

LAC DU FLAMBEAU BAND OF LAKE SUPERIOR CHIPPEWA TRIBAL CODE

CHAPTER 29

ALL-TERRAIN VEHICLE REGULATION ORDINANCE

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HISTORY NOTES:

Current Ordinance:

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LAC DU FLAMBEAU BAND OF LAKE SUPERIOR CHIPPEWA TRIBAL CODE

CHAPTER 29

ALL-TERRAIN VEHICLE REGULATION ORDINANCE

29.101 PURPOSE.

The purpose of this Ordinance is to provide for the protection, enhancement, and management of the Lac du Flambeau Reservation lands, waters, wetlands, and roadways in order to ensure present and future enjoyment of Lac du Flambeau Reservation resources by tribal members and other persons as the Lac du Flambeau Band of Lake Superior Chippewa Indians shall permit.

29.102 AUTHORITY.

This Ordinance is enacted pursuant to Article VI, Section 1(a), (I), and (n) of the Lac du Flambeau Band of Lake Superior Chippewa Indians' Constitution and Bylaws.

29.103 APPLICABILITY.

This Ordinance shall apply to activities undertaken upon the Lac du Flambeau Band of Lake Superior Chippewa Indian Reservation. The Ordinance shall apply to members of the Lac du Flambeau Band of Lake Superior Chippewa Indians and subject to review by the Secretary of the Interior all non-members. Any person who engages in any of the activities regulated by this Ordinance shall be deemed to have given consent to the jurisdiction of the Tribe for purposes of enforcing this Ordinance.

29.104 DEFINITIONS. As used in this ordinance:

(1) "All-terrain vehicle" means an engine-driven device which has a net weight of 650 pounds or less, which has a width of 48 inches or less, which is equipped with a seat designed to be straddled by the operator and which is designed to travel on 3 or more low-pressure tires. A low-pressure tire is a tire which has a minimum width of 6 inches, which is designed to be mounted on a rim with a maximum diameter of 12 inches and which is designed to be inflated with an operating pressure not to exceed 6 pounds per square inch as recommended by the manufacturer.

(2) "All-terrain vehicle renter" means a person engaged in the rental or leasing of all-terrain vehicles to the public.

(3) “All-terrain vehicle route” means a highway or sidewalk designated for use by all-terrain vehicle operators by the Department as authorized under this Chapter.

(4) “All-terrain vehicle trail” means a marked corridor on public property or on private lands subject to public easement or lease, designated for use by all-terrain vehicle operators by the Department.

(5) “Cultural Site” means an area designated as such by the Tribal Council as having particular cultural, religious, or traditional value to the Tribe and which requires the protection of this Ordinance to prevent damage, abuse , or deterioration.

(6) “Department” means the Lac du Flambeau Motor Vehicle Department.

(7) “Enrolled Member” shall mean those persons who are currently enrolled as provided in Article II & m; Membership of the Constitution and Bylaws of the Lac du Flambeau Band of Lake Superior Chippewa Indians.

(8) “Highway” means all public ways and thoroughfares and bridges on the same. It includes the entire width between the boundary lines of every way open to the use of the public as a matter of right for the purposes of vehicular travel. It includes those roads or driveways in the tribal, state, county, or municipal parks and in tribal or state forests which have been opened to the use of the public for the purpose of vehicular travel and roads or driveways upon the grounds of public schools, as defined in Wis. Stats. s. 115.01 (1), and institutions under the jurisdiction of the Tribal Council, but does not include private roads or driveways.

(9) “Historic Site” means an area designated as such by the Tribal Council, said site having particular historical value to the Tribe and which requires the protection of this Ordinance to prevent damage, abuse, or deterioration. *\*(Need to check with the Historic Preservation Office for a list/map of designated “Historic Sites”)*

(10) “Immediate family” means persons who are related as spouses, as siblings or as parent and child.

(11) “Indian land” means all land which is held in trust by the United States for the benefit of the Tribe or of a member of the Tribe, and all land owned in fee by the Tribe or member of the Tribe, such land being within the Reservation boundaries defined in subsection (18) below.

(12) “Intoxicant” means any alcohol beverage, controlled substance, controlled substance analog or other drug or any combination thereof.

(13) “Land under the management and control of a person’s immediate family” means land owned or leased by the person or a member of the person’s immediate family over which the owner or lessee has management and control.

