

1999 DRAFTING REQUEST

Bill

Received: **03/30/99**

Received By: **gibsom**

Wanted: **As time permits**

Identical to LRB:

For: **John Gard (608) 266-2343**

By/Representing: **Matt**

This file may be shown to any legislator: **NO**

Drafter: **gibsom**

May Contact:

Alt. Drafters:

Subject: **Nat. Res. - forests and parks**

Extra Copies:

Pre Topic:

No specific pre topic given

Topic:

Removal of forest products

Instructions:

See attached, redraft of 99-0179

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	gibsom 04/12/99	gilfokm 04/15/99		_____			S&L
/P1	gibsom 04/19/99		martykr 04/16/99	_____	lrb_docadmin 04/16/99		S&L
			martykr 04/19/99	_____	lrb_docadmin 04/19/99		
/1	gibsom 06/28/99	gilfokm 06/28/99	martykr 06/28/99	_____	lrb_docadmin 06/28/99	lrb_docadmin 06/28/99	

FE Sent For: *10/4/99*

<END>

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<END>

PA's Jacket for Assm

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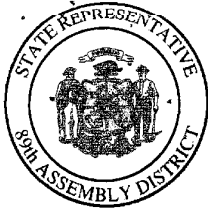
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1/?	gibsom	PI-4-13-99 KMG	KM 4/16	JF 4/16 KM 16			

Submit
"PI"

FE Sent For:

<END>



John Gard

Assembly Chairman, Joint Committee on Finance

March 16, 1999

**To: Mary Gibson-Glass
Legislative Reference Bureau**

From: Rep. John Gard

After initially approving of LRB draft 0179, several concerns have developed with the specific language of the proposal.

I have enclosed an edited version of your last draft. Please make the desired changes.

Thank you for your help. Please feel free to contact Matt in my office if you have any questions.

(Final changes)

State of Wisconsin
1999 - 2000 LEGISLATURE

LRB-0179/1
MGG&RPN:kgjf

1999 BILL

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 and providing penalties.

Analysis by the Legislative Reference Bureau

This bill makes changes to the laws governing the harvesting of forest products and includes the following:

1. The bill modifies the provisions relating to harvesting from land upon which there are delinquent taxes (tax-delinquent land) and the procedure for notifying local units of government of proposed harvesting. Under current law, with certain exceptions, a person intending to harvest must give annual notice to the county, who in turn mails the notice to each town in which the land is located. The county also provides the notice to the county treasurer, who determines whether it is tax-delinquent land. If taxes are delinquent, the county treasurer must act to either collect the taxes or prevent the harvesting. The bill changes current law by imposing a prohibition against harvesting forest products on land that is tax delinquent. Also, under the bill, the owner must notify the county only when the owner intends to harvest and the owner may do so in any manner acceptable to the county. The bill

BILL

imposes specific separate forfeitures for harvesting from tax-delinquent land and for failure to notify a county of intended harvesting. Under current law, one forfeiture applies to failure to give the annual notice and failure to pay the taxes before harvesting.

2. The bill creates specific provisions for a landowner to recover, in a civil action, monetary damages from a person who harvests from the landowner's property without his or her consent. Current law states that a landowner may recover double the amount of damages suffered. The Wisconsin court of appeals has held that these damages are calculated by reducing the market value of the forest products by the cost of the harvesting and then doubling that amount.

Under the bill, the owner may collect double the stumpage value of the cut forest products if the harvester took reasonable precautions to identify the boundaries of the area in which the harvesting was to take place (harvesting boundaries) four times stumpage value or double the fair market value, whichever is higher, if the harvester did not take reasonable precautions. The bill specifies that the harvester takes reasonable precautions if the harvester reviews land ownership records and identifies the harvesting boundaries by using a method specified in the bill. Under the bill, "stumpage value" means the value established by rule by DNR under the managed forest land program or the market value less the harvesting costs incurred, whichever is greater. Also, under the bill, the court also has discretion to use another method for determining damages.

In addition to this ~~doubled amount~~ stumpage or fair market value, under the bill, an owner may recover attorney fees, if certain prelitigation steps are taken, and other reasonable and necessary costs. The bill specifies some of these costs, including the costs of cleaning up the land after the harvesting, the costs of determining the value of the harvested forest products and reforestation costs.

3. The bill creates defenses that a harvester may use to bar or modify the owner's recovery of damages.

- a. If the harvester reasonably relied on a survey by a person registered, by the department of regulation and licensing, as a surveyor and, if the survey is later determined to be in error, the owner may ~~not~~ recover no more than single stumpage.

- b. **Similarly, if** adjacent landowners entered an agreement under which the presumed owner of the land gave consent but it is later determined that the presumed owner was not the actual owner of the property, the owner may not

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recover.

4. Current law provides procedures for law enforcement agents to seize forest products that are illegally harvested and imposes a forfeiture on a person who removes the seized forest products or removes or defaces a seizure notice concerning the products. The bill increases this penalty.

For further information see the state and local fiscal estimate, which will be printed as an appendix to this bill.

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:

1 26.03 (title) ~~Cutting Harvest~~ of raw forest products.

