

## CHAPTER 26

## PROTECTION OF FOREST LANDS AND FOREST PRODUCTIVITY

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Cross Reference: See definitions in s. 24.01.

**26.01 Definition.** In this chapter, unless the context requires otherwise "department" means the department of natural resources.

**26.03 Cutting forest products. (1) NOTICE; FILING CONVEYANCE.** (a) Before any person cuts, or causes to be cut any logs, piling, poles, posts, pulpwood, Christmas trees or other forest products, except fuel wood for personal home consumption, in, upon or adjoining any forest or wild land area the person shall pay all delinquent taxes on the land and each year shall mail a notice in the English language giving his or her name and post-office address, and listing all the lands upon which cutting is to be done, designating the lands upon which cutting is to be done by each 40 acre governmental subdivision or fraction of a 40 acre governmental subdivision with the proper section, town and range, by registered letter addressed to the county clerk of each county in which the land is located. The county clerk shall mail a copy of the notice to the town chairperson of each town in which lands upon which forest products are to be cut under this paragraph are located, and to the county treasurer, who shall forthwith determine whether the county holds tax certificates or tax deeds to any of the land listed in the notice, and if the county treasurer so finds, the county treasurer shall take action to collect the unpaid taxes represented by county-owned tax certificates or to prevent cutting on land to which the county holds a tax deed or tax certificate. This section shall not apply to cutting on public lands, as defined under s. 70.13 (7), or to cutting for the purpose of clearing the land for agricultural use or to a person who may cut up to 5 Christmas trees on the person's own property for his or her own use, providing that he or she can prove that his or her real estate taxes for the previous calendar year have been paid.

(b) No purchaser of Indian reservation land or land to be placed upon the tax roll for the first time shall cut or cause to be cut any logs, piling, posts, poles, pulpwood, Christmas trees or other forest products, except fuel wood for personal home consumption, from such land without first recording the instrument by which title to such land was acquired in the office of the register of deeds for the county in which such land is located.

**(2) PENALTIES.** Whoever violates this section shall forfeit not more than \$50.

History: 1975 c. 365; 1977 c. 224; 1983 a. 422, 424; 1989 a. 56 s. 258.

**26.05 Timber theft. (1) DEFINITION.** As used in this section, "raw forest products" means forest products not altered by a manufacturing process off the land from which they are taken. This term includes logs, pilings, posts, poles, cordwood products, pulpwood, fuel wood and Christmas trees.

**(2) CONSENT OF OWNER REQUIRED.** No person may cut, remove or transport raw forest products or direct the cutting, removal or transportation of raw forest products without the consent of the owner.

**(3) PENALTIES. (a)** A person who violates this section or a rule promulgated under this section is subject to a forfeiture of not less than \$100 nor more than \$10,000.

(b) Instead of the forfeiture provided under par. (a), a person who intentionally violates this section may be punished under s. 943.20 for theft.

(c) In addition to any other penalty, a person who violates this section or a rule promulgated under this section is liable for the reasonable costs incurred to establish the volume and value of the raw forest products cut, removed or transported.

History: 1981 c. 67.

**26.06 Enforcement, seizure and sale of materials. (1)** Foresters, forest supervisors, rangers and wardens of the department and the cruisers and foresters of the board of commissioners of public lands have the enforcement powers specified in s. 26.97 with respect to, and may seize, without process, any forest products unlawfully severed from public lands of the state, federal lands leased to the state, county forest lands entered under s. 28.11, forest croplands entered under subch. I of ch. 77 or managed forest land designated under subch. VI of ch. 77. Seized products cut from lands under the control of the board of commissioners of public lands shall be held for the commissioners and those cut from forest croplands, managed forest land or county forest shall be held for the owner, and subject to the payment of severance taxes, yield taxes or severance share thereon to the state. Products cut from state forest lands or federal lands leased to the department shall be appraised and sold. Products appraised at more than \$500 shall be sold on sealed bids not less than 10 days after a class 1 notice has been published, under ch. 985, in the county where the material is located. Any sheriff may seize and hold for the owner thereof any forest products unlawfully severed or removed.

**(2)** Any person who, without the consent of a person legally able to give consent, removes any seized products or removes or defaces a seizure notice of the department or of any sheriff shall forfeit not more than \$50.

(3) Any person who transports, receives or conceals any forest products, knowing the same to have been unlawfully severed from the lands of another, shall be liable to the owner for double the value thereof and in addition shall be punished as provided in s. 943.34 (1).

History: 1971 c. 265; 1975 c. 365; 1985 a. 29; 1987 a. 266 s. 5; 1989 a. 79.