(14) “Nonmembers” shall mean all those persons who are not members of the Lac du Flambeau Band as defined in Subsection (7) above.

(15) “Operate and operation” means to exercise physical control over the speed or direction of an all-terrain vehicle or to physically manipulate or activate any of the controls of an all-terrain vehicle necessary to put it in motion.

(16) “Operator” means a person who operates an all-terrain vehicle, who is responsible for the operation of an all-terrain vehicle or who is supervising the operation of an all-terrain vehicle.

(17) “Owner” means a person who has lawful possession of an all-terrain vehicle by virtue of legal title or equitable interest in the all-terrain vehicle which entitles the person to possession of the all-terrain vehicle.

(18) “Reservation” means the geographical area within the external boundaries of the Lac du Flambeau Band of Lake Superior Chippewa Indian Reservation as surveyed and provided pursuant to Article I, Clause 3(d) of the Treaty of September 30, 1854.

(19) “Reservation waters” means all lakes, streams, sloughs, bayous, and marsh outlets which are navigable in fact and which are located within the reservation; lakes which are partly within the Reservation are included to the extent the shoreline is within the Reservation.

(20) “Tribal member” means a person enrolled in the Lac du Flambeau Band of Lake Superior Chippewa Indians.

(21) “Used exclusively on private property” means use of an all-terrain vehicle by the owner of the all-terrain vehicle or a member of his or her immediate family only on land owned or leased by the all-terrain vehicle owner or a member of his or her immediate family.

(22) “Wetlands” means those areas where water is at, near, or above the land surface long enough to be capable of supporting aquatic or hydrophytic vegetation and which has soils indicative of wet conditions.

## 29.105 REGISTRATION.

(1) No person may operate and no owner may give permission for the operation of an all-terrain vehicle within the Reservation unless the all-terrain vehicle is registered for use with the Lac du Flambeau Motor Vehicle Department.

(2) An all-terrain vehicle is exempt from registration if it is:

- a. Owned by the Tribe, United States, another state or a political subdivision thereof, provided the exterior of the all-terrain vehicle displays in a visible manner the name, owner; or,
- b. Covered by a valid registration of a federally recognized Indian Tribe, another state, province or country if there is some identification of registration displayed on the all-terrain vehicle.

## 29.106 EQUIPMENT REQUIREMENTS.

(1) A person who operates an all-terrain vehicle during the hours of darkness or during daylight hours on any highway is required to display a lighted headlamp and tail lamp on the all-terrain vehicle.

- a. The headlamp on an all-terrain vehicle is required to display a white light of sufficient illuminating power to reveal any person, vehicle or substantial object at a distance of at least 200 feet ahead of the all-terrain vehicle.
- b. The tail lamp on an all-terrain vehicle is required to display a red light plainly visible during hours of darkness from a distance of 500 feet to the rear.

(2) Every all-terrain vehicle is required to be equipped with at least one brake operated either by hand or by foot.

(3) Every all-terrain vehicle is required to be equipped with a functioning muffler to prevent excessive or unusual noise and with a functioning spark arrester as approve by the U.S. Forest Service.

(4) Use of head gear. No person may operate or be a passenger on an all-terrain vehicle without wearing protective headgear of the type required under Wisconsin Statute s. 347.485 (1) (a), *Protective headgear for use on Type 1 motorcycles*, and with the chin strap properly fastened, unless one of the following applies:

(a) The person is at least 18 years of age.

(b) The person is traveling for the purposes of hunting or fishing and is at least 12 years of age.

(c) The all-terrain vehicle is being operated for an agricultural purpose.

(d) The all-terrain vehicle is being operated by a person on land under the management and control of the person's immediate family.

#### 29.107 RULES OF OPERATION.

It shall be unlawful for any person to operate any all-terrain vehicle in the following ways which are declared to be unsafe and a public nuisance:

(1) At a rate of speed greater than reasonable or proper under all the surrounding circumstances.

(2) In any careless, reckless, or negligent manner so as to endanger the person or property of another.

(3) On the private property of another without the consent of the owner or lessee. Failure to post private property does not imply consent for all-terrain vehicle use.

(4) With any firearm in his or her possession unless it is unloaded and enclosed in a carrying case, or any bow unless it is unstrung or enclosed in a carrying case.

(5) To drive or pursue any animal except as part of normal farming operations.

