

2005 DRAFTING REQUEST

Bill

Received: 01/08/2005

Received By: **mglass**

Wanted: As time permits

Identical to LRB:

For: **Mark Pettis (608) 267-2365**

By/Representing: **Kimber**

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

Drafter: **mglass**

May Contact:

Addl. Drafters:

Subject: **Nat. Res. - fish and game**

Extra Copies:

Submit via email: **NO**

Pre Topic:

No specific pre topic given

Topic:

Trespass enforcement authority for wardens

Instructions:

Give warden the same enforcement authority that sherrffs have during the 9 day gun deer hunting season

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>
/?				_____			S&L
/1	mglass 01/27/2005	wjackson 01/29/2005	pgreensl 01/31/2005	_____	lnorthro 01/31/2005		S&L
/2	mglass 02/23/2005 mglass 03/24/2005	wjackson 03/07/2005	pgreensl 03/08/2005	_____ _____ _____	mbarman 03/08/2005	lnorthro 03/11/2005 mbarman 03/29/2005	

FE Sent For:

*at intro
3/30*

<END>

Re-ran the Jacketing routine
↳ Acc was having a problem introducing.

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/1	mglass 01/27/2005	wjackson 01/29/2005	pgreensl 01/31/2005	<u>3/8</u> P8/W	Inorthro 01/31/2005		

FE Sent For:

<END>

1/2 WLj 2/24 3/1
P8

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/?	mglass	1. WJ 1/29	✓ 31 ps	✓ 31 ps/K			

FE Sent For:

<END>



State of Wisconsin
2005 - 2006 LEGISLATURE

LRB-1563/1 RMR
MGG:.....
WJ

D-Note soon (in 1/27/05)

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

Please print w/ line-its.

^{Gen}
AN ACT ...; **relating to:** the law enforcement authority of the department of natural resources during the regular season for hunting deer with firearms.

Analysis by the Legislative Reference Bureau

to Current law grants the department of natural resources (DNR) enforcement authority to enforce laws relating fish and game, boating, snowmobiling, and other and other conservation laws and to enforce certain laws relating to the use of dangerous weapons regardless of where the violation of the law is committed. Current law also grants DNR authority to enforce all state laws in state parks and on all state-owned land and property that is under the supervision, management, and control of DNR. This bill expands the authority to enforce all state laws to cover the entire state during the regular season for hunting deer with firearms that begins in November of each year.

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. 29.921 (1m) of the statutes is created to read:

29.921 (1m) DEER HUNTING SEASON. During the regular season for hunting deer with firearms that begins in November of each year, the department and any of its

wardens may execute and serve warrants and processes issued under any law of this state in the same manner as any constable may serve and execute the process; and may arrest, with or without a warrant, any person detected in the actual violation, or whom the warden has probable cause to believe is guilty of a violation of any law of this state, whether the violation is punishable by criminal penalties or by forfeiture, and may take the person before any court in the county where the violation was committed and make a proper complaint. For the purpose of enforcing any of the laws of this state, any warden may stop and board any boat and stop any vehicle, if the warden reasonably suspects there is a violation of the law.

SECTION 2. 29.921 (5) of the statutes is amended to read:

29.921 (5) ADDITIONAL ARREST POWERS. In addition to the arrest powers under ~~sub.~~ subs. (1) and (1m), a warden who has completed a program of law enforcement training approved by the law enforcement standards board, has been certified as qualified to be a law enforcement officer under s. 165.85 (4) (b) 1. and has complied with any applicable requirements under s. 165.85 (4) (bn) 1. while on duty and in uniform or on duty and upon display of proper credentials may assist another law enforcement agency as defined under s. 165.83 (1) (b) including making an arrest at the request of the agency, may arrest a person pursuant to an arrest warrant concerning the commission of a felony or may arrest a person who has committed a crime in the presence of the warden. If the warden makes an arrest without the presence of another law enforcement agency, the warden shall cause the person arrested to be delivered to the chief of police or sheriff in the jurisdiction where the arrest is made, along with the documents and reports pertaining to the arrest. The warden shall be available as a witness for the state. A warden may not conduct investigations for violations of state law except as authorized in ss. 23.11 (4), 29.924

(1) and 41.41 (12). A warden acting under the authority of this subsection is considered an employee of the department and is subject to its direction, benefits and legal protection. The authority granted in this section does not apply to county conservation wardens or special conservation wardens.

History: 1997 a. 248 ss. 98 to 102, 708 to 710; 2001 a. 109.

(END)

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

LRB-1563/?dn

MGG:/:....

WJ

This area of law is complicated. I therefore suggest that you have DNR Attorney Mike Lutz review this draft before introduction to make sure it achieves your intent.

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

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

LRB-1563/1dn
MGG:wlj:pg

January 31, 2005

This area of law is complicated. I therefore suggest that you have DNR Attorney Mike Lutz review this draft before introduction to make sure it achieves your intent.

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

redraft instructions → 1/2

① only for trespass violations

② only associated w/ hunting + fishing

③ surcharge to conveyance fund
defendant need not to pay more
surcharge comes from amt. forfeiture
would have been.

