

Chapter 202 of the Acts of 2010

AN ACT REGULATING THE USE OF OFF-HIGHWAY AND RECREATION VEHICLES.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same as follows:

SECTION 1.

Chapter 10 of the General Laws is hereby amended by inserting after section 35NN the following section:

Section 35OO.

- (a) There shall be established and set up on the books of the commonwealth an Off-Highway Vehicle Program Fund. Notwithstanding the provisions relative to the distribution of fines, penalties and forfeitures in section 10G of chapter 21A to the contrary, there shall be credited to the fund all of the fees collected pursuant to section 22 of chapter 90B, 75 per cent of all fines, costs, forfeitures, expenses and interest imposed pursuant to section 21 and sections 24 to 32, inclusive, of said chapter 90B and pursuant to the fourth paragraph of section 10H of chapter 21A, any revenue from appropriations or other monies authorized by the general court and specifically designated to be credited to the fund, any appropriation or grant explicitly made to the fund and any income derived from the investment of amounts credited to the fund. The remaining 25 per cent of the fines, costs, forfeitures, expenses and interest imposed pursuant to said section 21 and said sections 24 to 32, inclusive of said chapter 90B and pursuant to the fourth paragraph of section 10H of chapter 21A shall be distributed equally among the division, departments or offices involved or to the division, department or office if a single law enforcement agency was involved.
- (b) The secretary of energy and environmental affairs, as trustee, shall administer the fund. All amounts credited to the fund may be expended, without further appropriation, for use by the office of environmental law enforcement, the department of conservation and recreation, the department of fish and game and the department of environmental protection for the following purposes:
- (i) the enforcement of statutes, regulations and policies applicable to off-highway vehicles;
 - (ii) the acquisition of land for use as commonwealth-approved trails and facilities for off-highway vehicles or for the development, maintenance, repair or restoration of commonwealth-approved trails and facilities;
 - (iii) grants made by the department of conservation and recreation to municipalities and other public entities for the purposes of clauses (i) and (ii);
 - (iv) the development and administration of safety, training and education programs relative to off-highway vehicles; and
 - (v) other off-highway program activities, including all direct and indirect costs of personnel or contractors of the office of environmental law enforcement, the department of conservation and recreation, the department of fish and game and the department of environmental protection; provided, however, that the secretary of energy and environmental affairs shall report annually, not later than January 15, to the house and senate committees on ways and means and the joint committees on

environment, natural resources and agriculture, transportation and public safety and homeland security relative to the source and amount of funds deposited into the fund, the amount distributed to each department and the purpose and recipient of expenditures from the fund.

- (c) Monies deposited into the fund that are unexpended at the end of the fiscal year shall not revert to the General Fund and shall be available for expenditure in the subsequent fiscal year.
- (d) Not less than 25 per cent of the monies deposited in the fund shall be expended on a fiscal year basis for the activities identified in clause (ii) of subsection (b) or for grants made pursuant to clause (iii) of subsection (b) to fund the activities identified in clause (ii) of subsection (b). Monies that are deposited in the fund that are unexpended at the end of the fiscal year shall not revert to the General Fund and shall be available for expenditure in the subsequent fiscal year.

SECTION 2.

Section 10H of chapter 21A of the General Laws, as appearing in the 2008 Official Edition, is hereby amended by inserting after the third paragraph the following paragraph:

A person notified to appear before the clerk of a district court as provided in section 10G for a violation of sections 21 to 24, inclusive, of said chapter 90B may so appear within the time specified and pay a fine of \$250.

SECTION 3.

Said chapter 21A is hereby further amended by striking out section 11, as so appearing, and inserting in place thereof the following section:

Section 11.

There shall be within the office of law enforcement a boating safety advisory board. The board shall consist of 5 members to be appointed by the governor, 2 of whom shall be representatives of the boating public, each of whom shall hold a certificate of number issued pursuant to section 3 of chapter 90B; 1 of whom may represent the harbormaster's association; and 2 of whom shall represent the recreational boating business, 1 of whom shall operate a boat dealership. Each member shall serve for a term of 3 years. The chair of the board shall be appointed from among the 5 members, annually by the governor and, in the absence of same, shall be designated by the director. Board members shall be appointed or reappointed for terms of 3 years.

The boating safety advisory board shall meet at least quarterly and 3 members in attendance shall constitute a quorum. The chiefs of enforcement of the coastal enforcement bureau and the inland enforcement bureau established under section 6 of chapter 21, or their designees, shall attend all meetings of the board and shall provide such information as the board shall request.