**26.07 Money, how disposed of.** All money received from the sale of logs, lumber, shingles, timber, minerals or other articles seized under this chapter, or recovered in legal proceedings for damages done the public lands, shall be paid into the treasury to the credit of the respective funds to which the lands belong on which such trespasses were committed, and all other money collected as expenses, fees, penalties and damages for trespass on such lands shall be paid into the general fund.

**26.08 Leases and licenses.** (1) The department may, from time to time, lease parts or parcels of state park lands or state forest lands. These leases shall contain proper covenants to guard against trespass and waste. The rents arising from these leases shall be paid into the state treasury to the credit of the proper fund. Licenses also may be granted to prospect for ore or mineral upon any of these lands; but proper security shall be taken that the licensees will fully inform the department of every discovery of ore or mineral and will restore the surface to its former condition and value if no discovery of valuable deposits is made. The department shall retain a copy of each lease or license and file the original in the office of the board of commissioners of public lands.

(2) (a) Except as provided under par. (b) the department may lease state park land or state forest land for terms not exceeding 15 years.

(b) The department may lease Rib Mountain state park lands and Willow river state park lands for terms not exceeding 30 years.

(3) The department shall furnish to the board of commissioners of public lands such maps, plats, surveys, valuations, information and other services as the board may request respecting any of the public lands, for use by it in granting leases or licenses or in making sales under s. 24.39.

History: 1979 c. 34; 1987 a. 27.

**26.09 Civil liability for unlawful cutting, removal and transport.** In addition to the other penalties and costs, any person unlawfully cutting, removing or transporting raw forest products is liable to the owner or to the county holding a tax certificate, or to the board of commissioners of public lands holding a land contract certificate under ch. 24, to the land on which the unlawful cutting was done or from which it was removed, in a civil action, for double the amount of damages suffered. This section does not apply to the cutting, removal and transporting of timber for the emergency repair of a highway, fire lane or bridge upon or adjacent to the land.

History: 1981 c. 67.

Double damages under this section are not "punitive damages" *Hartland Cicero Mut. Ins. Co. v. Elmer*, 122 W (2d) 481, 363 NW (2d) 252 (Ct. App. 1984).

**26.10 Reports by the department to the board of commissioners of public lands.** The department shall report monthly to the board of commissioners of public lands all trespasses committed, all materials seized, all sales made and all moneys received under ss. 26.01 to 26.09.

**26.11 Forest fires; department jurisdiction; procedure.** (1) The department is vested with power, authority and jurisdiction in all matters relating to the prevention, detection and suppression of forest fires outside the limits of incorporated villages and cities in the state except as provided in sub. (2),

and to do all things necessary in the exercise of such power, authority and jurisdiction.

(2) The term "forest fire" as used in this chapter means uncontrolled, wild, or running fires occurring on forest, marsh, field, cutover or other lands or involving farm, city or village property and improvements incidental to the uncontrolled, wild or running fires occurring on forest, marsh, field, cutover or other lands.

(3) The department shall direct and give suitable instructions to and obtain reports as directed from, the entire fire warden force of the state whether in officially established forest protection areas or elsewhere, and it may move about or concentrate the fire warden force as occasion demands.

(4) The department may enter into arrangements or agreements and cooperate with town boards, county boards or committees thereof, with individuals, concerns, corporations or associations, for the purpose of improving the protection against forest fires.

(5) The department may, upon request from the fire chief of a city or village, or the chief executive thereof, supply assistance within the limits of its resources in suppressing a forest fire within the confines of said municipality.

(6) The department, as the director of the effort, may suppress a forest fire on lands located outside the boundaries of intensive or extensive forest fire protection districts but not within the limits of any city or village if the town responsible for suppressing fires within its boundaries spends more than \$3,000, as determined by rates established by the department, on suppressing the forest fire and if the town chairperson makes a request to the department for assistance. Persons participating in the suppression efforts shall act at the direction of the department after the department begins suppression efforts under this subsection. Funds expended by the state under this subsection shall be drawn from the appropriation under s. 20.370 (1) (mu).

History: 1977 c. 224; 1983 a. 422; 1989 a. 56 s. 258.

**26.12 Forest protection areas, organization, emergency fire wardens, county cooperation, setting fire.** (1) ESTABLISHMENT OF AREAS. Whenever it appears to the department from investigation, hearing or otherwise that areas in the state are in need of protection from forest fires, the department may by rule establish an intensive or an extensive forest protection area in the areas. The limits of each forest protection area shall be defined, and public notice of its establishment shall be published in the local press of the region affected as a class 1 notice, under ch. 985, and given any other publicity the department deems necessary.

