

1999 Assembly Bill 504

Date of enactment: **May 17, 2000**
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1999 WISCONSIN ACT 190

AN ACT *to repeal* 26.03 (1) (title), 26.03 (1) (a) and 814.04 (5); *to renumber and amend* 26.03 (1) (b) and 26.03 (2); *to amend* 26.03 (title), 26.05 (1), 26.05 (3) (b), 26.05 (3) (c) and 26.06 (2); *to repeal and recreate* 26.09; and *to create* 26.03 (1b), 26.03 (1g), 26.03 (1m), 26.03 (1r) (title) and (b) and 26.03 (2) (a) of the statutes; **relating to:** cutting, removal and transportation of raw forest products, seizures of forest products, granting rule-making authority and providing penalties.

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

SECTION 1. 26.03 (title) of the statutes is amended to read:

26.03 (title) ~~Cutting Harvest of raw forest products.~~

SECTION 2. 26.03 (1) (title) of the statutes is repealed.

SECTION 3. 26.03 (1) (a) of the statutes is repealed.

SECTION 4. 26.03 (1) (b) of the statutes is renumbered 26.03 (1r) (a) and amended to read:

26.03 (1r) (a) 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, may harvest any raw forest products, or direct the harvesting of any raw forest products,~~ from ~~such the~~ land without first recording the instrument by which title to ~~such the~~ land was acquired in the office of the register of deeds for the county in which ~~such the~~ land is located.

SECTION 5. 26.03 (1b) of the statutes is created to read:

26.03 (1b) DEFINITIONS. In this section:

(a) "Harvest" means to cut, remove or transport.

(b) "Harvesting" means cutting, removing or transporting.

(c) "Raw forest products" has the meaning given in s. 26.05 (1).

SECTION 6. 26.03 (1g) of the statutes is created to read:

26.03 (1g) PROHIBITION; DELINQUENT TAXES. No person may harvest any raw forest products, or direct the harvest of any raw forest products, from any land for which taxes are delinquent.

SECTION 7. 26.03 (1m) of the statutes is created to read:

26.03 (1m) HARVESTING UPON NOTIFICATION. (a) 1. Unless otherwise authorized to do so by the county, no person may harvest any raw forest products, or direct the harvesting of any raw forest products, from any land until 14 days after the clerk of the county in which the land is located is notified of the person's proposal to harvest. The person shall notify the county clerk each year and may do so in any manner acceptable to the county. Each time the person notifies the county, the person shall describe the land upon which the harvesting will occur by quarter-quarter section, government lot or fractional lot, unless the county requires a different method for describing the land. Notification under this subdivision expires

* Section 991.11, WISCONSIN STATUTES 1997-98: Effective date of acts. "Every act and every portion of an act enacted by the legislature over the governor's partial veto which does not expressly prescribe the time when it takes effect shall take effect on the day after its date of publication as designated" by the secretary of state [the date of publication may not be more than 10 working days after the date of enactment].

on the December 31 immediately following the notification, and no person may harvest, or direct the harvesting of, any additional raw forest products from the land until further notification that complies with this subdivision is provided to the county.

2. Upon receipt of notifications under subd. 1., the county clerk shall provide notice to the town chairperson of each town in which the land from which raw forest products will be harvested is located and to the county treasurer. The county treasurer shall determine whether the county holds a tax certificate or tax deeds to any of the land involved. If the county holds a tax certificate, the county treasurer shall take action to collect the unpaid taxes represented by county-owned tax certificates or to prevent the harvesting of raw forest products from the land. If the county holds a tax deed, the county treasurer shall take action to prevent the harvesting of raw forest products from the land.