The board shall review the budgetary recommendations of the director and the secretary of energy and environmental affairs concerning the expenditure of federal funds allocated to the division for recreational boating safety each fiscal year prior to the submission of such recommendations to the secretary or the governor, as the case may be. In the event the board disapproves of any such recommendation it may file a report noting its objection and such report shall be transmitted to the governor and to the house and senate committees on ways and means.

SECTION 4.

Said chapter 21A is hereby further amended by adding the following section:

Section 23.

There is hereby established within the executive office of energy and environmental affairs a state off-highway vehicle advisory committee. The committee shall advise the secretary and the department of conservation and recreation, the department of fish and game, the department of environmental protection and the office of environmental law enforcement on matters involving the commonwealth's regulation of off-highway vehicles, as defined in section 20 of chapter 90B, including the development and enforcement of state regulations and policies, safety and training programs and the distribution of available state funding.

The committee shall consist of 13 members to be appointed by the secretary,

- 3 of whom shall be representatives of off-highway vehicle users,
 - 1 of whom shall be a representative of the New England Trail Rider Association;
 - 1 of whom shall be a representative of the Specialty Vehicle Industry Association and the Massachusetts Powersport Dealers Association;
 - 1 of whom shall be a representative of the department of public health;
 - 1 of whom shall be a representative of child safety advocates associated with the safe use of off-highway vehicles;
 - 1 of whom shall be a representative of the Snowmobile Association of Massachusetts, Inc.;
 - 2 of whom shall be representatives of a nonprofit organization that owns and manages land open to the public;
 - 1 of whom shall be a representative of an association or organization of large private land owners; 1 of whom shall be a member of a friends group of the Massachusetts Forest and Parks Network; and
 - 2 of whom shall be representatives of state or local law enforcement authorities.
- Members shall serve without compensation. Members shall be appointed for terms of 3 years.

The committee shall select a chair annually by a majority vote of the members. The committee shall meet at least twice each year and shall also meet at the request of the secretary or the committee chair.

SECTION 5.

Section 20 of chapter 90B of the General Laws, as appearing in the 2008 Official Edition, is hereby amended by striking out the definition of "Law enforcement officer" and inserting in place thereof the following 3 definitions:

"All-terrain vehicle", a motorized recreational vehicle designed or modified for travel on 4 low pressure tires and having a seat designed to be straddled by the operator and handlebars for steering control.

"Directly supervised", the supervising adult shall be sufficiently close to the operator at all times that the operator's vehicle is in operation, such that a reasonable person acting as supervisor under the totality of the circumstances including, but not limited to, vehicle and ambient noise, the landscape, topography and geography of the location, and the operator's wearing of protective headgear, would reasonably believe that he is maintaining visual contact and verbal communication with the operator.

"Law enforcement officer", the director, a deputy director of enforcement, a chief of enforcement, a deputy chief of enforcement, an environmental police officer and a deputy environmental police officer of the office of environmental law enforcement, the registrar or an

authorized agent thereof, a police officer, a member of the state police, a city or town police officer or an employee of the commonwealth having police powers on public lands.

SECTION 6.

Said section 20 of said chapter 90B, as so appearing, is hereby further amended by striking out the definition of "Recreation vehicle" and inserting in place thereof the following 2 definitions:

"Recreation utility vehicle" or "utility vehicle", a motorized flotation tire vehicle with not less than 4 and not more than 6 low pressure tires that is limited in engine displacement to less than 1,500 cubic centimeters and in total dry weight to not more than 1,800 pounds and that has a seat that is of bench design, not intended to be straddled by the operator, and a steering wheel for control.

"Recreation vehicle" or "off-highway vehicle", any motor vehicle designed or modified for use over unimproved terrain for recreation or pleasure while not being operated on a public way as defined in chapter 90 including, but not limited to,

- all-terrain vehicles,
- off-highway motorcycles,
- dirt bikes,
- recreation utility vehicles and
- all registered motor vehicles while not being operated on a public way

as defined in said chapter 90; provided, however, that recreation vehicles and off-highway vehicles operated exclusively for agricultural, forestry, lumbering or construction purposes shall not be subject to this chapter and it shall be an affirmative defense that such vehicle was being operated for such purposes at the time of an alleged violation of this chapter.

SECTION 7.

Said chapter 90B is hereby further amended by striking out section 21, as so appearing, and inserting in place thereof the following section:

Section 21.

No person under 18 years of age shall operate a recreation vehicle unless he has successfully completed a recreation vehicle safety and responsibility course approved by the director of environmental law enforcement. Such course shall include, but shall not be limited to, notification of the potential criminal penalties and forfeiture process for certain violations of law relative to the safe operation of recreation vehicles.