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

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

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

6 26.03 (1r) (a) No purchaser of Indian reservation land or land to be placed upon
7 the tax roll for the first time ~~shall cut or cause to be cut any logs, piling, posts, poles,~~
8 ~~pulpwood, Christmas trees or other forest products, except fuel wood for personal~~
9 ~~home consumption,~~ may harvest any raw forest products, or direct the harvesting of
10 any raw forest products from such the land without first recording the instrument
11 by which title to ~~such~~ the land was acquired in the office of the register of deeds for
12 the county in which ~~such~~ the land is located.

13 SECTION 5. 26.03 (lb) of the statutes is created to read:

14

26.03 (1b) DEFINITIONS. In this section:

15

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

BILL

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

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

3 26.03 (1g) PROHIBITION; DELINQUENT TAXES. No person may harvest any raw
4 forest products, or direct the harvest of any raw forest products, from any land for
5 which taxes are delinquent.

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

7 26.03 (1m) HARVESTING UPON NOTIFICATION. (a) Unless otherwise authorized
8 to do so by the county, no person may harvest any raw forest products, or direct the
9 harvest of any raw forest products, from any land until 14 days after the owner, person harvesting
the raw forest products, or other person notifies the county in which the land is located each year
of the person's intention to harvest.

See MSix ?

11 The person notifying the county may do so in any manner acceptable to the county.

12 The person shall describe the land upon which the harvesting will occur by
13 quarter-quarter section, government lot or fractional lot, unless the county requires
14 a different method for describing the land.

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

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

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

2 26.03 (1r) (title) HARVESTING UPON RECORDING.

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

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

7 26.03 (2) (b) Whoever violates ~~this section~~ sub. (1m) or (1r), or a rule
8 promulgated under sub. (1m) or (1r), shall forfeit not more than ~~\$50~~ ~~\$200~~ \$100.

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

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

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

13 26.05 (1) DEFINITION. ~~As used in~~ In this section, "raw forest products" means
14 forest products not altered by a manufacturing process off the land from which they
15 are taken. ~~This term~~ and includes seedlings, saplings, shrubs, whole tree chips, boughs, logs, pilings
16 posts, poles, cordwood products, pulpwood, fuel wood and Christmas trees.

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

18 26.05 (3) (b) Instead of the forfeiture provided under par. (a), a person who
19 intentionally violates this section, or a rule promulgated under this section, may be
20 punished under s. 943.20 for theft.

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

22 26.05 (3) (c) In addition to any other penalty, a person who violates this section.

BILL

1 or a rule promulgated under this section,, is liable for the reasonable costs incurred
2 to establish the volume and value of the raw forest products cut, removed or
3 transported.

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

5 26.06 (2) Any person who, without the consent of a person legally able to give
6 consent, removes any seized products or removes or defaces a seizure notice of the
7 department or of any sheriff shall forfeit not less than \$500 nor more than
8 \$10,000.

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

10 **26.09 Civil liability for unauthorized cutting, removal or**

11 **transportation of raw forest products. (Ib) DEFINITIONS.** In this section:

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

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

15 (c) "Harvesting boundary" means the boundary of an area in which the cutting,
16 removal or transporting of raw forest products is planned.

17 (^{that}) "^{that is}Established survey corner" or "^amonument" means a corner of a public land
survey, evidenced by a monument, that determines the boundaries of various
subdivisions which are represented on the official plat, i.e. Township corner, section
corner, quarter-quarter corner, meander corner, and a corner whose position can be
identified by verifying the evidence of the monument or its accessories, by reference to
the description that is contained in the surveying field notes, or where the point can be
located by an acceptable supplemental survey record, some physical evidence, or
testimony.

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2

18 (d) ~~“Market value” means the highest price that the raw forest products can be expected to bring when sold to a manufacturer or consumer on the open market.~~ “Fair market value” means the amount raw forest products could be sold for in the open market by an owner willing and able but not compelled to sell to a purchaser willing and able but not obliged to buy.” ✓

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SECTION 15

BILL

1 (e) "Owner" includes the board of commissioners of public lands if the board
2 holds a land contract certificate under ch. 24 to the land from which the raw forest
3 products were cut, removed or transported.

4 (f) "Raw forest products" has the meaning given in S. 26.05 (1).

5 (g) "Slash" has the meaning given in S. 26.12 (6) (a).

6 (h) "Stumpage value" means the applicable stumpage ^{rate?} established by rule *NR 46*
7 under S. 77.91 (1) or the fair market value of raw forest products less the cost of their
8 cutting, removal or transportation, whichever is greater.

10 (2) PERSONS ENTITLED TO SUE; EXCEPTION. (a) In addition to any other
11 enforcement action that may be taken and subject to par. (b), an owner of raw forest
12 products that were harvested without the consent of the owner may bring a civil
13 action to recover the damages caused by the harvesting. In addition to any other
14 enforcement action and subject to par. (b), a county in which a violation of S. 26.03
15 (1g) or (1r) or a rule promulgated under S. 26.03 (1g) or (1r) occurred may bring a civil
16 action to recover damages for the violation.