(b) Paragraph (a) 1. does not apply to a person harvesting raw forest products on public lands, as defined in s. 70.13 (7), to a person harvesting raw forest products for fuel wood for his or her home consumption, to a person harvesting for the purpose of clearing the land for agricultural use or to a person harvesting from the person's own land, any of the following:

1. Boughs for his or her own use.
2. Up to 5 Christmas trees for his or her own use.

SECTION 8. 26.03 (1r) (title) and (b) of the statutes are created to read:

26.03 (1r) (title) HARVESTING UPON RECORDING.

(b) Paragraph (a) does not apply to a person harvesting raw forest products for fuel wood for his or her home consumption.

SECTION 9. 26.03 (2) of the statutes is renumbered 26.03 (2) (b) and amended to read:

26.03 (2) (b) Whoever violates ~~this section sub. (1m) or (1r), or a rule promulgated under sub. (1m) or (1r),~~ shall forfeit not more than \$50 ~~\$100~~.

SECTION 10. 26.03 (2) (a) of the statutes is created to read:

26.03 (2) (a) Whoever violates sub. (1g), or a rule promulgated under sub. (1g), shall forfeit not less than \$500 nor more than \$10,000.

SECTION 11. 26.05 (1) of the statutes is amended to read:

26.05 (1) DEFINITION. ~~As used in~~ 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 and includes seedlings, saplings, shrubs, whole-tree chips, boughs,~~ logs, pilings, posts, poles, cordwood products, pulpwood, fuel wood and Christmas trees.

SECTION 12. 26.05 (3) (b) of the statutes is amended to read:

26.05 (3) (b) Instead of the forfeiture provided under par. (a), a person who intentionally violates this section,

or a rule promulgated under this section, may be punished under s. 943.20 for theft.

SECTION 13. 26.05 (3) (c) of the statutes is amended to read:

26.05 (3) (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.

SECTION 14. 26.06 (2) of the statutes is amended to read:

26.06 (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 less than \$500 nor more than \$50 ~~\$10,000~~.

SECTION 15. 26.09 of the statutes is repealed and recreated to read:

26.09 Civil liability for unauthorized cutting, removal or transportation of raw forest products.

(1b) DEFINITIONS. In this section:

(a) "Compass" means a sighting compass with a liquid-filled capsule that has been adjusted for the proper declination.

(b) "Fair market value" means the amount for which the raw forest products or land can be sold in an open market by a person willing and able but not compelled to sell and a purchaser willing and able but not obliged to buy.

(c) "Harvest" means to cut, remove or transport.

(d) "Harvesting" means cutting, removing or transporting.

(e) "Harvesting boundary" means the boundary of an area in which the harvesting of raw forest products is planned.

(f) "Owner" includes the board of commissioners of public lands if the board holds a land contract certificate under ch. 24 to the land from which the raw forest products were harvested.

(g) "Raw forest products" has the meaning given in s. 26.05 (1).

(h) "Recorded survey" means a land survey that is recorded with the register of deeds in each of the counties in which the harvesting took place.

(i) "Slash" has the meaning given in s. 26.12 (6) (a).

(j) "Stumpage value" means the applicable stumpage rate established by rule under s. 77.91 (1) or the fair market value of raw forest products less the cost of their harvesting, whichever is greater.

(k) "Subdivision" means a township, section, quarter-quarter section, government lot or fractional lot.

(2) PERSONS ENTITLED TO SUE; EXCEPTION. (a) In addition to any other enforcement action that may be taken and subject to par. (b), an owner of raw forest products that were harvested without the consent of the owner may bring a civil action against the person who harvested the raw forest products to recover the damages caused by the

harvesting. In addition to any other enforcement action and subject to par. (b), a county in which a violation of s. 26.03 (1g) or (1r) or a rule promulgated under s. 26.03 (1g) or (1r) occurred may bring a civil action to recover damages for the violation.

(b) An owner may not recover damages under this subsection if the person harvesting the raw forest products or the person giving consent for the harvesting reasonably relied on a written agreement among adjacent owners, or their agents, that the owner giving consent to harvest has the authority to do so even if after the harvesting it is determined that the owner giving the consent did not have such authority, but only if the harvesting is from land owned by an owner who is a party to the agreement.