(6) A manner which results in damage or destruction to any tree, nursery, planting, growing stock, Reservation waters or wetlands, as defined by the Tribal Natural Resource Department, with the exception of Law Enforcement and Tribal Natural Resource Department conducting duties that require such activities.

(7) On an area designated a cultural or historic site by the Tribal Council.

(8) On the frozen surface of public waters within 100 feet of a person, not on an ATV or motor vehicle, or within 100 feet of a fish shanty at a speed greater than ten (10) miles per hour.

(9) No person shall operate an all-terrain vehicle on a town road, tribal road, county highway, or state highway or adjacent to said highway or road, which may be designated as an all-terrain route, at a speed greater than fifteen (15) miles per hour.

#### 29.108 AGE RESTRICTIONS; SAFETY CERTIFICATION PROGRAM.

(1) Age restriction. No person under twelve (12) years of age may operate an all-terrain vehicle unless he or she is operating the all-terrain vehicle for an agricultural purpose and he or she is under the supervision of a person over eighteen (18) years of age or unless he or she is operating a small all-terrain vehicle on an all-terrain vehicle trail designated by Tribal Natural Resource Department and he or she is accompanied by his or her parent. No person who is under twelve (12) years of age may operate an all-terrain vehicle which is an implement of husbandry on a roadway under any circumstances. No person who is under twelve (12) years of age may rent or lease an all-terrain vehicle. For purposes of this paragraph, supervision does not require that the person under twelve (12) years of age be subject to continuous direction or control by the person over eighteen (18) years of age.

(2) All-terrain vehicle safety certificate. A person who is at least twelve (12) years of age but under sixteen (16) years of age may not operate an all-terrain vehicle unless he or she holds a valid all-terrain vehicle safety certificate or is accompanied by a person over eighteen (18) years of age. A person who is at least twelve (12) years of age but under sixteen (16) years of age may not operate an all-terrain vehicle on a roadway under the authorization provided under sec. 29.110 unless he or she holds a valid all-terrain vehicle safety certificate regardless if he or she is accompanied by a person over eighteen (18) years of age. A person who is at least twelve (12) years of age, but under sixteen (16) years of age may not operate an all-terrain vehicle which is an implement of husbandry on a roadway under the authorization provided under sec. 29.110 unless her or she holds a valid all-terrain vehicle safety certificate regardless if he or she is accompanied by a person over eighteen (18) years of age. A person who is at least twelve (12) years of age, but under sixteen (16) years of age who holds an all-terrain vehicle safety certificate shall carry it while he or she operates an all-terrain vehicle and shall display it to law enforcement officers on request. Persons enrolled in a safety certification program approved by the Tribal Department of Natural Resources may operate an all-terrain vehicle in an area designated by the instructor.

(3) Exceptions. Paragraphs (1) and (2) do not apply to a person who operates an all-terrain vehicle exclusively on land under the management and control of the person's immediate family. Paragraphs (1) and (2) do not apply to a person at least twelve (12) years of age but under sixteen (16) years of age who holds a valid certificate issued by another state or a province of Canada.

(4) Safety certificate program established. The Tribal Natural Resources Department shall establish or supervise the establishment of programs of instruction on all-terrain vehicle laws, including the intoxicated operation of an all-terrain vehicle law, regulations, safety and related subjects. The Tribal Natural Resources Department may charge or authorize an instruction fee.

#### 29.109 ROUTES AND TRAILS.

(1) The Tribal Natural Resources Department may encourage and supervise a system of all-terrain vehicle routes and trails. The Tribal Council shall have final approval authority over the route and trail locations. The Tribal Natural Resources Department in cooperation with the Lac du Flambeau Motor Vehicle Department and the Conservation Department, may establish uniform all-terrain vehicle route and trails signs. The Tribal Natural Resources Department may establish standards and procedures for certifying the designation of all-terrain vehicle routes and trails.

(2) The Tribal Natural Resources Department may specify effective periods for the use of all-terrain vehicle routes and trails and may restrict or prohibit the operation of an all-terrain vehicle during certain periods of the year.

(3) Interference with signs and standards prohibited.

a. No person may intentionally remove, damage, deface, move or obstruct any uniform all-terrain vehicle route or trail sign or intentionally interfere with the effective operation of any uniform all-terrain vehicle route or trail sign if the sign is legally placed by the Department or any authorized individual.

b. No person may possess any uniform all-terrain vehicle route or trail sign of the type established by the Department for the warning, instruction or information of the public, unless he or she obtained the uniform all-terrain vehicle route or trail sign in a lawful manner. Possession of a uniform all-terrain vehicle route or trail sign creates a rebuttable presumption of illegal possession.