(2) ORGANIZATION. The department shall organize each forest protection area so as to most effectively prevent, detect and suppress forest fires, and to that end may employ experienced wardens or forest rangers to have charge of its efforts in each area; may subdivide each area into patrol areas; may establish lookout towers, construct ranger stations, telephone lines, purchase tools for fire fighting as well as other necessary supplies or equipment, and carry on all other activities considered necessary to effectively protect the area from forest fires, including the promulgation of rules for the payment of fire fighters, the preparation of notices and forms for publication and the disposition and use of all fire-fighting equipment or property. All property or equipment purchased by the state shall be owned by the state, but counties or towns may purchase and own equipment for fire suppression, and the equipment shall be used for the improvement of the forest fire-fighting organization.

(3) EMERGENCY FIRE WARDENS. The department may deputize additional fire wardens who shall be called emergency fire

wardens, and who shall serve during the fire season or for such temporary periods as may be determined upon by the department. Such appointments shall be made in cooperation with the county board in the county concerned or with a committee thereof. A list of such appointments shall be submitted by the department each year on or before February 15 to such county board or authorized committee thereof for approval by such board or committee. Should no written approval of such list of emergency fire wardens be received by the department before March 15 of the year in which submitted such list as submitted shall be deputized by the department as the official list for the year. Any vacancies occurring during the year shall be filled by the department as occasion demands. Chapter 230 shall not apply to appointments under this subsection and s. 26.13 (1).

(4) **COUNTY COOPERATION.** Each county included wholly or partially in a forest protection area may appoint a committee to cooperate with the department and to consider all matters relating to fire prevention, detection and suppression in the county, including the payment of fire fighters, the purchase of fire-fighting equipment and all matters or details relating to or arising from the prevention, detection and suppression of forest fires.

(5) **SETTING FIRE.** (a) No person may set any fire except for warming the person or cooking food within the limits of any intensive forest protection area at any time of the year except when the ground is snow-covered, unless written permission has been received in advance from a duly appointed fire warden. The department shall prepare the necessary blanks for this purpose, shall promulgate rules for the issuance of the permits, shall appoint, if necessary, in addition to the regular or emergency fire wardens, others who shall be authorized to issue the permits, and shall have jurisdiction over all other details concerned with or growing out of the closed season on the setting of fire.

(b) No person may set any fire except for warming the person or cooking food within the limits of any extensive forest protection area at any time during January through May except when the ground is snow-covered and during any other time of the year when so ordered by the department unless written permission has been received in advance from a duly appointed fire warden. The department shall prepare the necessary blanks for this purpose, shall promulgate rules for the issuance of the permits, shall appoint, if necessary, in addition to the regular or emergency fire wardens, others who shall be authorized to issue the permits, and shall have jurisdiction over all other details concerned with or growing out of the closed season on the setting of fire.

(6) **SLASH DISPOSAL.** (a) *Definition.* In this subsection and sub. (7), "slash" means any tree tops, limbs, bark, abandoned forest products, windfalls or other debris left on the land after timber or other forest products have been cut.

(b) *Illegal felling.* All slash, which during the process of cutting timber or taking out other forest products, falls into or is deposited in any lake or stream or on the land of an adjoining owner, shall be immediately removed therefrom by the timber owner or cutting operator conducting the operations when in the opinion of the department such removal is in the public interest. If such slash is not removed within 30 days, the department may do the work and the landowner, timber owner or cutting operator responsible for such slash shall be liable to the state jointly, severally or individually for the cost of such work, including supervision and transportation of its personnel and any court costs which may arise.

(7) **SLASH DISPOSAL.** All slash resulting from clearing or brushing on any public highway within the limits of any forest protection area shall be piled and burned or lopped and

scattered. Whenever clearing or brushing work is done under contract the disposal of the resulting slash shall be made a part of the contract. All the slash shall be disposed of concurrently with the clearing or brushing operation or within a reasonable period to be determined by the department, but not to exceed one year. On failure to dispose of the slash the department may do the work and the municipality or contractor doing the clearing or brushing shall be liable to the state for the cost of the work.

History: 1977 c. 196 s. 131; 1977 c. 224; 1983 a. 422; 1985 a. 332 s. 251 (6)

**26.13 Town fire wardens; duties, expenses.** (1) The chairperson of the town board of each town outside the limits of a forest protection area shall, by virtue of the office and the oath of the office, be town fire warden for the town. The fire warden shall assist and cooperate with the department in all matters relating to the prevention, detection and suppression of forest fires. If a town is unusually large or if special or peculiar conditions in connection with forest fires exist, the department may, upon recommendation of the town chairperson, annually appoint emergency fire wardens as necessary, whose duties and authority shall be the same as provided for emergency fire wardens serving in forest protection areas.

(2) All expenses arising from the prevention or suppression of forest fires by the town fire warden and by those called upon by the warden to assist in the work shall be borne by the town in which the expense was incurred. The town board may levy and assess a tax for defraying the expense. In addition the town board may levy a tax for the purchase of equipment for the suppression of forest fires. The taxes shall be collected in the same manner as other taxes, and when collected shall be paid into the town treasury from which the expense is paid.

