A bill for an act

relating to natural resources; providing for seizure and forfeiture of certain off-highway vehicles; modifying operating restrictions for all-terrain vehicles; providing criminal penalties; amending Minnesota Statutes 2008, section 84.928, subdivision 1a; proposing coding for new law in Minnesota Statutes, chapter 84; repealing Minnesota Statutes 2008, sections 84.796; 84.805; 84.929.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

Section 1. **[84.774] OFF-HIGHWAY VEHICLE CRIMINAL PENALTIES.**

(a) Except as provided in paragraph (b), a person who violates a provision of sections 84.773; 84.777; 84.788 to 84.795; 84.798 to 84.804; 84.90; or 84.922 to 84.928 or rules of the commissioner relating to off-highway vehicle use is guilty of a misdemeanor.

(b) A person is guilty of a gross misdemeanor if the person violates section 84.773, subdivision 2, clause (2), and the person recklessly upsets the natural and ecological balance of a wetland or public waters wetland.

(c) A person is prohibited from operating an off-highway vehicle for a period of one year if the person:

(1) is convicted of a gross misdemeanor under paragraph (b);

(2) violates the prohibition on the intentional operation on unfrozen public water, in a state park, in a scientific and natural area, or in a wildlife management area under section 84.773, subdivision 1, clause (3); or

(3) violates the prohibition on the willful, wanton, or reckless disregard for the safety of persons or property under section 84.773, subdivision 2, clause (1).

The commissioner shall notify the person of the time period during which the person is prohibited from operating an off-highway vehicle.

EFFECTIVE DATE. This section is effective August 1, 2009, and applies to crimes committed on or after that date.

Sec. 2. **[84.7741] OFF-HIGHWAY VEHICLE FORFEITURE.**

Subdivision 1. **Definitions.** (a) As used in this section, the following terms have the meanings given them.

(b) "Appropriate agency" means a law enforcement agency that has the authority to make an arrest for a violation of a designated offense.

(c) "Claimant" means an owner of an off-highway vehicle or a person claiming a leasehold or security interest in an off-highway vehicle.

(d) "Designated offense" means a gross misdemeanor violation under section 84.774, paragraph (b).

(e) "Family or household member" means:

(1) a parent, stepparent, or guardian;

(2) any of the following persons related by blood, marriage, or adoption: brother, sister, stepbrother, stepsister, first cousin, aunt, uncle, nephew, niece, grandparent, great-grandparent, great-uncle, or great-aunt; or

(3) persons residing together or persons who regularly associate and communicate with one another outside of a workplace setting.

(f) "Off-highway vehicle" and "vehicle" do not include an off-highway vehicle that is stolen or taken in violation of the law.

(g) "Owner" means a person legally entitled to possession, use, and control of an off-highway vehicle, including a lessee of an off-highway vehicle if the lease agreement has a term of 180 days or more. There is a rebuttable presumption that a person registered as the owner of an off-highway vehicle according to the records of the Department of Public Safety or the Department of Natural Resources is the legal owner. For purposes of this section, if an off-highway vehicle is owned jointly by two or more people, each owner's interest extends to the whole of the vehicle and is not subject to apportionment.

(h) "Prosecuting authority" means the attorney in the jurisdiction in which the designated offense occurred, or a designee, who is responsible for prosecuting violations of a designated offense. If a state agency initiated the forfeiture and the attorney responsible for prosecuting the designated offense declines to pursue forfeiture, the attorney general's office, or its designee, may initiate forfeiture under this section.

(i) "Security interest" means a bona fide security interest perfected according to section 168A.17, subdivision 2, based on a loan or other financing that, if an off-highway vehicle is required to be registered under chapter 168, is listed on the vehicle's title.

Subd. 2. **Seizure.** (a) An off-highway vehicle subject to forfeiture under this section may be seized by the appropriate agency upon process issued by any court having jurisdiction over the vehicle.

(b) Property may be seized without process if:

(1) the seizure is incident to a lawful arrest or a lawful search;

(2) the vehicle subject to seizure has been the subject of a prior judgment in favor of the state in a criminal injunction or forfeiture proceeding under this section; or

(3) the appropriate agency has probable cause to believe that the delay occasioned by the necessity to obtain process would result in the removal or destruction of the vehicle. If property is seized without process under this clause, the prosecuting authority must institute a forfeiture action under this section as soon as is reasonably possible by serving a notice of seizure and intent to forfeit at the address of the owner as listed in the records of the Department of Public Safety or Department of Natural Resources.

