

1 **AN ACT** *to amend* 23.33 (3) (c), 350.10 (1) (f) and 350.11 (1) (a) and (b); and *to*
2 *create* 23.33 (13) (aw) and 350.10 (2w) of the statutes; **relating to:** trespass by
3 operators of snowmobiles, all-terrain vehicles and other off-road vehicles; and
4 providing penalties.

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

JOINT LEGISLATIVE COUNCIL PREFATORY NOTE: This bill draft was prepared for the Joint Legislative Council's (JLC) Special Committee on Enhancing Recreational Trails for Non-Motorized Use.

The draft expands the current statutes that prohibit trespass with an all-terrain vehicle (ATV), snowmobile, or off-road vehicle to apply to all property, rather than just private property, and changes the penalty for violation of the amended statutes by creating a mandatory minimum forfeiture and an increased maximum forfeiture.

COMMENT: This bill draft is in response to a drafting request from the committee at its September 26, 2008 meeting, as it reviewed Memo No. 3, *Issues for Discussion by Members and Related Background Information* (September 19, 2008).

The specific change discussed by the committee and included in this draft is outlined, in general terms, on page 8 of that Memo under the topic, DNR Warden Trespass Enforcement on Public Land. As the Memo points out: (1) the issue of Department of Natural Resources (DNR) warden trespass enforcement on public land has been discussed for a number of years and has had the support of the warden force; (2) current law prohibits an operator of an ATV, snowmobile, or other off-road vehicle from operating on *private* property of another without the consent of the owner or lessee; and (3) current law could be changed to add *public* land (primarily county forest land) to this prohibition, thus allowing wardens and other law enforcement officers to enforce the prohibition on all lands, public and private.

In addition to making this change in current law, the draft adds language specifying that the revised prohibitions (applicable to all lands, public and private) do not apply to the right-of-way of a public highway (see SECTIONS 1 and 3 of the draft). This change is the same as a change

made in 2007 Senate Bill 185, a JLC bill that was the work product of the JLC's Special Committee on State Trails Policy. Issues related to this change are: is this additional language acceptable to the committee? Should the new language be revised? Deleted?

The draft also changes the forfeiture penalty for violation of these prohibitions to a mandatory minimum and a higher maximum (see the NOTES to SECTIONS 2 and 4 of the draft). This change is the same as the change made in 2007 Senate Bill 185. Issues related to this change are:

1. Should the current forfeiture penalty (up to \$250) be changed at all (i.e., remain the same)?
2. If changed, are the amounts specified in the draft appropriate (mandatory minimum forfeiture of \$250 up to a maximum of \$1,000)? Should there be a mandatory minimum? If so, is \$250 an acceptable amount (should it be higher? lower?)? Is the maximum of \$1,000 an appropriate amount (should it be higher? lower?)?

1 **SECTION 1.** 23.33 (3) (c) of the statutes is amended to read:

2 23.33 **(3)** (c) On the private property of another without the consent of the owner or
 3 lessee. Failure to post ~~private~~ such property does not imply consent for all-terrain vehicle use.
 4 This paragraph does not apply to the right-of-way of a public highway.

NOTE: This provision in the current statutes [s. 23.33 (3) (c), stats.] is part of the rules of operation for ATVs. This paragraph is preceded by an introductory clause that states: "No person may operate an all-terrain vehicle:".

This draft expands the property that is subject to the prohibition by applying the prohibition to **public** property as well as private property. The draft does this by deleting "private" in the statute. The draft also creates an exception so that the expanded statute does not apply to a public highway right-of-way.

5 **SECTION 2.** 23.33 (13) (aw) of the statutes is created to read:

6 23.33 **(13)** (aw) *Penalty related to operation on the property of another.* A person who
 7 violates s. 23.33 (3) (c) shall forfeit not less than \$250 and not more than \$1,000.

NOTE: 1. General Trespass Statute – Penalty: The current criminal code contains a general provision on trespass to land in s. 943.13, stats. This statute prohibits any person from entering the land of another without the express or implied consent of the owner or occupant, or remaining on the

land of another after being notified to leave. This statute applies whether or not the person is in a vehicle, and therefore would apply to trespass by a person who is operating an ATV, snowmobile, or other off-road vehicle. The penalty for violation of this statute is a Class B forfeiture, which is a civil penalty of a forfeiture not to exceed \$1,000.