(3) Whenever the town board of any town located outside of a forest protection area deems it imprudent to set fires upon any land within the town, they shall post or cause to be posted in 5 or more public places in each township in the town, notices which shall be prepared by the department, or place one such notice in the official county paper, forbidding the setting of fires in the township, and after the posting of the notices no person may set any fire upon any land in the town except for warming the person or cooking food, until written permission has been received from one of the fire wardens of the town.

History: 1977 c. 224; 1989 a. 56.

**26.14 Forest fires, authority of fire fighters, compensation, penalties, civil liability.** (1) State forest rangers, town chairpersons, conservation wardens and other duly appointed deputies shall take prompt measures against the spread and illegal setting of forest fires. They may call upon any able-bodied citizen to assist in fighting fires in such manner as they direct.

(2) All such forest rangers, town chairpersons, emergency fire wardens, conservation wardens and other duly appointed deputies may in the performance of their official duty go on the lands of any person to fight forest fires, and in so doing may set back fires, dig trenches, cut fire lines or carry on all other customary activities in the fighting of forest fires, without incurring a liability to anyone.

(3) Emergency fire wardens, and all persons employed by them or by any other duly appointed fire warden for the purpose of suppressing forest fires, shall receive such hourly pay as the department may determine, for the time actually employed. Equipment operators and other specialists shall be paid the prevailing wage rate for comparable skills in each locality. And in addition thereto the department may allow the cost of meals, transportation and disbursements for

emergency equipment. One-half of such expense shall be paid by the state and one-half by the county where such service was performed.

(4) Emergency fire wardens or those assisting them in the fighting of forest fires shall prepare itemized accounts of their services and the services of those employed by them, as well as other expenses incurred, on blanks to be furnished by the department and in a manner prescribed by the department, and make oaths or affirmation that said account is just and correct, which account shall be forwarded and approved for payment by the department. As soon as any such account has been paid by the state treasurer the department shall send to the proper county treasurer a bill for the county's share of such expenses and a copy of the bill shall be filed with the department of administration. The county shall have 60 days within which to pay such bill, but if not paid within that time the county shall be liable for interest at the rate of 6% per year. If payment is not made within 60 days the department of administration shall include such amount as a part of the next levy against the county for state taxes, but no county shall be required to pay more than \$5,000 in any one year. Any unpaid levy under this section shall remain a charge against the county and the department of administration shall include such unpaid sums in the state tax levy of the respective counties in subsequent years.

(5) Any person who sets a fire or assists in the setting of a fire, including a back fire, on any lands in this state and fails to totally extinguish such fire before leaving it shall be fined not more than \$500 or imprisoned not more than 30 days or both.

(6) Any person who sets a fire or assists in setting a fire, including a back fire, on any lands in this state and allows the fire to escape and become a forest fire shall be fined not more than \$1,000 or imprisoned not more than 90 days or both.

(7) Any person who sets or assists in setting a fire upon marsh or other land in the state for the purpose of driving out game birds or animals shall be fined not more than \$1,000 or imprisoned not more than 90 days or both. The possession of firearms upon any marsh while it is on fire shall be prima facie evidence of such violation.

(8) Any person who intentionally sets fire to the land of another or to a marsh shall be fined not more than \$10,000 or imprisoned not more than 5 years or both.

(9) (a) Nothing in this chapter shall be construed as affecting the right to damages. The liability of persons for damages is not limited to the destruction of merchantable timber but may also include the value of young or immature forest growth.

(b) Any person who sets a fire on any land and allows such fire to escape and become a forest fire shall be liable for all expenses incurred in the suppression of the fire by the state or town in which the fire occurred. An action under this paragraph shall be commenced within the time provided by s. 893.91 or be barred.

**History:** 1973 c. 336; 1975 c. 365; 1977 c. 449; 1979 c. 110 s. 60 (13); 1979 c. 323; 1983 a. 36, 422; 1989 a. 56, 79.

Court cannot make the jump from the complaint and the stipulation of facts that a "large grass fire" is necessarily a forest fire as defined in 26.11 (2) Town of Howard v. Soo Line R.R. Co. 63 W (2d) 500, 217 NW (2d) 329.

Intentional or negligent act, or omission where there is duty to act, is necessary prerequisite for imposition of fire suppression costs under (9) (b). DNR v. Wisconsin Power & Light Co. 108 W (2d) 403, 321 NW (2d) 286 (1982).

**26.15 Responsibility of wardens and citizens.** Any fire warden who refuses to carry out this chapter, or any able-bodied citizen who refuses to render assistance as provided by this chapter, shall forfeit not more than \$50.