(3) DAMAGES. (a) A person against whom an action is brought as provided in sub. (2) is liable for the applicable damages under par. (b) or (c), subject to sub. (6), and other reasonable and necessary costs under par. (d).

(b) 1. A court shall award damages that equal the stumpage value of the raw forest products harvested if the person harvesting the raw forest products or the person giving consent for the harvesting reasonably relied upon a recorded survey that was done by a person who is registered as a land surveyor or who is issued a permit to practice land surveying under s. 443.06 even if the recorded survey is determined, after the harvesting, to be in error.

2. A court shall award damages that are equal to 2 times the stumpage value of the raw forest products harvested if a recorded survey was not relied upon as specified in subd. 1. but the person harvesting the raw forest products took reasonable precautions in identifying harvesting boundaries.

3. A court shall award damages that are equal to 4 times the stumpage value or 2 times the fair market value of the raw forest products harvested, whichever is greater, if a recorded survey was not relied upon as specified in subd. 1. and the person harvesting the raw forest products did not take reasonable precautions in identifying the harvesting boundaries.

(c) In addition to the award under par. (b), a court shall award the owner of raw forest products that were harvested without the consent of the owner, any economic damages resulting from that harvest.

(d) A court shall award other reasonable and necessary costs, which may include costs for any of the following:

1. Repair of damage to, or cleanup on, the land from which the raw forest products were harvested.
2. Removal of slash from agricultural land, waterways, highways, private roads, trails or other sites where the slash would interfere with reforestation or replanting.
3. Determining the fair market value, the stumpage value or the volume of the raw forest products that were harvested.

4. Determining the location of property boundaries necessary for determining whether a violation occurred.

5. Preparing forest management or reforestation plans.

6. Reforestation.

7. Replanting by direct seeding or by use of seedlings.

(4) LEGAL COSTS. Notwithstanding the limitations under s. 814.04, and in addition to the remedies available under s. 807.01, the court shall award the successful party in a civil action brought under sub. (2) court costs and reasonable attorney fees if the unsuccessful party, before the commencement of the action, unreasonably refused to pay a demand for damages or to accept an offer of payment for damages.

(5) REASONABLE PRECAUTIONS. (a) For purposes of sub. (3) (b), a person takes reasonable precautions if the person does all of the following:

1. Identifies the harvesting boundaries as required under par. (b).

2. Reviews land ownership records and any other resources or documentation regarding the land. These records, resources and documentation include instruments of conveyance, certified survey maps, survey field notes and information on the land's boundaries provided by the owners, or their agents, of any land that abuts a proposed harvesting boundary.

(b) For purposes of par. (a), the harvesting boundaries may be identified by any of the following methods:

1. By use of a compass and measuring device or by use of a global position system if the identification is conducted by a person trained in the method used and if the identification is based on an established survey corner as specified in par. (c). If a global positioning system is used, it shall be accurate to plus or minus 2 meters.

2. By use of a method established by rule by the department.

(c) A survey corner is an established survey corner for purposes of par. (b) if it is part of a U.S. government survey plat and it is used to determine one or more boundaries of a subdivision. The survey corner may be evidenced by a monument or other marking that was placed at the time that the survey was conducted or, if the monument or marker is no longer visible or in existence, the position of the survey corner may be reconstructed by doing one of the following:

1. Using a reference to a description contained in applicable surveying field notes or other supplemental surveying record.

2. Locating the survey corner by use of physical evidence or witness testimony.

(6) DAMAGES; OTHER. An owner may not receive both payment under s. 26.06 (3) and damages specified under sub. (3) (b) or (c) from the same person. An owner may

not receive both payment under s. 26.05 (3) (c) and the damages specified in sub. (3) (d) 3.

SECTION 16. 814.04 (5) of the statutes is repealed.