#### 29.110 OPERATION ON HIGHWAYS.

(1) No person may operate an all-terrain vehicle on a highway except as authorized within this section or as authorized by rules promulgated by the Tribal Natural Resources Department.

(2) Paragraph (1) does not apply to the operator of an all-terrain vehicle owned by the Tribe, state agency or public utility while the operator is engaged in an emergency or in the operation of an all-terrain vehicle directly related to the functions of the Tribe, state agency or public utility if safety does not require strict adherence to these restrictions.

(3) A person may operate an all-terrain vehicle on the roadway portion of any highway only in the following situations:

- a. The crossing of a roadway is authorized only if the crossing is done in the most direct manner practical, if the crossing is made at a place where no obstruction prevents a quick and safe crossing and if the operator stops the all-terrain prior to the crossing and yields the right-of-way to other vehicles and pedestrians using the roadway.
- b. On any roadway which is seasonally not maintained for motor vehicle traffic. Operation of an all-terrain vehicle on this type of roadway is authorized only during the seasons when no maintenance occurs and only if the roadway is not officially closed to all-terrain vehicle traffic.
- c. To cross a bridge, culvert or railroad right-of-way. The crossing of a bridge, culvert or railroad right-of-way is not authorized if the roadway is officially closed to all-terrain vehicle traffic. The crossing is authorized only if the crossing is done in the most direct manner practical, if the crossing is made at a place where no obstruction prevents a quick and safe crossing and if the operator stops the all-terrain vehicle prior to the crossing and yields the right-of-way to other vehicles and pedestrians using the roadway.
- d. On roadways which are designated as all-terrain vehicle routes. Operation of all-terrain vehicles on a roadway which is an all-terrain vehicle route is authorized only for the extreme right side of the roadway except that left turns may be made from any part of the roadway which is safe given prevailing conditions.

#### 29.111 OPERATION ADJACENT TO ROADWAY.

(1) A person may operate an all-terrain vehicle adjacent to a roadway on an all-terrain vehicle route or trail if the person operates the all-terrain vehicle in the

following manner:

- a. At a distance of 10 or more feet from the roadway along U.S. numbered highways and state and county highways. Travel on the median of a divided highway is prohibited except to cross.
- b. Outside of the roadway along town highways.
- c. During hours of darkness in the same direction as motor vehicle traffic in the nearest lane, although during daylight hours travel may be in either direction regardless of the flow of motor vehicle traffic.
- d. Not in excess of the speed limits of the adjacent roadway (see sec. 29.107(9)).
- e. With due regard to safety and in compliance with rules promulgated by the Tribal Natural Resources Department.

#### 29.112 ACCIDENTS.

(1) If an accident results in the death of any person or in the injury of any person which requires the treatment of the person by a physician, the operator of each all-terrain vehicle involved in the accident shall give notice of the accident to a conservation warden or law enforcement officer as soon as possible and shall file a written report of the accident with the Conservation Law Enforcement Department on the form provided by the Conservation Law Enforcement Department within 10 days after the accident. Until a different form is developed or adopted the form to be used is the form presently used by the state of Wisconsin.

(2) If the operator of an all-terrain vehicle is physically incapable of making the report required by this subsection and there was another witness to the accident capable of making the report, the witness may make the report.

#### 29.113 INTOXICATED OPERATION OF AN ALL-TERRAIN VEHICLE.

- (1) Operation. (a) Operating while under the influence of an intoxicant. 'No person may operate an all-terrain vehicle while under the influence of an intoxicant to a degree which renders him or her incapable of safe operation of an all-terrain vehicle.
- (b) 'Operating with alcohol concentration at or above specified

levels. 'No person may engage in the operation of an all-terrain vehicle while the person has an alcohol concentration of 0.1% or more.

(c) 'Operating with alcohol concentrations at specified levels; below age twenty-one (21).' If a person has not attained the age of twenty-one (21), the person may not engage in the operation of an all-terrain vehicle while he or she has an alcohol concentration of more than 0.0 but not more than 0.1.