**History:** 1975 c. 365.

**26.18 District attorneys to prosecute.** Whenever an arrest has been made for any violation of this chapter, or whenever any information of such violation has been lodged with him or her, the district attorney of the county in which the act was committed may prosecute the offender.

**History:** 1975 c. 365.

**26.19 Destruction of forest protection equipment or notices.** (1) Any person who destroys, defaces, removes or molests any forest protection equipment or property shall be fined not more than \$10,000 or imprisoned not more than 9 months or both.

(2) Any person who disfigures any forest fire sign, poster or warning notice shall forfeit not more than \$100.

**History:** 1975 c. 365; 1983 a. 422.

**26.20 Fire protection devices.** (2) **SPARK ARRESTERS ON LOCOMOTIVES.** All road locomotives operated on any railroad shall be equipped with spark arresters that meet or exceed minimum performance and maintenance standards enumerated by the department. The superintendent of motive power or equivalent officer of each railway shall designate an employe of the railway at each railway division point and roundhouse who shall examine each locomotive and its spark arrester each time the locomotive leaves the railway division point or roundhouse and the designated employe and his or her employer shall each be held responsible for complying with this subsection.

(3) **LOCOMOTIVE INSPECTOR; POWERS.** Any locomotive inspector designated by the department shall have the power to reject from service immediately any locomotive, donkey, traction, or portable engine which, in the opinion of the said inspector, is deficient in adequate design, construction, or maintenance of the fire protective devices designated in sub. (2), and any such locomotive, donkey, traction, or portable engine so rejected from service shall not be returned to service until such defects have been remedied to the satisfaction of said locomotive inspector. In case of disagreement between said inspector and the owner of the locomotive, donkey, traction, or portable engine so rejected from service as to the efficiency or proper maintenance of said protective devices, then the owner of said locomotive, donkey, traction, or portable engine may appeal to the office of the commissioner of transportation for a decision of said matter, but pending such decision the said locomotive, donkey, traction, or portable engine shall not be returned to service.

(4) **CLEARING RIGHT-OF-WAY.** (a) Every corporation maintaining and operating a railway shall, at least once in each year, and within 10 days when requested by the department in writing, cut and burn or remove from its right-of-way all grass and weeds and burn or remove from its right-of-way all brush, logs, refuse material, and debris within a reasonable time, and whenever fires are set for such purpose, shall prevent the escape of the fire from the right-of-way. Upon failure of a railway corporation to comply with this paragraph, the department may do or contract for completion of the work and the corporation shall be liable to the state for all of the costs of the work.

(b) The department may periodically require every corporation operating a railway to remove combustible materials from designated right-of-way or portions of a right-of-way, and lands adjacent to the right-of-way. This paragraph shall not relieve any railway corporation from responsibility or liability for causing any damage along any right-of-way nor from the corporation's duty to comply with par. (a).

(5) **COMBUSTIBLE DEPOSITS ON TRACK.** No such corporation shall permit its employes to deposit fire, live coals, or ashes

upon their tracks outside of the yard limits, except they be immediately extinguished.

**(6) REPORTS AND MEASURES FOR PREVENTION OF FIRES.** (a) Conductors or individuals in charge of a train who discover that their train is causing fires along or adjacent to the right-of-way shall immediately report the fires to the nearest railway division point or district office. It shall be the duty of the railway dispatcher or appropriate railway management authority to immediately notify the local department office plus the sheriff of the county where any fire is located. The conductor or other individuals in charge of a train shall attempt to discover the cause of any fire. If any part of the train, including the locomotive, is believed to have caused the fire, efforts shall be made to rectify the part before the train returns to service.

(b) Any forest ranger, conservation warden, sheriff or other duly appointed authority may, in the performance of official duties, require any train causing fires or suspected of causing fires to stop within a safe distance from the fires to avoid further setting or spread of fire.

**(7) FIRE PATROL.** All corporations maintaining and operating a railway, during a dangerously dry season, and when so directed by the department, shall provide fire patrols for duty along their tracks. Whenever the department deems necessary it may order the corporations to provide for fire patrol personnel to follow each train throughout forest protection areas as may be necessary to prevent fires. When the department has given a corporation notice that in its opinion the conditions require a patrol after trains, the corporation shall immediately comply with the instructions throughout the areas designated. If the corporation fails to do so, the department may employ fire patrol personnel, and furnish them with the necessary equipment to patrol the rights-of-way of the corporations, and the expense of the patrols shall be charged to the corporation and may be recoverable in a civil action in the name of this state. In addition, the corporation is subject to the penalties under sub. (9). The corporation, acting independently of the department, shall patrol its rights-of-way after the passage of each train when necessary to prevent the spread of fires and use the highest degree of diligence to prevent the setting and spread of fires, and its officers and employees operating trains in this state shall use diligence in extinguishing fires set by locomotives or found existing upon their respective rights-of-way, and any negligence in this regard shall render the corporation or any officer or employee subject to the penalties under sub. (9). Every corporation affected by this section shall designate and register with the department an officer or some other person to be responsible for carrying out the corporation's responsibilities with the highest degree of diligence. If the officer or person fails in the duty, he or she shall forfeit not more than \$500.