Subd. 3. **Right to possession vests immediately; custody.** All right, title, and interest in an off-highway vehicle subject to forfeiture under this section vests in the appropriate agency upon commission of the conduct resulting in the designated offense giving rise to the forfeiture. Any vehicle seized under this section is not subject to replevin, but is deemed to be in the custody of the appropriate agency subject to the orders and decrees of the court having jurisdiction over the forfeiture proceedings. When an off-highway vehicle is seized under this section, the appropriate agency may:

(1) place the vehicle under seal;

(2) remove the vehicle to a place designated by the agency;

(3) place a disabling device on the vehicle; and

(4) take other steps reasonable and necessary to secure the vehicle and prevent waste.

Subd. 4. **Bond by owner for possession.** If the owner of an off-highway vehicle that has been seized under this section seeks possession of the vehicle before the forfeiture action is determined, the owner may, subject to the approval of the appropriate agency, give security or post bond payable to the appropriate agency in an amount equal to the retail value of the seized vehicle. On posting the security or bond, the seized vehicle may be returned to the owner. The forfeiture action must proceed against the security as if it were the seized vehicle.

Subd. 5. **Evidence.** Certified copies of court records and off-highway vehicle and driver's records concerning prior incidents are admissible as substantive evidence where necessary to prove the commission of a designated offense.

Subd. 6. **Vehicle subject to forfeiture.** An off-highway vehicle is subject to forfeiture under this section if it was used in the commission of a designated offense.

Subd. 7. **Presumptions; limitations on vehicle forfeiture.** (a) An off-highway vehicle is presumed subject to forfeiture under this section if the driver:

(1) is convicted of the designated offense upon which the forfeiture is based; or

(2) fails to appear for a scheduled court appearance with respect to the designated offense charged and fails to voluntarily surrender within 48 hours after the time required for appearance.

(b) An off-highway vehicle encumbered by a security interest perfected according to section 168A.17, subdivision 2, or subject to a lease that has a term of 180 days or more, is subject to the interest of the secured party or lessor unless the party or lessor had knowledge of or consented to the act upon which the forfeiture is based. However, when the proceeds of the sale of a seized vehicle do not equal or exceed the outstanding loan balance, the appropriate agency shall remit all proceeds of the sale to the secured party after deducting the agency's costs for the seizure, tow, storage, forfeiture, and sale of the vehicle. If the sale of the vehicle is conducted in a commercially reasonable manner consistent with section 336.9-610, the agency is not liable to the secured party for any amount owed on the loan in excess of the sale proceeds. The validity and amount of a nonperfected security interest must be established by its holder by clear and convincing evidence.

(c) Notwithstanding paragraph (b), the secured party's or lessor's interest in an off-highway vehicle is not subject to forfeiture based solely on the secured party's or lessor's knowledge of the act or omission upon which the forfeiture is based if the secured party or lessor demonstrates by clear and convincing evidence that the party or lessor took reasonable steps to terminate use of the vehicle by the offender.

(d) An off-highway vehicle is not subject to forfeiture under this section if its owner can demonstrate by clear and convincing evidence that the owner did not have actual or constructive knowledge that the vehicle would be used or operated in any manner contrary to law or that the owner took reasonable steps to prevent use of the vehicle by the offender. If the offender is a family or household member of the owner and has three or more prior off-highway vehicle convictions, the owner is presumed to know of any vehicle use by the offender that is contrary to law.

Subd. 8. **Administrative forfeiture procedure.** (a) An off-highway vehicle used to commit a designated offense is subject to administrative forfeiture under this subdivision.

(b) When an off-highway vehicle is seized under subdivision 2, or within a reasonable time after seizure, the appropriate agency shall serve the driver or operator of the vehicle with a notice of the seizure and intent to forfeit the vehicle. Additionally, when an off-highway vehicle is seized under subdivision 2, or within a reasonable time

after that, all persons known to have an ownership, possessory, or security interest in the vehicle must be notified of the seizure and the intent to forfeit the vehicle. For those vehicles required to be registered under chapter 168, the notification to a person known to have a security interest in the vehicle is required only if the vehicle is registered under chapter 168 and the interest is listed on the vehicle's title. Notice mailed by certified mail to the address shown in Department of Public Safety records is sufficient notice to the registered owner of the vehicle. For off-highway vehicles not required to be registered under chapter 168, notice mailed by certified mail to the address shown in the applicable filing or registration for the vehicle is sufficient notice to a person known to have an ownership, possessory, or security interest in the vehicle. Otherwise, notice may be given in the manner provided by law for service of a summons in a civil action.

