning with “on public premises”
23 and ending with “s. 23.33 (1) (jd),” on line 7.

1 **20.** Page 26, line 8: delete “violated” and substitute “was convicted of a
2 violation of”.

3 **21.** Page 26, line 18: delete lines 18 to 20 and substitute:

4 “(b) No person may operate a recreational motorboat during the time that the
5 person’s motor vehicle operating privilege is suspended or revoked for a conviction
6 counted under s. 343.307 (1) unless a court order authorizes the person to operate
7 a recreational motorboat exclusively on private land because the court finds that
8 such operation is essential for the purpose of engaging in an occupation or trade.”.

9 **22.** Page 27, line 2: delete lines 2 to 5 and substitute:

10 “30.80 (6) (a) 1. Except as provided under subds. 2. to 5., a person who violates
11 s. 30.681 (1) (a) or (b), s. 30.684 (5), or a local ordinance in conformity with s. 30.681
12 (1) (a) or (b) ~~or the refusal law~~ shall forfeit not less than ~~\$150~~ \$400 nor more than ~~\$300~~
13 \$550.”.

14 **23.** Page 28, line 14: delete lines 14 to 16 and substitute:

15 “30.80 (6) (a) 6. A person who violates s. 30.681 (1) (bn) ~~or a local ordinance in~~
16 ~~conformity with s. 30.681 (1) (bn)~~ shall forfeit \$50.”.

17 **24.** Page 34, line 3: delete lines 3 to 9.

18 **25.** Page 36, line 6: delete the material beginning with “As part of the order”
19 and ending with “trade.” on line 9 and substitute “As part of the order, the court may
20 authorize the person to operate a recreational vehicle exclusively on private land and
21 not on highways if the court finds that such operation is essential for the purpose of
22 engaging in an occupation or trade.”.

1 **26.** Page 36, line 13: delete the material beginning with “on public premises”
2 and ending with “s. 23.33 (1) (jd),” on line 14.

3 **27.** Page 36, line 16: delete “violated” and substitute “was convicted of a
4 violation of”.

5 **28.** Page 37, line 1: delete lines 1 to 3 and substitute:

6 “(b) No person may operate a snowmobile during the time that the person’s
7 motor vehicle operating privilege is suspended or revoked for a conviction counted
8 under s. 343.307 (1) unless a court order authorizes the person to operate a
9 snowmobile exclusively on private land and not on highways because the court finds
10 that such operation is essential for the purpose of engaging in an occupation or
11 trade.”.

12 **29.** Page 37, line 5: delete lines 5 to 7 and substitute:

13 “350.11 (3) (a) 1. Except as provided under subds. 2. ~~and 3.~~ to 5., a person who
14 violates s. 350.101 (1) (a), (b), or (bm) ~~or~~, s. 350.104 (5), or a local ordinance in
15 conformity with s. 350.101 (1) (a), (b), or (bm) shall forfeit not less than \$400 nor more
16 than \$550.”.

17

(END)

2019-2020 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRBa0857/lins
ZDW:...

1 **INS 1-2**

2 **1.** Page 5, line 1: delete “(km)” and substitute “(L)”.

3 **INS 4-16**

4 **2.** Page 22, line 24: delete “(km)” and substitute “(L)”.

5 **INS 5-17**

6 **3.** Page 33, line 24: delete “(km)” and substitute “(L)”.

7 **4.** Page 34, line 2: after that line insert:

8 “**SECTION 85m.** 350.01 (9j) of the statutes is created to read:

9 350.01 (9j) “Legal drinking age” means 21 years of age.”

10 **INS 5-18**

11 **5.** Page 34, line 23: after that line insert:

12 **SECTION 89m.** 350.101 (1) (c) of the statutes is amended to read:

13 350.101 (1) (c) *Operating with alcohol concentrations at specified levels; below*
14 *legal drinking age 19.* If a A person who has not attained the legal drinking age of
15 19, the person may not engage in the operation of a snowmobile while he or she has
16 an alcohol concentration of more than 0.0 but not more less than 0.08.”

17 **INS 6-17**

18 **6.** Page 37, line 22: delete that line and substitute:

19 “**SECTION 97m.** 350.11 (3) (a) 4. of the statutes is renumbered 350.11 (3) (a) 6.

20 and amended to read:

21 350.11 (3) (a) 6. A person who violates s. 350.101 (1) (c) or 350.104 (5) and who
22 has not attained the legal drinking age of 19 shall forfeit not more than \$50.”