A parent or legal guardian of an operator of a recreation vehicle under 16 years of age shall participate in at least 1 session of the recreation vehicle safety and responsibility course or as required by the director.

Proof of the successful completion of the course shall be carried on the person of the operator while operating a recreation vehicle. Proof of an operator's successful completion of another state's equivalent recreation vehicle safety and responsibility course, as determined by the director, shall be valid in the commonwealth.

SECTION 8.

Section 22 of said chapter 90B, as so appearing, is hereby amended by striking out the first paragraph and inserting in place thereof the following 2 paragraphs:

No person shall operate a snow vehicle or a recreation vehicle unless the vehicle has been registered in accordance with this chapter and a registration number assigned by the director is displayed on the vehicle.

The registration number shall be painted or by means of a decal or sticker which is firmly attached to both sides of the cowl of the vehicle and located so that both are clearly visible and not obstructed. The registration number displayed shall be not less than 3 inches in height and not less than one-half inch in width and shall be in a color that is in marked and distinct contrast to the background to which the number is applied. The registration number shall be maintained in a legible condition at all times. A motor vehicle license or learner's permit shall not be required for the operation of a snow vehicle or a recreation vehicle.

Application for registration of a snow vehicle or a recreation vehicle shall be made by the owner to the director or his agent on such forms as the director shall prescribe and shall state the name and address of the owner of the vehicle. No person shall knowingly make a false statement in an application for registration of a snow vehicle or recreation vehicle.

SECTION 9.

Said section 22 of said chapter 90B, as so appearing, is hereby further amended by striking out the third paragraph and inserting in place thereof the following 2 paragraphs:

The fee for initial registration of each such vehicle and for each renewal thereof, other than vehicles for which application is made by a manufacturer or dealer as hereinafter provided, shall be determined annually by the commissioner of administration as provided in section 3B of chapter 7, except that no fee shall be collected for the registration of any such vehicle owned by the commonwealth or any political subdivision thereof or a vehicle used exclusively for agricultural, forestry, lumbering or construction purposes.

In the case of a recreation vehicle to be operated exclusively for agricultural, forestry, lumbering or construction purposes, the owner of such vehicle may apply for an exemption from the registration fee. The application for exemption shall be on a form prescribed by the director of law enforcement. If the director is satisfied that the vehicle for which a fee exemption is sought is to be operated exclusively for agricultural, forestry, lumbering or construction purposes, the director shall grant the application and the owner of such vehicle shall be exempt from the registration fee for such vehicle. If the vehicle ceases to be operated exclusively for agricultural, forestry, lumbering or construction purposes, the owner shall no longer be exempt from paying such registration fee and shall be required to pay a portion of the registration fee for the year in which the exemption no longer applies. A new application for a fee exemption shall be required for further fee exemption with an application for registration renewal. A fee exemption granted pursuant to this section shall not be admissible nor relevant at trial on the question of whether such vehicle was being operated for agricultural, forestry, lumbering or construction purposes at the time of an alleged violation of this chapter.

SECTION 10.

Section 24 of said chapter 90B, as so appearing, is hereby amended by striking out the second and third paragraphs and inserting in place thereof the following paragraph:

No snow vehicle or recreation vehicle shall be operated which emits noxious fumes or makes unusual or excessive noise. No snow vehicle or recreation vehicle manufactured on or after January 1, 1998, shall be sold, offered for sale or operated that produces a sound pressure level of more than 96 decibels when measured from a distance of 20 inches using test procedures established by the Society of Automotive Engineers under Standard J1287 JUL98 or with such other test procedures for measurement of sound pressure levels as the registrar may adopt.

No snow vehicle or recreation vehicle manufactured prior to January 1, 1998, shall be offered for sale or operated that produces a sound pressure level of more than 101 decibels when measured from a distance of 20 inches using test procedures established by the Society of Automotive Engineers under Standard J1287 JUL98 or with such other test procedures for measurement of sound pressure levels as the registrar may adopt.

SECTION 11.

Section 25 of said chapter 90B, as so appearing, is hereby amended by striking out the third paragraph and inserting in place thereof the following paragraph:

No person under 16 and one-half years of age shall operate a snow vehicle or a recreation vehicle across or on a public way unless the operator holds a valid license or right to operate a motor vehicle or is directly supervised by a person 18 years of age or older. An operator of a snow vehicle or a recreation vehicle that meets the requirements of the preceding sentence shall, after coming to a full stop, cross, as directly as possible, a public way; provided, however, that for recreation vehicles, the public way and the crossing shall be marked and approved for use by recreation vehicles by the applicable state or local authorities as part of a publicly or privately authorized recreation vehicle trail system. An operator of a snow vehicle or a recreation vehicle shall make the crossing safely and without interfering with the free movement of vehicular traffic. An operator of a snow vehicle or a recreation vehicle shall yield the right of way to all other vehicular traffic when making such crossing; provided, further, that an operator shall not cross a controlled access highway.