17 (b) An owner may **not** recover single stumpage ^{value} ~~damages~~ under this subsection if the person
18 harvesting the raw forest products or the person giving consent for the harvesting)

one time

include FMV

19 reasonably relied on **one of the following:**

20 ~~1. A~~ ^{registered} a survey by a person registered as a land surveyor or issued a permit to
21 practice land surveying under S. 443.06 even if the registered survey is determined after the
22 harvesting to be in error.

*Certified survey map ✓
recorded w/ respect w/ deed*

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SECTION 15

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2.(c) 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 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 by the department 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.

by whom then

6 (3) DAMAGES. Except as provided in sub. (6) (b), a person against whom an
7 action is brought as provided in sub. (2) is liable for all of the following damages:

something less than relying on a survey but more than doing nothing

8 (a) An amount equal to double the stumpage value of the raw forest products
9 harvested if the person who harvested them took reasonable precautions in

10 identifying harvesting boundaries or equal to four times the stumpage ^{value} rate or double the fair market

gross

value of the raw forest products, whichever is higher, if the person who harvested them did not take such reasonable precautions.

applies to single stumps

13 (b) Any other reasonable and necessary costs, which may include costs for any
14 of the following:

15 1. Repair of damage to or, cleanup on, the land from which the raw forest
16 products were cut, removed or transported.

- 17 2. Removal of slash from agricultural land, waterways, highways, private
18 roads, trails or other sites where the slash would interfere with reforestation or
19 replanting.
- 20 3. Determining the market value, the stumpage value or the volume of the raw
21 forest products that were cut, removed or transported.
- 22 4. Determining the location of property lines necessary for determining
23 whether a violation occurred.
- 24 5. Preparing forest management or reforestation plans.

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MGG&RPN:kgif
SECTION 15

1 6. Reforestation ^{7,} ~~or replanting~~ by direct seeding or seedlings.

2 (4) LEGAL costs. Notwithstanding the limitations under s. 814.04, the court

3 shall award the plaintiff in a civil action under sub. (2) court costs and reasonable

4 attorney fees if the plaintiff presented a written, reasonable demand for damages to

5 the defendant not less than 60 days before commencing the action under sub. (2) and

6 those damages were not paid before the action was commenced.

7 (5) REASONABLE PRECAUTIONS. (a) For purposes of sub. (3) (a), a person takes ✓

8 reasonable precautions if the person does all of the following:

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

10 2. Reviews land ownership records and any other resources or documentation

11 regarding the land that are reasonably available to the person. These records, ?

12 resources and documentation shall include instruments of conveyance, certified

13 survey maps, survey field notes and information on the land's boundaries provided

14 by the owners, or their agents, of any land that abuts a proposed harvesting

15 boundary.

*applies
to all*

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

18 ~~1. Use of commonly recognized and proper land surveying methods based on~~
19 ~~an established survey corner or monument.~~

20 **2.1.** Use of ^{either} a compass and measuring device or a global positioning system accurate to
plus or minus two meters if the identification is conducted by a person trained in
21 their use ~~of the compass~~ ^{the method they used} and if the identification is based on an established survey corner.

22 **3.2.** Use of a method established by rule by the department.

23 (6) DAMAGES; OTHER. (a) Notwithstanding sub. (3), a court may use a different

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BILL

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SECTION 15

1 method that is reasonable and appropriate for determining the amount of damages
2 awarded under sub. (3) (a) such as diminution in the value of the real property, or
the ornamental or landscape value of the vegetation.

4 (b) An owner may not receive both payment under s. 26.06 (3) and damages
5 specified under sub. (3) (a) from the same person. An owner may not receive both
6 payment under s. 26.05 (3) (c) and the damages specified in sub. (3) (b) 3.

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

8 (END)

alternatives to "timber value" approach.

BILL

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

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

3 26.03 (1g) PROHIBITION; DELINQUENT TAXES. No person may harvest any raw
4 forest products, or direct the harvest of any raw forest products, from any land for
5 which taxes are delinquent.

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

7 26.03 (1m) HARVESTING UPON NOTIFICATION. (a) Unless otherwise authorized
8 to do so by the county, no person may harvest any raw forest products, or direct the
9 harvest of any raw forest products, from any land until 14 days after the owner, person harvesting
the raw forest products, or other person notifies the county in which the land is located each year
of the person's intention to harvest. 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.

11 The person notifying the county may do so in any manner acceptable to the county.

12 The person shall describe the land upon which the harvesting will occur by
13 quarter-quarter section, government lot or fractional lot, unless the county requires
14 a different method for describing the land.