(c) The notice must be in writing and contain:

(1) a description of the vehicle seized;

(2) the date of the seizure; and

(3) notice of the right to obtain judicial review of the forfeiture and of the procedure for obtaining that judicial review, printed in English, Hmong, and Spanish. Substantially, the following language must appear conspicuously: "IF YOU DO NOT DEMAND JUDICIAL REVIEW EXACTLY AS PRESCRIBED IN MINNESOTA STATUTES, SECTION 84.7741, SUBDIVISION 8, YOU LOSE THE RIGHT TO A JUDICIAL DETERMINATION OF THIS FORFEITURE AND YOU LOSE ANY RIGHT YOU MAY HAVE TO THE ABOVE-DESCRIBED PROPERTY. YOU MAY NOT HAVE TO PAY THE FILING FEE FOR THE DEMAND IF DETERMINED YOU ARE UNABLE TO AFFORD THE FEE. IF THE PROPERTY IS WORTH $7,500 OR LESS, YOU MAY FILE YOUR CLAIM IN CONCILIATION COURT. YOU DO NOT HAVE TO PAY THE CONCILIATION COURT FILING FEE IF THE PROPERTY IS WORTH LESS THAN $500."

(d) Within 30 days following service of a notice of seizure and forfeiture under this subdivision, a claimant may file a demand for a judicial determination of the forfeiture. The demand must be in the form of a civil complaint and must be filed with the court administrator in the county in which the seizure occurred, together with proof of service of a copy of the complaint on the prosecuting authority having jurisdiction over the forfeiture and the standard filing fee for civil actions unless the petitioner has the right to sue in forma pauperis under section 563.01. If the value of the seized property is $7,500 or less, the claimant may file an action in conciliation court for recovery of the seized vehicle. A copy of the conciliation court statement of claim must be served personally or by mail on the prosecuting authority having jurisdiction over the forfeiture within 30 days following

service of the notice of seizure and forfeiture under this subdivision. If the value of the seized property is less than $500, the claimant does not have to pay the conciliation court filing fee. No responsive pleading is required of the prosecuting authority and no court fees may be charged for the prosecuting authority's appearance in the matter. Pleadings, filings, and methods of service are governed by the Rules of Civil Procedure.

(e) The complaint must be captioned in the name of the claimant as plaintiff and the seized vehicle as defendant and must state with specificity the grounds on which the claimant alleges the vehicle was improperly seized, the claimant's interest in the vehicle seized, and any affirmative defenses the claimant may have. Notwithstanding any law to the contrary, an action for the return of an off-highway vehicle seized under this section may not be maintained by or on behalf of any person who has been served with a notice of seizure and forfeiture unless the person has complied with this subdivision.

(f) If the claimant makes a timely demand for a judicial determination under this subdivision, the forfeiture proceedings must be conducted according to subdivision 9.

Subd. 9. **Judicial forfeiture procedure.** (a) This subdivision governs judicial determinations of the forfeiture of an off-highway vehicle used to commit a designated offense. An action for forfeiture is a civil in rem action and is independent of any criminal prosecution. All proceedings are governed by the Rules of Civil Procedure.

(b) If no demand for judicial determination of the forfeiture is pending, the prosecuting authority may, in the name of the jurisdiction pursuing the forfeiture, file a separate complaint against the vehicle, describing it, specifying that it was used in the commission of a designated offense, and specifying the time and place of its unlawful use.

(c) The prosecuting authority may file an answer to a properly served demand for judicial determination, including an affirmative counterclaim for forfeiture. The prosecuting authority is not required to file an answer.

(d) A judicial determination under this subdivision must not precede adjudication in the criminal prosecution of the designated offense without the consent of the prosecuting authority. The district court administrator shall schedule the hearing as soon as practicable after adjudication in the criminal prosecution. The district court administrator shall establish procedures to ensure efficient compliance with this subdivision. The hearing is to the court without a jury.

(e) There is a presumption that an off-highway vehicle seized under this section is subject to forfeiture if the prosecuting authority establishes that the vehicle was used in the commission of a designated offense. A claimant bears the burden of proving any affirmative defense raised.