SECTION 12.

Said section 25 of said chapter 90B, as so appearing, is hereby further amended by inserting after the word "vehicle", in lines 29, 30, 32, 33 and 34, each time it appears, the following words: or recreation vehicle.

SECTION 13.

Said chapter 90B is hereby further amended by striking out section 26, as so appearing, and inserting in place thereof the following section:

Section 26.

- (a) (1) No person under 14 years of age shall operate an all terrain vehicle or recreation utility vehicle. This section shall not apply to a person operating a recreation vehicle or snow vehicle in preparation for, or while a participant in, a sanctioned race, rally or organized event which is supervised by a person aged 18 or older and which has been authorized or approved by a municipal permitting authority. It shall be an affirmative defense in a delinquency proceeding for a violation of this section that a juvenile was supervised by a person aged 18 or older while operating such a vehicle within 21 days before such sanctioned race, rally or organized event or while a participant in such a sanctioned race, rally or organized event.
- (2) No person between 14 and 16 years of age shall operate an all-terrain vehicle or recreation utility vehicle with an engine capacity greater than 90 cubic centimeters; provided, however, that a person between 14 and 16 years of age may operate an all-terrain vehicle or recreation utility vehicle with an engine capacity equal to or less than 90 cubic centimeters if directly supervised by a person 18 years of age or older.
- (b) No person aged 18 years of age or older shall knowingly permit another, who is under the age of 18, to operate a snow vehicle or recreation vehicle in his custody or under his control

in violation of this chapter. Lack of ownership of the vehicle or mistake as to the age of the operator shall not be available defenses to a violation of this section.

- (c) No person operating or in control of a snow vehicle or recreation vehicle shall refuse to stop such vehicle after having been requested or signaled to do so by a law enforcement officer. No such person shall refuse to give his correct name, address and registration number to such officer.
- (d) No person shall operate or ride in or on a snow vehicle or a recreation vehicle or ride in or on a sled, inflated tube or similar article attached to such vehicle and which is pulled by such vehicle, without wearing protective headgear. Such headgear shall conform to minimum standards for construction and performance as the registrar of motor vehicles may prescribe.
- (e) No person shall operate a snow vehicle or a recreation vehicle on privately-owned property unless:
 - (i) the operator is the owner or lessee or an immediate family member of the owner or lessee of the property;
 - (ii) the operator has in his possession either a document, signed by the owner or lessee of such property or his agent, authorizing the operation of a such vehicle on the property by the operator or valid proof of current membership in a club, association or other organization to which express authorization for the operation of such vehicles on the property has been granted; provided, however, that such operation shall be consistent with the express authorization granted and any restrictions imposed therewith; or
 - (iii) the owner or lessee of the property has designated the area for use by such vehicles by posting reasonable notice of such designation in a manner approved by the director.

No person shall operate a snow vehicle or recreation vehicle on publicly-owned property except on trails marked and designated for use by such vehicles, or without the express permission of the owner.

- (f) No person shall operate a snow vehicle or a recreation vehicle in a manner that harasses or otherwise harms deer or other wildlife.

No person shall operate a snow vehicle or recreation vehicle in a reforested or planted area in a manner that causes damage to growing stock.

No person shall operate a snow vehicle or a recreation vehicle in a manner that causes damage to public or private property including, but not limited to, lands owned or managed by the department of conservation and recreation or the division of fisheries and wildlife, wetlands or other waters of the commonwealth, priority habitats delineated as such by the division of fisheries and wildlife pursuant to chapter 131A, lands used for public water supply purposes or historic or archaeological sites.

- (g) No person shall carry a firearm, rifle or shotgun in or on a snow vehicle or recreation vehicle or on a trailer or sled attached thereto unless such firearm, rifle or shotgun is unloaded and in an enclosed case. This section shall not apply to a law enforcement officer or other person with enforcement powers authorized in section 32, or to a paraplegic as provided in section 65 of chapter 131.
- (h) No person shall operate a snow vehicle or recreation vehicle after the registration has been suspended or revoked.

SECTION 14.

Said chapter 90B is hereby further amended by inserting after section 26, as appearing in the 2008 Official Edition, the following 5 sections:

Section 26A.