15 (b) Paragraph (a) does not apply to a person harvesting raw forest products on
16 public lands, as defined in s. 70.13 (7), to a person harvesting raw forest products for

corner - "monumented corner"

Subdivision ^{means} townships, sections, quarter - quarter sect
government lot, fractional lot
corners of any of these

corner "nonmonumented corner" - one where "monument
marking corner can no longer be seen)
stumpage rate - NR 46

"net fair market value" = FMV minus cost of
renewal

gross
fair market value = value at the mill w/o
deductions for cost of renewal



State of Wisconsin
1999 - 2000 LEGISLATURE

2649/14^P
RM not
Run

LRB-017972

MGG&RPN:kg:lp

Very Soon
D-Note

1999 BILL

1
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Jan 7
cut.
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 and providing penalties.

granting rule-making authority

Analysis by the Legislative Reference Bureau

This bill makes changes to the laws governing the harvesting of forest products and includes the following:

1. The bill modifies the provisions relating to harvesting from land upon which there are delinquent taxes (tax-delinquent land) and the procedure for notifying local units of government of proposed harvesting. Under current law, with certain exceptions, a person intending to harvest must give annual notice to the county, who in turn mails the notice to each town in which the land is located. The county also provides the notice to the county treasurer, who determines whether it is tax-delinquent land. If taxes are delinquent, the county treasurer must act to either collect the taxes or prevent the harvesting. The bill changes current law by imposing a prohibition against harvesting forests products on land that is tax delinquent. Also, under the bill, the owner must notify the county only when the owner intends to harvest and the owner may do so in any manner acceptable to the county. The bill

The notification is valid for one year.

check

BILL

the owner may recover ~~double~~ the stumpage value or double the market fair market value

~~imposes specific separate forfeitures for harvesting from tax-delinquent land and for failure to notify a county of intended harvesting. Under current law, one forfeiture applies to failure to give the annual notice and failure to pay the taxes before harvesting.~~

1. ~~§~~ The bill creates specific provisions for a landowner to recover, in a civil action, monetary damages from a person who harvests ^{forest products} from the landowner's property without his or her consent. Current law states that a landowner may recover double the amount of damages suffered. The Wisconsin court of appeals has held that these damages are calculated by reducing the market value of the forest products by the cost of the harvesting and then doubling that amount.

Under the bill, the owner may collect double the stumpage value of the cut forest products if the harvester took reasonable precautions to identify the boundaries of the area in which the harvesting was to take place (harvesting boundaries). ~~or double the market value~~ If the harvester did not take reasonable precautions, the bill specifies that the harvester takes reasonable precautions if the harvester reviews land ownership records and identifies the harvesting boundaries by using a method specified in the bill. Under the bill, "stumpage value" means the value established by rule by DNR under the managed forest land program or the market value less the harvesting costs incurred, whichever is greater. ~~Also, under the bill, the court also has discretion to use another method for determining damages.~~

under the bill

In addition to ~~this doubled amount~~ ^{the amount received for the loss of the value of the forest products described above,} under the bill, an owner may recover attorney fees, if certain prelitigation steps are taken, and other reasonable and necessary costs. The bill specifies some of these costs, including the costs of cleaning up the land after the harvesting, the costs of determining the value of the harvested forest products and reforestation ^{or replanting} costs.

~~§~~ The bill creates defenses that a harvester may use to bar the owner's recovery of damages. If the harvester reasonably relied on a survey by a person registered by the department of regulation and licensing, as a surveyor and, if the survey is later determined to be in error, the owner may not recover. Similarly, if adjacent landowners entered an agreement under which the presumed owner of the land gave consent but it is later determined that the presumed owner was not the actual owner of the property, the owner may not recover.

info

← INSERT ANL

3. ~~§~~ Current law provides procedures for law enforcement agents to seize forest products that are illegally harvested and imposes a forfeiture on a person who removes the seized forest products or removes or defaces a seizure notice concerning the products. The bill increases this penalty.

For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill.

Substantially

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

BILL

1 **26.03** (title) **Cutting Harvest of raw forest products.**

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

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

4 **SECTION 4.** 26.03 (1) (b) of the statutes is renumbered 26.03 (1r) (a) and
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6 26.03 (1r) (a) No purchaser of Indian reservation land or land to be placed upon
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11 ~~by which title to such the land was acquired in the office of the register of deeds for~~
12 ~~the county in which such the land is located.~~

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

14 26.03 (1b) DEFINITIONS. In this section:

- 15 (a) "Harvest" means to cut, remove or transport.
- 16 (b) "Harvesting" means cutting, removing or transporting.
- 16 (c) (b) "Raw forest products" has the meaning given in s. 26.05 (1).

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

18 26.03 (1g) PROHIBITION; DELINQUENT TAXES. No person may harvest any raw
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20 which taxes are delinquent.

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

22 26.03 (1m) HARVESTING UPON NOTIFICATION. (a) [✓]Unless otherwise authorized
23 to do so by the county, no person may harvest any raw forest products, or direct the
24 ~~harvest~~ ^{harvesting} of any raw forest products, from any land until 14 days after the owner
25 notifies the ~~county~~ ^{clerk} in which the land is located ^{15 notified proposal} of the person's intention to harvest.

of the county

BILL

Notification is valid for 365 days after the date which the county clerk is notified. **SECTION 7**

1 The person notifying the county may do so in any manner acceptable to the county.
2 The person shall describe the land upon which the harvesting will occur by
3 quarter-quarter section, government lot or fractional lot, unless the county requires
4 a different method for describing the land.

5

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

- 10 1. Boughs for his or her own use.
- 11 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
15 fuel wood for his or her home consumption.