(d) 'Related charges.' A person may be charged with and a prosecutor may proceed upon a complaint based upon a violation of subd. 1. or 2. or both for acts arising out of the same incident or occurrence. If the person is charged with violating both subds. 1. and 2. for acts arising out of the same incident or occurrence, there shall be a single conviction for purposes of sentencing and for purposes of counting convictions under sec. 29.121. Subdivisions 1. and 2. each require proof of a fact for conviction which the other does not require.

(2) Causing injury. (a) 'Causing injury while under the influence of an intoxicant.' No person while under the influence of an intoxicant to a degree which renders him or her incapable of safe operation of an all-terrain vehicle may cause injury to another person by the operation of an all-terrain vehicle.

(b) 'Causing injury with alcohol concentrations at or above specified levels.' No person who has an alcohol concentration of 0.1% or more may cause injury to another person by the operation of a all-terrain vehicle.

(c) 'Related Charges.' A person may be charged with and a prosecutor may proceed upon a complaint based upon a violation of subd. 1. or 2. or both for acts arising out of the same incident or occurrence. If a person is charged with violating both subds. 1. and 2. in the complaint, the crimes shall be joined. If the person is found guilty of both subds. 1. and 2. for acts arising out of the same incident or occurrence, there shall be a single conviction for purposes of sentencing and for purposes counting convictions under section 29.121. Subdivisions 1. and 2. each require proof of a factor for conviction which the other does not require.

(d) 'Defenses.' In an action under this paragraph, the defendant has a defense if he or she proves by a preponderance of evidence that the injury would have occurred event if he or she had been exercising due

care and he or she had not been under the influence of an intoxicant or did not have an alcohol concentration of 0.1% or more.

(3) PRELIMINARY BREATH SCREENING TEST.

- (a) Requirement. A person shall provide a sample of his or her breath for a preliminary breath screening test if a law enforcement officer has probable cause to believe that the person is violating or has violated the intoxicated operation of an all-terrain vehicle law and if, prior to arrest, the law enforcement officer requested the person to provide this sample.
- (b) Use of test results. A law enforcement officer may use the results of a preliminary breath screening test for the purpose of deciding whether or not to arrest a person for a violation of the intoxicated operation of an all-terrain vehicle law or for the purpose of deciding whether or not to request a chemical test under sub. Sec. 29.113 (6). Following the preliminary breath screening test, chemical tests may be required of the person under 29.113 (6).
- (c) Admissibility. The result of a preliminary breath screening test is not admissible in any action or proceeding except to show probable cause for an arrest, if the arrest is challenged, or to show that the chemical test was properly required of a person under 29.113(6).
- (d) Refusal. There is no penalty for a violation of par. (a). Sec. 29.121 does not apply to that violation.

(4) APPLICABILITY OF THE INTOXICATED OPERATION OF AN ALL-TERRAIN VEHICLE LAW. In addition to being applicable upon highways, the intoxicated operation of an all-terrain vehicle law is applicable upon all premises held out to the public for use of their all-terrain vehicles, whether such premises are publicly or private owned and whether or not a fee is charged for the use thereof.

(5) IMPLIED CONSENT. Any person who engages in the operation of an all-terrain vehicle upon the public highways of the reservation, or in those areas enumerated in 29.113 (4), is deemed to have given consent to provide one or more samples of his or her breath, blood or urine for the purpose of authorized analysis as required under 29.113 (6). Any person who engages in the operation of an all-terrain vehicle within this state is deemed to have given consent to submit to one or more chemical tests of his or her breath, blood or urine for the purpose of authorized analysis as required under 29.113 (6).

(6) CHEMICAL TESTS.

(a) Requirement. 1. 'Samples; submission to tests.' A person shall provide one or more samples of his or her breath , blood or urine for the purpose of authorized analysis if he or she is arrested for a violation of the intoxicated operation of an all-terrain vehicle law and if he or she is requested to provide the sample by a law enforcement officer. A person shall submit to one or more chemical tests of his or her breath, blood or urine for the purpose of authorized analysis if he or she is arrested for a violation of the intoxicated operation of an all-terrain vehicle law and if he or she is requested to submit to the test by a law enforcement officer.