- (a) Whoever being 21 years of age or older operates a snow vehicle or recreation vehicle:
 - (1) with a percentage, by weight, of alcohol in his blood of .08 or greater, as determined by a chemical test or analysis of his blood or as indicated by a chemical test or analysis of his breath pursuant to section 24 of chapter 90; or
 - (2) while under the influence of intoxicating liquor, or of marijuana, narcotic drugs, depressants or stimulant substances, as defined in section 1 of chapter 94C, or the vapors of glue, shall be punished by a fine of not less than \$500 nor more than \$5,000.
- (b) Whoever being under 21 years of age operates a snow vehicle or recreation vehicle:
 - (1) with a percentage, by weight, of alcohol in his blood of .02 or greater, as determined by a chemical test or analysis of his blood or as indicated by a chemical test or analysis of his breath pursuant to section 24 of chapter 90; or
 - (2) while under the influence of intoxicating liquor, or of marijuana, narcotic drugs, depressants or stimulant substances, as defined in section 1 of chapter 94C, or the vapors of glue, shall be punished by a fine of not less than \$500 nor more than \$5,000.

Section 26B.

- (a) Whoever operates a snow vehicle or recreation vehicle recklessly or operates a snow vehicle or a recreation vehicle negligently so that the lives or safety of the public might be endangered shall be punished by a fine of not less than \$250 nor more than \$1,000.
- (b) Whoever operates a snow vehicle or recreation vehicle and, without stopping and making known his name, address and the registration number of his snow vehicle or recreation vehicle, leaves the scene after knowingly colliding with or otherwise causing injury to another snow vehicle or recreation vehicle or property shall be punished by a fine of not less than \$250 nor more than \$1,000; provided, however, that the damage to property shall be greater than \$500.
- (c) Whoever operates a snow vehicle or a recreation vehicle and, without stopping and making known his name, address and the registration number of his snow vehicle or recreation vehicle, leaves the scene after knowingly colliding with or otherwise causing bodily injury to another shall be punished by a fine of not less than \$500 nor more than \$1,000.
- (d) Whoever operates a snow vehicle or a recreation vehicle recklessly or negligently so that the lives or safety of the public might be endangered and, by such operation, causes serious bodily injury, shall be punished by imprisonment in a jail or house of correction for not more than 2 and one-half years or by a fine of not less than \$300 nor more than \$5,000, or by both such fine and imprisonment.

For the purposes of this section “serious bodily injury” shall mean bodily injury which creates a substantial risk of death or which involves either total disability or the loss or substantial impairment of some bodily function for a substantial period of time.

- (e) Whoever operates a snow vehicle or a recreation vehicle recklessly or negligently so that the lives or safety of the public might be endangered, and by such operation causes the death of another person, shall be punished by imprisonment in a jail or house of correction for not

more than 2 and one-half years or by imprisonment in the state prison for not more than 5 years or by a fine of not more than \$5,000, or by both such fine and imprisonment.

Section 26C.

- (a) Upon a conviction or adjudication by reason of a violation of subsections (c) to (e), inclusive, of section 26B or upon a second or subsequent conviction or adjudication of delinquency for violation of section 26, or any combination thereof, a snow vehicle or recreation vehicle used in the commission of such violation or violations shall be subject to forfeiture.
- (b) A district attorney or the attorney general may petition the superior or district court in the name of the commonwealth in the nature of a proceeding in rem to order forfeiture of such snow vehicle or recreation vehicle. The petition shall be filed in the court having jurisdiction over the criminal proceeding brought under this section. The proceeding shall be deemed a civil suit in equity. In all such actions in which the snow vehicle or recreation vehicle is jointly owned before the date of the violation committed by the defendant by either a parent, spouse, child, grandparent, brother, sister or parent of the spouse living in the defendant's household, the commonwealth shall have the burden of proving to the court the existence of probable cause to institute the action.
- (c) The court shall order the commonwealth to give notice by certified or registered mail to the owners of the snow vehicle or recreation vehicle and to such other persons or entities who appear to have an interest therein, and the court shall promptly, but not less than 2 weeks after notice, hold a hearing on the petition. Upon the motion of an owner of the snow vehicle or recreation vehicle, the court may continue the hearing on the petition pending the outcome of a criminal trial related to the violation.

During the pendency of the proceedings, the court may issue at the request of the commonwealth ex-parte any preliminary order or process as is necessary to seize or secure the property for which forfeiture is sought and to provide for its custody. Process for seizure of the property shall issue only upon a showing of probable cause, and the application therefor and the issuance, execution and return thereof shall be subject to chapter 276, as applicable.