(f) If the forfeiture is based on the commission of a designated offense and the person charged with the designated offense appears in court as required and is not convicted of the offense, the court shall order the property returned to the person legally entitled to it upon that person's compliance with the redemption requirements of subdivision 12.

(g) If the lawful ownership of the vehicle used in the commission of a designated offense can be determined and the owner makes the demonstration required under subdivision 7, paragraph (d), the vehicle must be returned immediately upon the owner's compliance with the redemption requirements of subdivision 12.

(h) If the court orders the return of a seized vehicle under this subdivision, it must order that filing fees be reimbursed to the person who filed the demand for judicial determination. In addition, the court may order sanctions under section 549.211. Any reimbursement fees or sanctions must be paid from other forfeiture proceeds of the law enforcement agency and prosecuting authority involved and in the same proportion as distributed under subdivision 10, paragraph (b).

Subd. 10. **Disposition of forfeited vehicle.** (a) If the vehicle is administratively forfeited under subdivision 8, or if the court finds under subdivision 9 that the vehicle is subject to forfeiture under subdivisions 6 and 7, the appropriate agency shall:

(1) sell the vehicle and distribute the proceeds under paragraph (b); or

(2) keep the vehicle for official use. If the agency keeps a forfeited off-highway vehicle for official use, the agency shall make reasonable efforts to ensure that the off-highway vehicle is available for use by the agency's officers who participate in off-highway vehicle enforcement or education programs.

(b) The proceeds from the sale of forfeited vehicles, after payment of seizure, towing, storage, forfeiture, and sale expenses and satisfaction of valid liens against the property, must be distributed as follows:

(1) 70 percent of the proceeds must be forwarded to the appropriate agency for deposit as a supplement to the state or local agency's operating fund or similar fund for use in purchasing equipment for off-highway vehicle enforcement, training, and education; and

(2) 30 percent of the money or proceeds must be forwarded to the prosecuting authority that handled the forfeiture for deposit as a supplement to its operating fund or similar fund for prosecutorial purposes.

Subd. 11. **Sale of forfeited vehicle by secured party.** (a) A financial institution with a valid security interest in or a valid lease covering a forfeited off-highway vehicle may choose to dispose of the vehicle under this subdivision, in lieu of the appropriate agency disposing of the vehicle under subdivision 10. A financial institution wishing to dispose of an off-highway vehicle under this subdivision shall notify the appropriate

agency of its intent, in writing, within 30 days after receiving notice of the seizure and forfeiture. The appropriate agency shall release the vehicle to the financial institution or its agent after the financial institution presents proof of its valid security agreement or of its lease agreement and the financial institution agrees not to sell the vehicle to a family or household member of the violator, unless the violator is not convicted of the offense on which the forfeiture is based. The financial institution shall dispose of the vehicle in a commercially reasonable manner as defined in section 336.9-610.

(b) After disposing of the forfeited vehicle, the financial institution shall reimburse the appropriate agency for its seizure, storage, and forfeiture costs. The financial institution may then apply the proceeds of the sale to its storage costs, to its sale expenses, and to satisfy the lien or the lease on the vehicle. If any proceeds remain, the financial institution shall forward the proceeds to the state treasury, which shall credit the appropriate fund as specified in subdivision 10.

Subd. 12. **Redemption requirements.** (a) If an off-highway vehicle is seized by a peace officer for a designated offense, the seized vehicle must be released only:

(1) to the registered owner, a person authorized by the registered owner, a lienholder of record, or a person who has purchased the vehicle from the registered owner, who provides proof of ownership of the vehicle, proof of valid Minnesota driving privileges, and proof of insurance required by law to cover the vehicle;

(2) if the vehicle is subject to a rental or lease agreement, to a renter or lessee with valid Minnesota driving privileges who provides a copy of the rental or lease agreement and proof of insurance required by law to cover the vehicle; or

(3) to an agent of a towing company authorized by a registered owner if the owner provides proof of ownership of the vehicle and proof of insurance required by law to cover the vehicle.

(b) The proof of ownership and insurance or, if applicable, the copy of the rental or lease agreement required under paragraph (a) must be provided to the law enforcement agency seizing the vehicle or to a person or entity designated by the law enforcement agency to receive the information.