**(8) INSPECTION AND ENTRY.** The department may inspect or cause to be inspected any locomotive, donkey, or threshing engine, railway locomotive, and all other engines, boilers, and locomotives operated in, through or near forest, brush, or grass land and enter upon any property for such purpose, or where it deems it necessary in order to see that this section is duly complied with.

**(9) PENALTY.** (a) Any corporation, by its officers, agents, or employees, violating this section, shall forfeit not more than \$500.

(b) Any corporation, by its officers, agents or employees, wilfully violating this section shall be fined not more than \$1,000.

(c) Any conductor, individual in charge of a train or officer, agent or employe of a railway who violates this section shall forfeit not more than \$500.

**(10) APPEAL TO OFFICE OF THE COMMISSIONER OF TRANSPORTATION.** In case the department and any person operating any locomotive, donkey, or threshing engine, or any engine, boiler, or locomotive cannot agree as to the most practicable device or devices for preventing the escape of sparks, cinders, or fire from smokestacks, ash pans or fire boxes, then the same shall be determined by the office of the commissioner of transportation.

**(11) EXEMPTION.** The department may exempt from subs. (2), (3) and (4) any railroad, when, in its judgment, conditions along the right of way are such that the reduced fire hazard renders such protective devices unnecessary.

**History:** 1975 c. 365; 1977 c. 29 ss. 448b to 448t, 1654 (9) (f); 1977 c. 224; 1981 c. 347 s. 80 (2); 1983 a. 422 ss. 10, 15

**26.205 Tractors, spark arresters.** Tractors operating in a forest protection area or on other land where there is danger of setting fire, shall be equipped so that the tractors will not set fire on the lands and to reduce to a minimum the danger of setting fire. The department or its locomotive inspector is authorized and directed to reject from service all tractors not properly equipped to prevent the setting of fires. The department shall, after investigation, prescribe suitable fire preventive devices for tractors operating in marsh land or on other land where there is danger of fire being set by their operation.

**History:** 1977 c. 224.

**26.21 Civil liability for forest fires.** (1) In addition to the penalties provided in s. 26.20, the United States, the state, the county or private owners, whose property is injured or destroyed by forest fires, may recover, in a civil action, double the amount of damages suffered, if the fires occurred through wilfulness, malice or negligence. In a civil action, a court may award reasonable costs for legal representation to provide owners recovering damages under this subsection.

(2) Persons causing fires in violation of this chapter shall be liable to the state in an action for debt, to the full amount of all damages done to the state lands and for all expenses incurred by the towns fighting forest fires and shall be liable to municipalities in an action for debt, to the full amount of all damages to the municipal lands and for all expenses incurred by the municipalities fighting such fires.

**History:** 1977 c. 29.

This statute does not create liability in favor of a town. *Town of Howard v. Soo Line R.R. Co.* 63 W (2d) 500, 217 NW (2d) 329.

**26.22 Sales, etc.** The department may sell any timber on the state park or state forest lands which has been damaged by fire or wind, on such terms and in such manner as it shall deem best for the interest of the state.

**26.30 Forest insects and diseases; department jurisdiction; procedure.** (1) **PURPOSE.** It is the public policy of the state to control forest pests on or threatening forests of the state in order to protect the forest resources, promote good forest management, enhance the growth and maintenance of forests, promote stability of forest-using industries, aid in fire control by reducing the menace created by dying and dead trees, conserve forest cover on watersheds and protect wildlife, recreational values and other values of the forest.

(2) **POWERS.** The department is vested with authority and jurisdiction in all matters relating to the prevention, detection and control of forest pests on the forest lands of the state, and to do all things necessary in the exercise of such authority and jurisdiction, except that this shall not be construed to grant any powers or authority to the department for the silvicultural

tural control of forest pests on any land. This section shall apply only to the detection and control of forest pests on forest lands and does not affect the authority of the department of agriculture, trade and consumer protection under chs. 93 and 94. The action of the department under sub. (4) shall be coordinated with the department of agriculture, trade and consumer protection in accordance with s. 20.901. The secretaries of natural resources and agriculture, trade and consumer protection shall execute annually a memorandum of agreement to enable the coordination of pest control work of their departments.

**(3) DEFINITIONS.** As used in this section:

(a) "Control" includes prevent, retard, suppress, eradicate or destroy.