- (d) At a hearing under this section, the court shall hear evidence and make findings of fact and conclusions of law and shall issue a final order from which the parties shall have such right of appeal as from a decree in equity. No forfeiture under this section shall extinguish a perfected security interest held by a creditor in the property at the time of the filing of the forfeiture action.

In all actions where a final order results in forfeiture, the final order shall provide for disposition of the property by the commonwealth or any subdivision thereof in any manner not prohibited by law, including official use by an authorized law enforcement or other agency, or at sale at public auction or by competitive bidding, with the sale being conducted by the office of the district attorney or the attorney general that obtained the final order of forfeiture.

- (e) The final order of the court shall provide that the proceeds of any such sale shall be used to pay the reasonable expenses of the forfeiture proceedings, seizure, storage, maintenance of custody, advertising and notice, and 75 per cent of the balance of any proceeds shall be deposited into the Off-Highway Vehicle Program Fund, established in section 3500 of chapter 10 and the remaining 25 per cent shall be distributed equally by the court among the division, departments or offices involved in the seizure or to the division, department or office if a single law enforcement agency was involved.

- (f) Any moneys and proceeds received by a division, department or office pursuant to this section may be expended without further appropriation to defray the costs of investigations, to provide additional technical equipment or expertise, to provide matching funds to obtain federal grants or to accomplish such other law enforcement, environmental or public recreational purposes as the head of such division, department or office deems appropriate, but such funds shall not be considered a source of revenue to meet the operating needs of such division, department or office.

Section 26D.

A summons may be issued instead of a warrant for arrest upon a complaint for a violation of section 26A or 26B if in the judgment of the court or justice receiving the complaint there is reason to believe that the defendant will appear upon a summons. Nothing in this section shall limit a law enforcement officer's power to arrest under any other provisions of the General Laws or at common law.

Section 26E.

- (a) Any person age 18 or older with custody or control of a snow vehicle or recreation vehicle, who knowingly permits another, who is under the age of 18, to operate such vehicle shall be held liable, jointly and severally with the operator, for any damage or injuries caused by such operator's operation of the vehicle and for any fines, penalties or restitution resulting therefrom.
- (b) An owner of a snow vehicle or recreation vehicle or other person who knowingly permits a person 18 years of age or older to operate a snow vehicle or a recreation vehicle in violation of this chapter shall be held liable, jointly and severally, with the operator, for any damage or injuries caused by such operator's negligent operation and for any fines, penalties or restitution resulting therefrom.
- (c) Lack of ownership of the vehicle or mistake as to the age of the operator shall not be defenses in an action filed pursuant to this section.

SECTION 15.

Said chapter 90B is hereby amended by inserting after section 28, as so appearing, the following 2 sections:

Section 28A.

Notwithstanding section 28, upon conviction of, or adjudication of delinquency by reason of a violation of subsections (c) to (e), inclusive, of section 26B the registrar shall immediately suspend the operator's license or right to operate a motor vehicle and the director shall revoke the registration of any snow vehicle or recreation vehicle issued to such person. The registrar, after having suspended or revoked the license or right to operate of a person pursuant to this section, shall issue a new license or reinstate the right to operate of such person if the prosecution or adjudication of such person is terminated in favor of the defendant or juvenile and the director shall issue a new registration number if a vehicle was registered to such person. The registrar may, after an investigation or upon a hearing, issue a new license or reinstate the right to operate and the director may issue a new snow vehicle or recreation vehicle registration number to a person convicted or adjudicated delinquent for a violation of said subsections (c) to (e), inclusive, of said section 26B; provided, however, that no such license, right to operate or registration shall be reinstated by the registrar or issued by the director to any person so convicted or adjudicated delinquent by reason of said subsection (c) or (d) of said section 26B until 1 year after the date of suspension or revocation following his original conviction or

adjudication of delinquency if for a first offense or until 2 years after the date of suspension or revocation if for a subsequent conviction or adjudication of delinquency, or to any person convicted of or adjudicated delinquent by reason of subsection (e) of said section 26B until 5 years after the date of suspension or revocation following his original conviction or adjudication if for a first offense, or until 15 years after the date of suspension or revocation if for a subsequent conviction or adjudication.