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

26.03 (2) (b) Whoever violates this section sub. (1m) or (1r), or a rule
19 promulgated under sub. (1m) or (1r), shall forfeit not more than \$50 ~~\$200~~ \$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),
22 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
25 forest products not altered by a manufacturing process off the land from which they

← INS 2-4

BILL

tree
whole tree chips,

1 are taken. ~~This term~~ and includes seedlings, saplings, shrubs, ~~boughs,~~ logs, pilings,
2 posts, poles, cordwood products, pulpwood, fuel wood and Christmas trees.

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

4 26.05 (3) (b) Instead of the forfeiture provided under par. (a), a person who
5 intentionally violates this section, or a rule promulgated under this section, may be
6 punished under s. 943.20 for theft.

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

8 26.05 (3) (c) In addition to any other penalty, a person who violates this section,
9 or a rule promulgated under this section, [✓] is liable for the reasonable costs incurred
10 to establish the volume and value of the raw forest products ~~(cut, removed or~~
11 transported. *(stet)*

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

13 26.06 (2) Any person who, without the consent of a person legally able to give
14 consent, removes any seized products or removes or defaces a seizure notice of the
15 department or of any sheriff shall forfeit not less than \$500 nor more than \$50
16 \$10,000.

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

18 **26.09 Civil liability for unauthorized cutting, removal or**
19 **transportation of raw forest products. (1b) DEFINITIONS.** In this section:

20 (a) "Compass" means a sighting compass with a liquid-filled capsule that has
21 been adjusted for the proper declination. ← INSERT 5-21 ✓

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

23 (d) ~~(c)~~ "Harvesting" means *cutting, removing or transporting.*

24 (e) ~~(d)~~ "Harvesting boundary" means the boundary of an area in which the *cutting*
harvesting
removal or transporting of raw forest products is planned.

BILL

1 ^{fair}
(d) ~~"Market value" means the highest price that the raw forest products can be~~
2 ~~expected to bring when sold to a manufacturer or consumer on the open market.~~

3 (f) ~~(e)~~ "Owner" includes the board of commissioners of public lands if the board
4 holds a land contract certificate under ch. 24 to the land from which the raw forest
5 products were ^{harvested} ~~cut, removed or transported.~~

6 (g) ~~(f)~~ "Raw forest products" has the meaning given in s. 26.05 (1). ← INSERT 6-6

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

8 (j) ~~(h)~~ "Stumpage value" means the applicable stumpage ^{rate} established by rule
9 under s. 77.91 (1) or the ^{fair} market value of raw forest products less the cost of their
10 ^{harvesting} ~~cutting, removal or transportation~~, whichever is greater. ← INSERT 6-10

11 (2) PERSONS ENTITLED TO SUE; EXCEPTION. (a) In addition to any other
12 enforcement action that may be taken and subject to par. (b), an owner of raw forest
13 products that were harvested without the consent of the owner may bring a civil
14 action to recover the damages caused by the harvesting. In addition to any other
15 enforcement action ^{and} subject to par. (b), a county in which a violation of s. 26.03
16 (1g) or (1r) or a rule promulgated under s. 26.03 (1g) or (1r) occurred may bring a civil
17 action to recover damages for the violation.

18 (b) An owner may not recover damages under this subsection if the person
19 harvesting the raw forest products or the person giving consent for the harvesting
20 reasonably relied on ^a ~~one of the following~~.

21 1. A survey by a person registered as a land surveyor or issued a permit to
22 practice land surveying under s. 443.06 even if the survey is determined after the
23 harvesting to be in error.

24 ^{no} ~~2. A~~ written agreement among adjacent owners, or their agents, that the owner
25 giving consent to harvest has the authority to do so even if after the harvesting it is

BILL

1 determined that the owner giving the consent did not have such authority, but only
2 if the harvesting is from land owned by an owner who is a party to the agreement.

3 ~~(3) DAMAGES. Except as provided in sub. (6) (b) a person against whom an~~
4 ~~action is brought as provided in sub. (2) is liable for all of the following damages:~~

5 ~~(a) Damages measured by one of the foll~~
6 ~~(1) (a) An amount equal to double the stumpage value of the raw forest products~~
7 ~~harvested if the person who harvested them took reasonable precautions in~~
8 ~~identifying harvesting boundaries or equal to double the market value of the raw~~
9 ~~forest products if the person who harvested them did not take such reasonable~~
10 ~~precautions.~~

11 (c) ~~(b) Any other reasonable and necessary costs, which may include costs for any~~
12 ~~of the following:~~

13 1. Repair of damage to or cleanup on, the land from which the raw forest
14 products were cut, removed or transported.

15 2. Removal of slash from agricultural land, waterways, highways, private
16 roads, trails or other sites where the slash would interfere with reforestation or
17 replanting.

18 3. Determining the fair market value, the stumpage value or the volume of the raw
19 forest products that were harvested cut, removed or transported.

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

22 5. Preparing forest management or reforestation plans.

23 6. Reforestation or replanting.
24 7. Reforestation by direct seeding or by use of seedlings.