2. 'Information.' A law enforcement officer requesting a person to provide a sample or to submit to a chemical test under 29.113(6)(a)(1) shall inform the person of all of the following at the time of the request and prior to obtaining the sample or administering the test:

- (a) That he or she is deemed to have consented to tests under 29.113(5).
- (b) That refusal to provide a sample or to submit to a chemical test constitutes a violation under 29.116 and is subject to the same penalties and procedures as a violation of 29.113(1)(a).
- (c) That in addition to the designated chemical test under 29.113(6)(b) (2), he or she may have an additional chemical test under 29.113(6)(c)(1).

3. 'Unconscious person.' A person who is unconscious or otherwise not capable of withdrawing consent is presumed not to have withdrawn consent under this paragraph, and if a law enforcement officer has probable cause to believe that the person violated the intoxicated operation of an all-terrain vehicle law, one or more chemical tests may be administered to the person without a request under subd. 1. and without providing information under subd. 2.

(b) Chemical tests. 1. 'Test facility.' Upon the request of a law enforcement officer, a test facility shall administer a chemical test of breath, blood or urine for the purpose of authorized analysis. A test facility shall be prepared to administer 2 of the 3 chemical tests of

breath, blood or urine for the purpose of authorized analysis. The department may enter into agreements for the cooperative use of test facilities.

2. 'Designated chemical test.' A test facility shall designate one chemical test of breath, blood or urine which it is prepared to administer first for the purpose of authorized analysis.

3. 'Additional chemical test.' A test facility shall specify one chemical test of breath, blood or urine, other than the test designated under subd. 2., which it is prepared to administer for the purpose of authorized analysis as an additional chemical test.

4. 'Validity; procedure.' A chemical test of blood or urine conducted for the purpose of authorized analysis is valid as provided under Wisconsin Statutes section 343.305 (6), *Tests for intoxication, requirements for test*. The duties and responsibilities of the laboratory of hygiene, department of health and family services and department of transportation under s. 343.305 (6) apply to a chemical test of blood or urine conducted for the purpose of authorized analysis under this subsection. Blood may be withdrawn from the person arrested for a violation of the intoxicated operation of an all-terrain vehicle law only by a physician, registered nurse, medical technologist, physician assistant or person acting under the direction of a physician and the person who withdraws the blood, the employer of that person and any hospital where blood is withdrawn have immunity from civil or criminal liability as provided under Wisconsin Statutes s. 895.53, *Liability exemption; tests for intoxication*.

5. 'Report.' A test facility which administers a chemical test of breath, blood or urine for the purpose of authorized analysis under this subsection shall prepare a written report which shall include the findings of the chemical test, the identification of the law enforcement officer or the person who provided the sample or submitted to the chemical test. The test facility shall transmit a copy of the report to the law enforcement officer and the person who provided the sample or submitted to the chemical test.

(c) Additional and optional chemical tests. 1. 'Additional chemical test.' If a person is arrested for a violation of the intoxicated operation of an all-terrain vehicle law or is the operator of an all-terrain vehicle involved in an accident resulting in great bodily harm to or the death of someone and if the person is requested to provide a sample or to

submit to a test under par. (a) 1., the person may request the test facility to administer the additional chemical test specified under par. (b) 3. or, at his or her own expense, reasonable opportunity to have any qualified person administer a chemical test of his or her breath, blood or urine for the purpose of authorized analysis.

2. 'Optional test.' If a person is arrested for a violation of the intoxicated operation of an all-terrain vehicle law and if the person is not requested to provide a sample or to submit to a test under par. (a) 1., the person may request the test facility to administer a chemical test of his or her breath or, at his or her own expense, reasonable opportunity to have any qualified person administer a chemical test of his or her breath, blood or urine for the purpose of authorized analysis. If a test facility is unable to perform a chemical test of breath, the person may request the test facility to administer the designated chemical test under par. (b) 2. or the additional chemical test under par. (b) 3.

3. 'Compliance with request.' A test facility shall comply with a request under this paragraph to administer any chemical test it is able to perform.

4. 'Inability to obtain chemical test.' The failure or inability of a person to obtain a chemical at his or her own expense does not preclude the admission of evidence of the results of a chemical test required and administered under pars. (a) and (b).

(d) Admissibility; effect of test results; other evidence. The results of a chemical test required or administered under par. (a), (b) or (c) are admissible in any civil or criminal action or proceeding arising out of the acts committed by a person alleged to have violated the intoxicated operation of an all-terrain vehicle law on the issue of whether the person was under the influence of an intoxicant or the issue of whether the person had alcohol concentrations at or above specified levels. Results of these chemical test shall be given the effect required under Wisconsin Statutes, s. 885.235, *Chemical tests for intoxication*. This subsection does not limit the right of a law enforcement officer to obtain evidence by any other lawful means.