(c) No law enforcement agency, local unit of government, or state agency is responsible or financially liable for any storage fees incurred due to a seizure under this section.

EFFECTIVE DATE. This section is effective August 1, 2009, and applies to crimes committed on or after that date.

Sec. 3. Minnesota Statutes 2008, section 84.928, subdivision 1a, is amended to read:

Subd. 1a. **Crossing a public road right-of-way.** (a) An all-terrain vehicle may make a direct crossing of a public road right-of-way provided:

(1) the crossing is made at an angle of approximately 90 degrees to the direction of the road and at a place where no obstruction prevents a quick and safe crossing;

(2) the vehicle is brought to a complete stop before crossing the shoulder or main-traveled way of the road;

(3) the driver yields the right-of-way to all oncoming traffic that constitutes an immediate hazard;

(4) in crossing a divided road, the crossing is made only at an intersection of the road with another public road; and

(5) if the crossing is made between the hours of one-half hour after sunset to one-half hour before sunrise or in conditions of reduced visibility, only if both front and rear lights are on.

(b) An all-terrain vehicle may be operated upon a bridge, other than a bridge that is part of the main-traveled lanes of an interstate highway, or roadway shoulder or inside bank of a public road right-of-way when required for the purpose of avoiding obstructions to travel or environmentally sensitive areas when no other method of avoidance is possible; provided the all-terrain vehicle is operated in the extreme right-hand lane, the entrance to the roadway is made within 100 feet of the bridge ~~or~~, obstacle, or sensitive area, and the crossing is made without undue delay.

(c) A person shall not operate an all-terrain vehicle upon a public street or highway unless the vehicle is equipped with at least one headlight and one taillight, each of minimum candlepower as prescribed by rules of the commissioner, and with brakes conforming to standards prescribed by rule of the commissioner, and all of which are subject to the approval of the commissioner of public safety.

(d) An all-terrain vehicle may be operated upon a public road right-of-way other than as provided by paragraph (b) in an emergency during the period of time when and at locations where the condition of the roadway renders travel by automobile impractical.

(e) Chapters 169 and 169A apply to the operation of all-terrain vehicles upon streets and highways, except for those provisions relating to required equipment and except those provisions which by their nature have no application.

(f) A sled, trailer, or other device being towed by an all-terrain vehicle must be equipped with reflective materials as required by rule of the commissioner.

(g) A driver's license is not required to operate an all-terrain vehicle along or on a public road right-of-way if the right-of-way encompasses a trail administered by the commissioner and designated for all-terrain vehicle use or multiple use.

(h) A road authority as defined in section 160.02, subdivision 25, may by permit designate corridor access trails on public road rights-of-way for purposes of accessing established all-terrain vehicle trails. A driver's license is not required to operate an all-terrain vehicle on a designated corridor access trail.

Sec. 4. **REVISOR'S INSTRUCTION.**

In each section of Minnesota Statutes referred to in column A, the revisor of statutes shall delete the reference in column B and insert the reference in column C.

Column A	Column B	Column C
84.777	84.805	84.804
84.777	84.929	84.928
84.787, subd. 1	84.796	84.795
84.788, subd. 9	84.796	84.795
84.791, subd. 4	84.796	84.795
84.794, subd. 2	84.796	84.795
84.795, subd. 8	84.796	84.795
84.797, subd. 1	84.805	84.804
84.798, subd. 8	84.805	84.804
84.804, subd. 6	84.805	84.804
84.92, subd. 1	84.929	84.928
84.922, subd. 9	84.929	84.928
84.925, subd. 3	84.929	84.928
84.9256, subd. 4	84.929	84.928
84.927, subd. 2	84.929	84.928
84.928, subd. 1	84.929	84.928
84.928, subd. 6	84.929	84.928

Sec. 5. **REPEALER.**

Minnesota Statutes 2008, sections 84.796; 84.805; and 84.929, are repealed.

84.796 PENALTIES.

(a) A person who violates a provision of section 84.788, 84.789, 84.793, or 84.795 is guilty of a misdemeanor.

(b) A person who violates a provision of a rule adopted under section 84.79 is guilty of a petty misdemeanor.

84.805 PENALTIES.

A person who violates any provision of sections 84.797 to 84.804 is guilty of a misdemeanor.

84.929 PENALTIES.

Any person who violates any provision of sections 84.773, 84.777, and 84.92 to 84.928 or rules of the commissioner is guilty of a misdemeanor.