25 (4) LEGAL COSTS. Notwithstanding the limitations under s. 814.04, the court
shall award the plaintiff in a civil action under sub. (2) court costs and reasonable
attorney fees if the plaintiff presented a written, reasonable demand for damages to

INSURET
7-4
four times the stumpage or double the fair market
just which is greater,
INS
7-10

BILL

1 the defendant not less than 60 days before commencing the action under sub. (2) and
2 those damages were not paid before the action was commenced. (b) ~~of~~

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

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

6 2. Reviews land ownership records and any other resources or documentation
7 regarding the land ~~that are reasonably available to the person~~. These records,
8 resources and documentation ~~shall~~ include instruments of conveyance, certified
9 survey maps, survey field notes and information on the land's boundaries provided
10 by the owners, or their agents, of any land that abuts a proposed harvesting
11 boundary.

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

14 ~~1. Use of commonly recognized and proper land surveying methods based on
15 an established survey corner or monument.~~

16 1. ~~Use of a compass~~ ^{By} if the identification is conducted by a person trained in the
17 ~~use of the compass~~ ^{method used} and if the identification is based on an established survey corner. ~~INS 8-17~~

18 2. ~~Use of a method established by rule by the department.~~ ^{By}

19 (6) DAMAGES; OTHER. (a) Notwithstanding sub. (3), a court may use a different
20 ~~method that is reasonable and appropriate for determining the amount of damages~~ ^{INS 8-18}
21 ~~awarded under sub. (3) (a).~~ ^{INS 8-18}

22 ~~An owner may not receive both payment under s. 26.06 (3) and damages~~
23 ~~specified under sub. (3) (a) from the same person. An owner may not receive both~~
24 ~~payment under s. 26.05 (3) (c) and the damages specified in sub. (3) (b) 3.~~ ^(c)

the method they used... or... resulting in...

1999-2000 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-2649/?ins
MGG.....

Insert ANL

2. The bill modifies the procedure for notifying local units of government of proposed harvesting. Under current law, with certain exceptions, a person intending to harvest must give annual written notice by registered mail to each county in which the land is located. The county in turn mails the notice to each town in which the land is located. Under the bill, the owner may notify the county of the harvesting in any manner that the county will accept.

Under current law and under the bill, with limited exceptions, no person may harvest forest products from land ~~upon which there are~~ delinquent taxes, from land for which there has been no annual notice as described above or from land that is being placed on the tax rolls for the first time and whose ownership has not been recorded with the register of deeds. Under current law, one forfeiture applies to violations of all of these prohibitions. The bill imposes a different and substantially greater forfeiture for harvesting from tax-delinquent land and increases the forfeiture by \$50 for violations of the other two provisions.

Insert 4-4 ^{property} Upon receipt of notification under subd. 1,

2. The county clerk shall ~~notify~~ ^{provide notice to} the town chairperson of each town ^{in which the land from which raw forest products will be harvested} and to the county treasurer. The county treasurer shall determine whether the ~~county~~ ^{county} holds a tax certificate or tax deeds to any of the land involved. If the county ~~holds~~ ^{holds} a tax certificate, the county treasurer shall take action to collect the unpaid taxes represented by ~~the~~ ^{to} county 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.

Insert 5-21 ✓

(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.

Insert 6-6 ✓

that is owned by a person who owes on that land

property

property

is located

county

holds

-owned tax certificates

to

to

(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.

Insert 6-10 ✓

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

Insert 7-10 ✓

(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), subject to sub. (6), and other reasonable and necessary costs under par. (c).

(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 ~~two~~^{two} 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. 4

3. A court shall award damages that are equal to ~~two~~^{two} times the stumpage value or ~~two~~^{two} 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.

4. A court may calculate and award damages using a ~~different~~ ^{different} method ~~than~~ ^{than} those specified under subds. 1. to 3. if the ~~method~~ ^{method} is reasonable and appropriate. ~~used~~ ^{used}

These methods include:

a. Subtracting the fair market value of the land after the harvesting from the fair market value of the land before the harvesting.

b. Determining the loss of any ornamental, scenic, recreational, aesthetic or environmental value of the land that results from the harvesting.

Insert 8-18 ✓

(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~~ ^{use} 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 ~~one~~ ^{using} ~~one~~ ^{using} of the following ~~methods~~ ^{methods}:

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

2. ^{By} locating the survey corner by use of physical evidence or witness testimony.

**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-2649/dn
MGG.....

that
Please have DNR attorney Jim Christenson review this draft before sharing it with the other parties. He is the one who prepared the redrafting instructions and I think it is best to make sure *it* complies with the intent of the group, as he understands it, before sharing it with others.

1. I did not refer to copies of notices under s. 26.03 (1m) (a) 2. because some counties may choose to allow oral notice to be given.

2. Note that the 3 measurements of damages under s. 26.09 (3) (b) 1. to 3. use the "stumpage value" and not the stumpage rate. Also *s.* 26.09 (3) (b) 3. only works if it is possible to have a situation where 2 times the fair market value will exceed 4 times the "stumpage value" as calculated under the definition for stumpage value. Please let me know if any changes to this are necessary.