If the person so convicted or adjudicated is under age 17 at the time of a conviction or adjudication of delinquency under subsections (c) to (e), inclusive, of section 26B, inclusive, and he has not been issued a license or right to operate or has not been issued a snow vehicle or recreation vehicle registration number, neither the registrar nor the director shall issue such license or right to operate a motor vehicle or a snow vehicle or recreation vehicle registration until the time periods provided in the previous paragraph have passed and calculation of such time period shall not commence to run until such person reaches age 16 for purposes of issuance of a right to operate a motor vehicle and 16 and one-half for purposes of issuance of a license to operate a motor vehicle and for issuance of a snow vehicle or recreation vehicle registration number.

Section 28B.

Notwithstanding section 28, upon conviction of, or adjudication of delinquency by reason of a violation of section 26A, the registrar shall immediately suspend the operator's license or right to operate a motor vehicle and the director shall revoke the registration of any snow vehicle or recreation vehicle issued to such person. The registrar, after having suspended or revoked the license or right to operate of any person under this section, shall issue a new license or reinstate the right to operate and the director shall issue a new registration number, if the prosecution or adjudication of delinquency of such person is terminated in favor of the defendant or juvenile. The registrar may, after an investigation or upon hearing, issue a new license or reinstate the right to operate and the director may issue a new snow vehicle or recreation vehicle registration number to a person so convicted of or adjudicated delinquent by means of a violation of said section 26A; provided, however, that no such license or right to operate shall be issued by the registrar nor shall a registration number be issued by the director to a person convicted of a violation of subsection (a) of said section 26A, for a first offense, until 1 year after the date of suspension or revocation following his original conviction, or from the date of his original conviction if the person is unlicensed or has not been issued the right to operate or, for a subsequent offense, until 2 years after the date of such suspension, revocation or conviction, or to any person convicted of or adjudicated delinquent for a violation of subsection (b) of said section 26A, for a first offense, until 2 years after the date of suspension or revocation or, if the person is unlicensed or has not been issued a right to operate, until 2 years after the date of his original conviction or adjudication or, for a subsequent offense, until 3 years after the date of such suspension, revocation, conviction or adjudication; provided, however, that a person whose license or right to operate was suspended due to a conviction of said subsection (a) of said section 26A may, after the expiration of 3 months from the date of conviction, apply for and shall be granted a hearing before the registrar for the purpose of requesting the issuance of a new license for employment or educational purposes, which license shall be effective for not more than an identical 12-hour period every day on the grounds of hardship and a showing by the person that the causes of the present and past violations have been dealt with or brought under control, and the registrar may, in his discretion, issue such license or right to operate under such terms and conditions as he deems appropriate and necessary; and provided further, that such person may, after the expiration of 6 months from the date of conviction, apply for and shall be granted a hearing before the registrar for the purpose of requesting the issuance of a new license

or right to operate on a limited basis on the grounds of hardship and a showing by the person that the causes of the present and past violations have been dealt with or brought under control and the registrar may, in his discretion, issue such a license or right to operate under such terms and conditions as he deems appropriate and necessary.

If the person so convicted or adjudicated is under age 17 at the time of such conviction or adjudication and has not been issued a license or right to operate or a snow vehicle or recreation vehicle registration number, the registrar shall not issue such license or right to operate a motor vehicle and the director shall not issue a snow or recreation vehicle registration until the time periods provided in the previous paragraph have passed but the calculation of such time period shall not commence until such person reaches age 16 for purposes of issuance of a right to operate a motor vehicle and 16 and one-half for purposes of issuance of a license to operate a motor vehicle and for issuance of a snow vehicle or recreation vehicle registration number.

SECTION 16.

The first paragraph of section 32 of said chapter 90B, as so appearing, is hereby amended by striking out the first and second sentences and inserting in place thereof the following sentence:

Sections 21 to 34, inclusive, and the rules and regulations promulgated thereunder shall be enforced by law enforcement officers; provided, however, that any investigation, arrest or decision to seek application for complaint relative to a violation of subsections (c) to (e), inclusive, of section 26B shall be executed by a law enforcement officer who has successfully completed minimum training requirements for the enforcement of such sections as determined by the secretary of public safety and security.

SECTION 17.

Said chapter 90B is hereby further amended by striking out section 34, as so appearing, and inserting in place thereof the following section:

Section 34.

Whoever violates any provision of sections 21 to 24, inclusive, or any rule or regulation made thereunder, shall be punished by a fine of not less than \$250 nor more than \$500.

Whoever violates subsections (e) to (h), inclusive, of section 26 shall be punished by a fine of not less than \$250 nor more than \$1,000.

Whoever violates any provision of section 25 or subsections (a) to (d), inclusive, of section 26 shall be punished for a first offense, by a fine of \$250, and for a second or subsequent offense, by a fine of not less than \$500 nor more than \$2,500, and the snow vehicle or recreation vehicle in use at the time of such second or subsequent offense shall be subject to forfeiture under section 26C.