(b) "Control zone" means an area of land which, in the judgment of the department, constitutes a present or potential forest pest breeding ground of a nature to be harmful, detrimental and injurious to permanent forest growth in the district or zone upon which control measures are justified.

(c) "Forest pest" means any insect or disease which is harmful, injurious or destructive to forests or timber.

(d) "Forests" or "forest lands" mean any area on which trees exist, standing or down, alive or dead, actually or potentially valuable for forest products, watershed or wildlife protection or recreational uses in contrast to shade, horticulture or ornamental trees valuable for landscape, agricultural, aesthetic or similar purposes.

(e) "Infestation" includes actual, potential, incipient or emergency infestation or infection by forest pests.

**(4) SURVEYS, INVESTIGATIONS AND CONTROL.** The department shall make surveys and investigations to determine the presence, condition and extent of infestations and it shall also carry on control measures when necessary. For such purposes the department or its wardens may enter public and private lands at reasonable times without incurring a liability to anyone.

**(5) COOPERATIVE AGREEMENTS.** To carry out the purposes of this section the department may enter into arrangements or agreements with the university of Wisconsin system, the department of agriculture, trade and consumer protection, other departments of this and other states, the U.S. department of agriculture and other federal agencies and with counties, towns, corporations and individuals.

**(6) RESPONSIBILITY OF FOREST LANDOWNERS.** Every owner of forest lands or timber shall exercise every reasonable effort to control and destroy forest pests on forest lands or timber owned by or under the control of the owner. In case of the owner's failure, neglect or inability to do so, the work may be performed as provided in this section.

**(7) DESIGNATION OF INFESTATION CONTROL ZONES.** (a) Whenever the department finds that an area in the state is infested or threatened with infestation by forest pests, it shall determine whether proven measures of control are needed and are available at reasonable cost with respect to the value of the forest lands or timber to be protected and the area affected. Such control measures may be applied through cooperative agreements as provided in subs. (5) and (8) or the department may designate a proposed zone of infestation covering the area in which control measures are to be applied. When a proposed zone of infestation is designated and before the establishment thereof, the department shall hold a public hearing thereon. Notice of such hearing shall be published in one or more newspapers having a general circulation in the county covered in whole or in part by the proposed zone as a class 1 notice, under ch. 985. The notice shall contain a description of the lands included in the proposed zone of infestation and a time and place where owners of forest lands

in the proposed zone may show cause orally or in writing why the zone should or should not be established. The department shall consider any statements received in determining whether the zone shall be established. If the department determines that a zone should be established it shall issue an order establishing the zone of infestation.

(b) Upon the establishment of a zone of infestation by the department, notice thereof shall be published in one or more newspapers having a general circulation in the area affected by such zone as a class 1 notice, under ch. 985.

(c) When the department finds that an emergency condition exists and that the delays necessitated by the procedure outlined in pars. (a) and (b) would result in an epidemic or infestation, it may by order establish a zone of infestation without public hearing, giving such notice as it deems feasible.

**(8) DEPARTMENT TO CONTROL INFESTATION IF OWNER FAILS TO ACT.** Upon the establishment of a zone of infestation, the department shall apply measures of control on public and private forest lands within the established zone if the owner fails, refuses, neglects or is unable to undertake adequate control measures. The department shall endeavor to enter into agreements with owners of forest lands concerning the control work on their lands and fixing a proportional basis on which the costs of such work will be shared between the state and such owner. Failure of the department to offer an agreement to or execute an agreement with any owner shall not relieve the owner of any liability under this section or impair the right of the department to enter on the lands of said owner to conduct control operations.

**(9) DISTRIBUTION AND COLLECTION OF COSTS.** (a) At the completion of the control measures in any area, or at the end of the calendar year, the department shall prepare a certified statement of the expenses incurred in carrying out such measures including expenses of owners covered by agreements pursuant to sub. (8) but these charges shall not include salary or expenses of regular permanent or seasonal personnel of the department, or operating costs for such regular equipment as may be owned or purchased by the department for insect pest control work. The statement shall show the amount which the department determines to be the state's share of the expenses, but this amount shall not be less than 50% of the balance of such expenses incurred on forest lands after federal funds allocated to a specific control project have been deducted. The share of the state may include any federal aid funds and the value of contributions made available by other cooperators. The balance of such costs shall constitute a charge on an acreage basis against the owners of lands in the area affected by the forest pests for which control measures were conducted. In fixing the rates at which charges shall be made against each owner, the department shall consider present values and the present and potential benefits to such owner and to the state as a whole from the application of control measures, the cost of applying such measures to the owner's land, and other such factors as in the discretion of the department will enable it to determine an equitable distribution of the costs to all such owners. No charge shall be made against owners to the extent that they have individually or collectively contributed funds, supplies or services pursuant to agreement, and 160 acres or less of forest land owned by any person within any county shall be exempt from any control cost.