3. I moved the language contained in s. 26.09 (6) (a) to *s.* 26.09 (3) (b) because it seemed more logical to list it along with the other ways to measure *the* actual damages.

4. In reviewing this draft, I notice that under s. 26.09 (2) (a) counties may sue for violations of s. 26.09 (1g) and (1r) but not for violations of s. 26.09 (1m). OK?

Mary Gibson-Glass
Senior Legislative Attorney
Phone: (608) 267-3215

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-2649/P1dn
MGG:kg:km

April 16, 1999

Please have DNR attorney Jim Christenson review this draft before sharing it with the other parties. He is the one who prepared the redrafting instructions and I think it is best to make sure that it complies with the intent of the group, as he understands it, before sharing it with others.

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Mary Gibson-Glass
Senior Legislative Attorney
Phone: (608) 267-3215

DATE: June 22, 1999

TO: Representative John Gard – Capitol (316N)

FROM: Jim Christenson – DNR

SUBJECT: Proposed Legislation Respecting Damages for Timber Taken Without Consent

Mary Gibson-Glass suggested you provide the draft of LRB-2649/P1dn, attached, relating to damages for the taking of timber from another without consent. Thank you for the opportunity to comment.

I find the draft very well done and capturing the intent of the coalition that worked on it.

If I can be of further service, please contact me.



State of Wisconsin
1999 - 2000 LEGISLATURE

LRMR

LRB-2649/P
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no changes
Thus
7/1

~~PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION~~

Jan Cat

1 AN ACT *to repeal* 26.03 (1) (title), 26.03 (1) (a) and 814.04 (5); *to renumber and*
2 *amend* 26.03 (1) (b) and 26.03 (2); *to amend* 26.03 (title), 26.05 (1), 26.05 (3)
3 (b), 26.05 (3) (c) and 26.06 (2); *to repeal and recreate* 26.09; and *to create*
4 26.03 (1b), 26.03 (1g), 26.03 (1m), 26.03 (1r) (title) and (b) and 26.03 (2) (a) of
5 the statutes; **relating to:** cutting, removal and transportation of raw forest
6 products, seizures of forest products, granting rule-making authority and
7 providing penalties.

Analysis by the Legislative Reference Bureau

This bill makes changes to the laws governing the harvesting of forest products and includes the following:

1. The bill creates specific provisions for a landowner to recover, in a civil action, monetary damages from a person who harvests forest products from the landowner's property without his or her consent. Current law states that a landowner may recover double the amount of damages suffered. The Wisconsin court of appeals has held that these damages are calculated by reducing the market value of the forest products by the cost of the harvesting and then doubling that amount.

Under the bill, the owner may collect double the stumpage value of the cut forest products if the harvester took reasonable precautions to identify the boundaries of the area in which the harvesting was to take place (harvesting

boundaries). If the harvester did not take reasonable precautions, the owner may recover four times the stumpage value or double the fair market value. The bill specifies that the harvester takes reasonable precautions if the harvester reviews land ownership records and identifies the harvesting boundaries by using a method specified in the bill. Under the bill, "stumpage value" means the value established by rule by DNR under the managed forest land program or the market value less the harvesting costs incurred, whichever is greater.

In addition to the amount received for the loss of the value of the forest products described above, an owner may recover, under the bill, attorney fees, if certain prelitigation steps are taken, and other reasonable and necessary costs. The bill specifies some of these costs, including the costs of cleaning up the land after the harvesting, the costs of determining the value of the harvested forest products and reforestation or replanting costs.

The bill creates a defense that a harvester may use to bar the owner's recovery of damages. If adjacent landowners entered into an agreement under which the presumed owner of the land gave consent but it is later determined that the presumed owner was not the actual owner of the property, the owner may not recover.

2. The bill modifies the procedure for notifying local units of government of proposed harvesting. Under current law, with certain exceptions, a person intending to harvest must give annual written notice by registered mail to each county in which the land is located. The county in turn mails the notice to each town in which the land is located. Under the bill, the owner may notify the county of the harvesting in any manner that the county will accept.

Under current law and under the bill, with limited exceptions, no person may harvest forest products from land that is owned by a person who owes delinquent property taxes on that land, from land for which there has been no annual notice as described above or from land that is being placed on the property tax rolls for the first time and whose ownership has not been recorded with the register of deeds. Under current law, one forfeiture applies to violations of all of these prohibitions. The bill imposes a different and substantially greater forfeiture for harvesting from tax-delinquent land and increases the forfeiture by \$50 for violations of the other two provisions.

3. Current law provides procedures for law enforcement agents to seize forest products that are illegally harvested and imposes a forfeiture on a person who removes the seized forest products or removes or defaces a seizure notice concerning the products. The bill substantially increases this penalty.

For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill.