(e) Refusal. No person may refuse a lawful request to provide one or more samples of his or her breath, blood or urine or to submit to one or more chemical tests under par. (a). A person shall not be deemed to refuse to provide a sample or to submit to a chemical test if it is

shown by a preponderance of the evidence that the refusal was due to a physical inability to provide the sample or to submit to the test due to a physical disability or disease unrelated to the use of an intoxicant. Issues in any action concerning violation of par. (a) or this paragraph are limited to:

1. Whether the law enforcement officer had probable cause to believe the person was violating or had violated the intoxicated operation of an all-terrain vehicle law.
2. Whether the person was lawfully placed under arrest for violating the intoxicated operation of an all-terrain vehicle law.
3. Whether the law enforcement officer requested the person to provide a sample or to submit to a chemical test and provided the information required under par. (a) 2. or whether the request and information was unnecessary under par. (a) 3.
4. Whether the person refused to provide a sample or to submit to a chemical test.

1) No person may operate an all-terrain vehicle while under the influence of an intoxicant to a degree which renders him or her incapable of safe operation of an all-terrain vehicle.

2) No person may engage in the operation of an all-terrain vehicle while the person has an alcohol concentration of 0.1% or more.

3) If a person has not attained the age of 21, the person may not engage in the operation of an all-terrain vehicle while he or she has consumed any alcohol.

#### 29.114 APPLICABILITY OF THE INTOXICATED OPERATION OF AN ALL-TERRAIN VEHICLE.

In addition to being applicable upon highways, the intoxicated operation of an all-terrain vehicle law is applicable upon all premises held out to the public for use of their all-terrain vehicles, whether such premises are publicly or privately owned and whether or not a fee is charged for the use thereof.

#### 29.115 IMPLIED CONSENT.

Any person who engages in the operation of all-terrain vehicle upon the public highways of the Reservation, or in those areas enumerated in section 29.111, is deemed to have given consent to provide one or more samples of his or her breath, blood or urine for the purpose of authorized analysis are required under section 29.113. Any person who engages in the operation of an all-terrain vehicle within the Reservation is deemed to have given consent to submit to one or more chemical tests of his or her breath, blood or urine for the purpose of authorized analysis.

#### 29.116 REFUSAL.

No person may refuse a lawful request to provide one or more samples of his or her breath, blood or urine or to submit to one or more chemical tests as authorized by law.

#### 29.117 RENTAL OF ALL-TERRAIN VEHICLES.

(1) No person who is engaged in the rental or the leasing of all-terrain vehicles to the public may do any of the following:

- a. Rent or lease an all-terrain vehicle for operation by a person who will be operating an all-terrain vehicle for the first time unless the person is engaged in the rental or leasing gives the person instruction on how to operate an all-terrain vehicle.
- b. Rent or lease an all-terrain vehicle to a person under 16 years of age.

(2) A person who is engaged in the rental or leasing of all-terrain vehicle to the public shall have clean, usable protective headgear available for rent in sufficient quantity to provide headgear to all persons who will be on all-terrain vehicles that the person rents or leases.

(3) The Tribal Natural Resources Department may promulgate rules to establish minimum standards for the instruction given under paragraph (1)a.

#### 29.118 ENFORCEMENT.

(1) Tribal law enforcement personnel have authority to enforce this Ordinance and ordinances enacted in conformity with this section.

(2) County law enforcement personnel are hereby empowered to enforce

the provisions of this Ordinance upon request of tribal law enforcement personnel.

(3) Conservation wardens of the Great Lakes Indian Fish and Wildlife Commission are hereby empowered to enforce the provisions of this Ordinance upon the request of tribal law enforcement personnel.

(4) Conservation wardens and deputy conservation wardens of the Wisconsin Department of Natural Resources are hereby empowered to enforce the provisions of this Ordinance upon the request of tribal law enforcement personnel.

#### 29.119 AUTHORITY OF LAW ENFORCEMENT PERSONNEL.

(1) All law enforcement personnel authorized to enforce this Ordinance may execute and serve warrants and other process issued by the Tribal Court.

(2) All law enforcement personnel authorized to enforce this Ordinance may, with or without a warrant, enter and inspect activities on Tribal, allotted, or fee (private) lands, where the law enforcement personnel has probable cause to believe that a provision of this Ordinance has been violated.