SECTION 18.

Said chapter 90B is hereby further amended by striking out section 35, as so appearing, and inserting in place thereof the following section:

Section 35.

Notwithstanding the provisions relative to the distribution of fines, penalties and forfeitures in section 10G of chapter 21A to the contrary, of the fines collected by the commonwealth pursuant to a violation of the fourth paragraph of section 10H of chapter 21A and section 21 and sections 24 to 32, inclusive, 75 per cent shall be deposited into the Off-Highway Vehicle Program Fund, established in section 35OO of chapter 10, and the remaining 25 per cent shall be distributed

equally among the divisions, departments or offices involved in the enforcement of the laws which resulted in the assessment of such fines.

SECTION 19.

Chapter 242 of the General Laws, as appearing in the 2008 Official Edition, is hereby amended by inserting after section 7A the following section:

Section 7B.

- (a) Any person operating an off-highway or recreational vehicle who damages or destroys a field crop product and agricultural property situated on the land of another shall be liable to the owner of such product in tort.
- (b) A party awarded judgment under this section shall be entitled to damages in an amount up to, but not greater than, 3 times the amount assessed for the removal, damage or destruction of the farm crop product and agricultural property, plus attorney fees and litigation costs. In assessing damages under this section, the court shall consider the market value of the field crop product and agricultural property prior to its removal, damage or destruction and all costs directly related to the production, research, testing, replacement and development of the field crop product and agricultural property.
- (c) Damages awarded under this section shall not limit remedies available under chapter 266 or under any other applicable local, state or federal law.
- (d) Liability under this section shall not apply to any federal, state or local government agency, or to any employee of any such agency acting in the course of his employment.
- (e) For purposes of this section, a “field crop product” shall mean any product of the soil that is grown in the context of a research or product development program in conjunction or coordination with a private research facility or a university, any federal, state or local governmental agency or any crop produced for commercial purposes on an agricultural operation as defined by Section 1A of chapter 128.
- (f) For purposes of this section, an “agricultural property” shall mean any implement of husbandry, structure used for the conveyance of water or structure used in the production, growing or processing of field crop products or for keeping and raising of livestock.

SECTION 20.

Section 121A of chapter 266 of the General Laws, as so appearing, is hereby amended by striking out, in line 6, the words “two hundred and fifty dollars” and inserting in place thereof the following figure: \$500.

SECTION 21.

Notwithstanding any general or special law to the contrary, in making initial appointments to the off-highway vehicle advisory committee established pursuant to section 23 of chapter 21A, added by section 4 of this act, the secretary of energy and environmental affairs shall appoint 4 members to serve for a term of 1 year, 4 members to serve for a term of 2 years and 5 members to serve for a term of 3 years.

SECTION 22.

The director of law enforcement in the executive office of energy and environmental affairs may, after consultation with the off-highway vehicle advisory committee and a public hearing, promulgate regulations consistent with this act including, but not limited to, increasing the age at

which persons may operate all-terrain vehicles or regulating the engine size and speed capabilities of such vehicles, based on the age of the operator.

SECTION 23.

On or before February 1, 2011, the director of law enforcement in the executive office of energy and environmental affairs shall amend regulations of the division that are inconsistent with this act.

SECTION 24.

On or before November 1, 2010, the director of law enforcement in the executive office of energy and environmental affairs shall prescribe forms for application for registration fee exemption for vehicles used exclusively for agricultural, forestry, lumbering or construction purposes under section 22 of chapter 90B of the General Laws.

SECTION 25.

On or before November 1, 2010, the director of law enforcement in the executive office of energy and environmental affairs shall adopt minimum training requirements for law enforcement officers, except state and municipal police officers, as required by section 32 of chapter 90B of the General Laws.

SECTION 26.

Section 7 shall take effect on February 1, 2011; provided, however, that no operator of a snow vehicle or recreation vehicle shall be assessed a penalty for violation of section 22 of chapter 90B of the General Laws until May 1, 2011.

SECTION 27.

The provisions of subsections (b) and (c) of section 26B of chapter 90B of the General Laws prohibiting an operator of a snow vehicle or recreation vehicle from leaving the scene after causing injury to property or to a person without making known his registration number shall take effect on February 1, 2011. Nothing in this section shall affect the prohibition in said subsections (b) and (c) of said section 26B of said chapter 90B against an operator leaving the scene after causing injury to property or to a person without stopping and making known his name, address and registration number on or after October 1, 2010.

Approved July 31, 2010