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

1

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

1 **26.03** (title) **Cutting Harvest of raw forest products.**

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

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

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

6 26.03 (1r) (a) No purchaser of Indian reservation land or land to be placed upon
7 the tax roll for the first time shall cut or cause to be cut any logs, piling, posts, poles,
8 pulpwood, Christmas trees or other forest products, ~~except fuel wood for personal~~
9 ~~home consumption,~~ may harvest any raw forest products, or direct the harvesting of
10 any raw forest products, from such ~~the~~ land without first recording the instrument
11 by which title to such ~~the~~ land was acquired in the office of the register of deeds for
12 the county in which such ~~the~~ land is located.

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

14 26.03 (1b) DEFINITIONS. In this section:

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

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

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

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

19 26.03 (1g) PROHIBITION; DELINQUENT TAXES. No person may harvest any raw
20 forest products, or direct the harvest of any raw forest products, from any land for
21 which taxes are delinquent.

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

23 26.03 (1m) HARVESTING UPON NOTIFICATION. (a) 1. Unless otherwise authorized
24 to do so by the county, no person may harvest any raw forest products, or direct the
25 harvesting of any raw forest products, from any land until 14 days after the clerk of

1 the county in which the land is located is notified of the person's proposal to harvest.
2 The person notifying the county clerk may do so in any manner acceptable to the
3 county. The person shall describe the land upon which the harvesting will occur by
4 quarter-quarter section, government lot or fractional lot, unless the county requires
5 a different method for describing the land. Notification is valid for 365 days after the
6 date on which the county clerk is notified.

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

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

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

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

24 26.03 (1r) (title) HARVESTING UPON RECORDING

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

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

5 26.03 (2) (b) Whoever violates ~~this section sub. (1m) or (1r), or a rule~~
6 promulgated under sub. (1m) or (1r), shall forfeit not more than ~~\$50~~ \$100.

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

8 26.03 (2) (a) Whoever violates sub. (1g), or a rule promulgated under sub. (1g),
9 shall forfeit not less than \$500 nor more than \$10,000.

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

11 26.05 (1) DEFINITION. ~~As used in~~ In this section, “raw forest products” means
12 forest products not altered by a manufacturing process off the land from which they
13 are taken. ~~This term and~~ includes seedlings, saplings, shrubs, whole-tree chips,
14 boughs, logs, pilings, posts, poles, cordwood products, pulpwood, fuel wood and
15 Christmas trees.

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

17 26.05 (3) (b) Instead of the forfeiture provided under par. (a), a person who
18 intentionally violates this section, or a rule promulgated under this section, may be
19 punished under s. 943.20 for theft.

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21 26.05 (3) (c) In addition to any other penalty, a person who violates this section,
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24 transported.

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1 26.06 (2) Any person who, without the consent of a person legally able to give
2 consent, removes any seized products or removes or defaces a seizure notice of the
3 department or of any sheriff shall forfeit not less than \$500 nor more than \$50
4 \$10,000.

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

6 **26.09 Civil liability for unauthorized cutting, removal or**
7 **transportation of raw forest products. (1b) DEFINITIONS.** In this section:

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

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

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

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

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

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

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

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

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

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

4 (k) “Subdivision” means a township, section, quarter-quarter section,
5 government lot or fractional lot.

6 **(2) PERSONS ENTITLED TO SUE; EXCEPTION.** (a) In addition to any other
7 enforcement action that may be taken and subject to par. (b), an owner of raw forest
8 products that were harvested without the consent of the owner may bring a civil
9 action to recover the damages caused by the harvesting. In addition to any other
10 enforcement action and subject to par. (b), a county in which a violation of s. 26.03
11 (1g) or (1r) or a rule promulgated under s. 26.03 (1g) or (1r) occurred may bring a civil
12 action to recover damages for the violation.

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

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

23 (b) 1. A court shall award damages that equal the stumpage value of the raw
24 forest products harvested if the person harvesting the raw forest products or the
25 person giving consent for the harvesting reasonably relied upon a recorded survey

1 that was done by a person who is registered as a land surveyor or who is issued a
2 permit to practice land surveying under s. 443.06 even if the recorded survey is
3 determined, after the harvesting, to be in error.

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

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

13 4. A court may calculate and award damages using a different method than
14 those specified under subds. 1. to 3. if the method used is reasonable and appropriate.
15 These methods include:

16 a. Subtracting the fair market value of the land after the harvesting from the
17 fair market value of the land before the harvesting.

18 b. Determining the loss of any ornamental, scenic, recreational, aesthetic or
19 environmental value of the land that results from the harvesting.

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

22 1. Repair of damage to, or cleanup on, the land from which the raw forest
23 products were harvested.

1 2. Removal of slash from agricultural land, waterways, highways, private
2 roads, trails or other sites where the slash would interfere with reforesting or
3 replanting.

4 3. Determining the fair market value, the stumpage value or the volume of the
5 raw forest products that were harvested.

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

8 5. Preparing forest management or reforestation plans.

9 6. Reforesting.

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

11 (4) LEGAL COSTS. Notwithstanding the limitations under s. 814.04, the court
12 shall award the plaintiff in a civil action under sub. (2) court costs and reasonable
13 attorney fees if the plaintiff presented a written, reasonable demand for damages to
14 the defendant not less than 60 days before commencing the action under sub. (2) and
15 those damages were not paid before the action was commenced.

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

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

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

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