(b) As soon as the expenses incurred by the state in forest pest control work have been paid by the state treasurer, the department shall send to each landowner a bill covering an equitable share of such expenses as herein provided.

**26.30 PROTECTION OF FOREST LANDS AND PRODUCTIVITY**

91-92 Wis. Stats. 634

1. When such work has been performed on county lands, the department shall send to the proper county treasurer a bill for the county's share of such expenses and a copy of the bill shall be filed with the department of administration. The county shall have until October 1 of each year to pay such bill. If payment is not made by October 1 of each year, the secretary of state, upon information certified to the secretary of state by the department of administration, shall include such amount as a part of the next levy against the county for state taxes, but no county shall be required to pay more than \$5,000 of such amount in any one year. Any unpaid levy under this section shall remain a charge against the county and the secretary of state shall include such unpaid sums in the state tax levy of the respective counties in subsequent years.

2. When such work has been performed on other public or private lands the department shall certify to such owner the claim of the state in writing and list the items of expense incurred in such pest control work. Such claims shall be paid within 60 days and, if not paid within such time, the state may begin an action thereon at any time within 2 years.

3. If any claim is not paid within 60 days, the state may file a mechanics' lien within 6 months after the 60-day period expires against the land affected in accordance with ch. 779, and shall have the necessary remedies to enforce the lien.

**(10) DISSOLUTION OF INFESTATION CONTROL ZONES.** Whenever the department finds that forest pest control within an established zone of infestation is no longer necessary or feasible it shall set aside the order establishing the zone.

**History:** 1977 c. 29 s. 1650m (1); 1979 c. 32 s. 92 (9); 1979 c. 110 s. 60 (11); 1983 a. 189; 1985 a. 13; 1991 a. 316.

**26.35 Forest productivity.** The department shall identify types of privately owned forest lands which are most likely to provide high forest productivity benefits to the economy of the state. The department shall target its activities in providing assistance to owners of privately owned forest lands in order to concentrate on those types of forest lands identified as most likely to provide high forest productivity benefits to the economy of the state.

**History:** 1983 a. 27.

**26.97 Law enforcement and police power.** A state forest ranger, town chairperson, conservation warden or other duly appointed deputy may do any of the following:

(1) Arrest a person, with or without a warrant, when the person is detected actually committing a violation of this chapter or s. 167.10 (3), 941.10 (1), 941.11, 941.12, 941.13, 943.02 (1), 943.03, 943.04, 943.05 or 943.06 (2).

(2) Arrest a person, with or without a warrant, whom the ranger, chairperson, warden or deputy has reason to believe is committing or has committed a violation of a statutory provision specified under sub. (1).

(3) Take the arrested person before the circuit court for the county where the violation occurred and make a proper complaint.

(4) Execute and serve any warrant or process in the same manner as any constable.

**History:** 1989 a. 79.

**26.98 General penalty.** Any person who violates a provision of this chapter for which no penalty is provided shall forfeit not more than \$50.

**History:** 1975 c. 365; 1983 a. 27 s. 643m; Stats. 1983 s. 26.98

**26.985 Penalties, repeaters. (1)** In this section, "violation" means any violation under this chapter or any violation of a department order punishable under this chapter.

(2) Except as provided in subs. (3) and (4), if a person is convicted of a violation and has one or more convictions, within the 5 years prior to the current conviction, for one or more violations, the person shall be fined not more than \$100 or imprisoned for not more than 6 months or both. The prosecution shall allege and prove the prior convictions in the manner specified in s. 29.995.

(3) Except as provided in sub. (4), if a person is convicted of a violation and has 3 or more convictions, within the 3 years prior to the current conviction, for one or more violations, the person shall be fined not more than \$2,000 or imprisoned for not more than 9 months or both. The prosecution shall allege and prove the prior convictions in the manner specified in s. 29.995.

(4) (a) A person under this section is subject to a fine not to exceed the fine under this section or the fine or forfeiture for the underlying offense, whichever is greater.

(b) A person under this section is subject to imprisonment for a term not to exceed the amount provided under this section or the amount provided for the underlying offense, whichever is greater.

**History:** 1989 a. 79.

**26.99 Parties to a violation. (1)** Whoever is concerned in the commission of a violation of this chapter for which a forfeiture is imposed is a principal and may be charged with and convicted of the violation although he or she did not directly commit it and although the person who directly committed it has not been convicted of the violation.

(2) A person is concerned in the commission of the violation if the person:

(a) Directly commits the violation;

(b) Aids and abets the commission of it; or

(c) Is a party to a conspiracy with another to commit it or advises, hires or counsels or otherwise procures another to commit it.

**History:** 1975 c. 365.