(3) All law enforcement personnel authorized to enforce this Ordinance may issue a citation upon reasonable belief that a provision of the Ordinance has been violated and may seize and hold any property needed as evidence.

#### 29.120 JURISDICTION.

The Lac du Flambeau Tribal Court is hereby authorized to undertake jurisdiction of any proceeding instituted under this Ordinance.

#### 29.121 CIVIL REMEDIAL MONEY PENALTIES.

(1) Except as provided in paragraphs (2) and (3), any person who violates this section shall forfeit not more than \$500.

(2) Except as provided under paragraph (3), a person who within 5 years prior to the conviction for the current violation, was convicted previously under the intoxicated operation of an all-terrain vehicle law or the refusal law shall be fined not less than \$500 nor more than \$1,000.

(3) A person who within 5 years prior to the conviction for the current violation, was convicted 2 or more times previously under the intoxicated operation of an all-terrain vehicle law or refusal law shall be fined not less than \$1,000 nor more than \$2,000.

(4) In determining the number of previous convictions under paragraph (2) and (3), convictions arising out of the same incident or occurrence shall be counted as one previous conviction.

(5) Whenever a person is convicted of the intoxicated operation of an all-terrain vehicle law, the Lac du Flambeau Clerk of Court shall forward to the Wisconsin Department of Natural Resources the record of such conviction. The record of conviction forwarded to the Wisconsin Department of Natural Resources shall state whether the offender was involved in an accident at the time of the offense.

(6) In addition to any other penalty or order, a person who violates section 26.113 shall be ordered by the court to submit to and comply with an assessment by an approved public treatment facility for an examination of the person's use of alcohol, controlled substances or controlled substance analogs. Intentional failure to comply with an assessment ordered under this paragraph constitutes contempt of court.

#### 29.122 DAMAGES.

The Tribe reserves the right to seek money damages to its resources through any activity, whether authorized by this Ordinance, pursuant to permit, or prohibited, in any court of competent jurisdiction.

#### 29.123 OWNER'S CIVIL LIABILITY.

(1) The owner of an all-terrain vehicle shall be liable for any injury of damage occasioned by the negligent operation of such all-terrain vehicle whether such negligence consists of a violation of the provisions of this Ordinance or neglecting to observe such ordinary care and such operation as the rules of the common law require.

(2) The owner shall not be liable unless such all-terrain vehicle is being used with his or her express or implied consent. It shall be presumed that such all-terrain vehicle is being operated with the knowledge and consent of the owner at the time of the injury or damage. Nothing contained herein shall be construed to relieve any other person from any liability they would otherwise have, however, nothing contained herein shall be construed to authorize or permit any recovery in excess of injury or damage actually incurred.

#### 29.124 INTERPRETATION.

The interpretation and application of the provisions of this Ordinance shall

be held to the minimum requirements and shall be liberally construed in favor of the Tribe and shall not be deemed a limitation on or a repeal of any other tribal power or authority.

#### 29.125 ABROGATION AND HEIGHTENED RESTRICTIONS.

Where this Ordinance affords greater restrictions than those contained within other Tribal ordinances, the provisions provided in this Ordinance shall prevail. All prior ordinances and resolutions in conflict with this Ordinance are hereby rescinded in their entirety.

#### 29.126 SEVERABILITY OF PROVISIONS.

If any provision of this Ordinance or the application portion thereof to any person or circumstances shall be adjudged by any court of competent jurisdiction to be violative of applicable law or otherwise invalid, then that provision shall be severable and considered null and void, but such judgment shall not affect, impair or invalidate the remainder of this Ordinance or application to other persons and circumstances, but shall remain in full force and effect, and such judgement shall be confined in its operation to the provisions of the Ordinance or the applicable thereof to the person and circumstances directly involved in the controversy in which such judgment was rendered.

#### 29.127 NON-LIABILITY.

The Tribe declares there is no liability on the part of the Tribe, its agencies, or employees, for damages, that may occur as a result of reliance upon or conformance with this ordinance. The Tribe, by adoption of this Ordinance, does not waive its sovereign immunity in any respect.

#### 29.128 EFFECTIVE DATE.

This Ordinance shall take effect upon members upon approval by a popular referendum of the Tribe and upon non-members upon review by the Secretary of the Interior.