This general trespass statute is enforced by local law enforcement authorities. Because the enforcement authority of DNR wardens is limited to delineated statutory provisions [e.g., see the list in s. 29.921 (1), stats.] and because s. 943.13, stats., is not so delineated, DNR wardens do not have authority to enforce this general trespass statute. The trespass statute is enforced by a citation system, similar to that for a traffic citation. The judicial conference sets the actual amount of the bond for violations of the trespass statute, and the basic deposit amount that has been set by the judicial conference is \$100. The statutes impose a variety of other surcharges on the basic amount, with the result that the total deposit amount for a person who pleads no contest to a trespass citation is \$249.

2. Section 23.33 (3) (c), stats., as Revised – New Penalty: Current statutes also have provisions regarding entry onto the private property of another without the consent of the owner or lessee, when operating an ATV, snowmobile, or other off-road vehicle [ss. 23.33 (3) (c) and 350.10 (1) (f), stats.] The current penalty for violation of these statutes is a forfeiture not to exceed \$250. The judicial conference has also set the amount of the deposit for these violations at \$100, with a total deposit for the citation of \$249. DNR wardens do have authority, delineated in the statutes to enforce these provisions.

This SECTION of the draft changes the penalty for violation of these statutory provisions, as revised by the draft to include all lands, to a mandatory minimum forfeiture of not less than \$250 and a maximum of not more than \$1,000. If the judicial conference sets the deposit amount at the minimum of \$250, the total deposit for one of these violations would be \$438.

It is also possible that the district attorney could issue a summons and complaint for one of these violations and seek a forfeiture up to the maximum of \$1,000.

- 1 **SECTION 3.** 350.10 (1) (f) of the statutes is amended to read:
- 2 350.10 (1) (f) On the ~~private~~ property of another without the consent of the owner or
- 3 lessee. Failure to post ~~private~~ such property does not imply consent for snowmobile use. Any
- 4 other motor-driven craft or vehicle principally manufactured for off-highway use shall at all

1 times have the consent of the owner before operation of such craft or vehicle on private lands
2 the property of another. This paragraph does not apply to the right-of-way of a public
3 highway.

NOTE: This provision in the current statutes [s. 350.10 (1) (f), stats.] is part of the statutes related to snowmobile operation. This paragraph is preceded by an introductory clause that states: “No person shall operate a snowmobile in the following manner:”. The provision is not limited to snowmobiles, but also applies to other “motor-driven craft or vehicle principally manufactured for off-highway use”.

This draft expands the property that is subject to the prohibition by applying the prohibition to **public** property as well as private property. The draft does this by deleting “private” in the statute. The draft also creates an exception so that the expanded statute does not apply to a public highway right-of-way.

4 **SECTION 4.** 350.10 (2w) of the statutes is created to read:

5 350.10 (2w) A person who violates s. 350.10 (1) (f) shall forfeit not less than \$250 and
6 not more than \$1,000.

NOTE: This provision changes the penalty for violation of the prohibition on operating a snowmobile or other motor-driven craft or vehicle on the property of another from a forfeiture of not to exceed \$250 to a mandatory minimum forfeiture of \$250 and a maximum of not more than \$1,000. For additional information on trespass, see the NOTE following the amendment to s. 23.33 (13) (aw) in the draft.

7 **SECTION 5.** 350.11 (1) (a) and (b) of the statutes are amended to read:

8 350.11 (1) (a) Except as provided in par. (b) and subs. (2g), (2m), (2w), and (3), any
9 person who violates any provision of this chapter shall forfeit not more than \$250.

10 (b) Except as provided in subs. (2g), (2m), (2w), and (3), any person who violates any
11 provision of this chapter and who, within the last 3 years prior to the conviction for the current
12 violation, was 2 or more times previously convicted for violating the same provision of this
13 chapter shall forfeit not more than \$500.

NOTE: Technical changes necessary because of the penalty change in s. 350.10 (2w) in this draft.

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(END)