RMR

(D-N)

soon
Lin 1/23/

2005 BILL

imposing
a hunting and fishing
trespass surcharge; and providing
a penalty

Regen

1 AN ACT to amend 29.921 (5); and to create 29.921 (1m) of the statutes; relating
2 to: the law enforcement authority of the Department of Natural Resources
3 to enforce violations of the trespass law during the regular season for hunting deer with firearms.

Analysis by the Legislative Reference Bureau

Current law grants the Department of Natural Resources (DNR) enforcement authority to enforce laws relating to fish and game, boating, snowmobiling, and other conservation laws and to enforce certain laws relating to the use of dangerous weapons regardless of where the violation of the law is committed. Current law also grants DNR authority to enforce all state laws in state parks and on all state-owned land and property that is under the supervision, management, and control of DNR. This bill expands the authority to enforce all state laws to cover the entire state during the regular season for hunting deer with firearms that begins in November of each year.

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:

INSERT
ANALY
SIS

4 SECTION 1. 29.921 (1m) of the statutes is created to read:

BILL

1 **29.921 (1m) DEER HUNTING SEASON.** During the regular season for hunting deer
2 with firearms that begins in November of each year, the department and any of its
3 wardens may execute and serve warrants and processes issued under any law of this
4 state in the same manner as any constable may serve and execute the process; and
5 may arrest, with or without a warrant, any person detected in the actual violation,
6 or whom the warden has probable cause to believe is guilty of a violation of any law
7 of this state, whether the violation is punishable by criminal penalties or by
8 forfeiture, and may take the person before any court in the county where the violation
9 was committed and make a proper complaint. For the purpose of enforcing any of
10 the laws of this state, any warden may stop and board any boat and stop any vehicle,
11 if the warden reasonably suspects there is a violation of the law.

12 **SECTION 2.** 29.921 (5) of the statutes is amended to read:

13 **29.921 (5) ADDITIONAL ARREST POWERS.** In addition to the arrest powers under
14 ~~sub.~~ subs. (1) and (1m), a warden who has completed a program of law enforcement
15 training approved by the law enforcement standards board, has been certified as
16 qualified to be a law enforcement officer under s. 165.85 (4) (b) 1. and has complied
17 with any applicable requirements under s. 165.85 (4) (bn) 1. while on duty and in
18 uniform or on duty and upon display of proper credentials may assist another law
19 enforcement agency as defined under s. 165.83 (1) (b) including making an arrest at
20 the request of the agency, may arrest a person pursuant to an arrest warrant
21 concerning the commission of a felony or may arrest a person who has committed a
22 crime in the presence of the warden. If the warden makes an arrest without the
23 presence of another law enforcement agency, the warden shall cause the person
24 arrested to be delivered to the chief of police or sheriff in the jurisdiction where the
25 arrest is made, along with the documents and reports pertaining to the arrest. The

1 ✓
INS
2-12

BILL

1 warden shall be available as a witness for the state. A warden may not conduct
2 investigations for violations of state law except as authorized in ss. 23.11 (4), 29.924
3 (1) and 41.41 (12). A warden acting under the authority of this subsection is
4 considered an employee of the department and is subject to its direction, benefits and
5 legal protection. The authority granted in this section does not apply to county
6 conservation wardens or special conservation wardens.

7

(END)

✓
INS 3-6

2005-2006 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-1563/2ins
MGG:.....

Insert analysis

Current law grants the Department of Natural Resources (DNR) and its wardens enforcement authority to enforce fish and game laws, laws relating to boating and snowmobiling, other conservation laws, and certain other laws relating to the use of dangerous weapons regardless of where the violations of any of these laws are committed. This bill expands this authority to cover violations of the land trespass law when the trespass is committed by a person engaged in an activity that relates to hunting or fishing.

This bill requires a court to calculate an amount to be imposed for a trespass violation that is committed by a person engaged in an activity related to hunting or fishing. ~~Thirty-five per cent of the calculated amount~~ is the forfeiture for the violation and ~~the 65 per cent of the amount~~ is a hunting and fishing trespass surcharge imposed for the violation. Each surcharge amount that is collected is deposited in the conservation fund. The forfeiture amount is deposited in the common school fund.

of the
calculated
amounts
35 percent

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

~~SECTION 1. 23.51 (3j) of the statutes is created to read:~~

~~23.51 (3j) Hunting and fishing trespass surcharge~~

Deletes the
surcharge
under s. 23.51(3j)

INS

2-12

SECTION 2. 29.921 (1m) of the statutes is created to read:

29.921 (1m) TRESPASS. The department and any of its wardens may execute

and serve warrants and processes issued for a violation of s. 943.13 if the violation

was done while the person was engaged in an activity relating to hunting or fishing

in the same manner as any constable may serve and execute the process; and may

arrest, with or without a warrant, any person detected in the actual violation, or

whom the warden has probable cause to believe is guilty of such a violation, and may

take the person before any court in the county where the violation was committed

and make a proper complaint. For the purpose of enforcing any of the laws of this

state, any warden may stop and board any boat and stop any vehicle, if the warden

reasonably suspects there is a violation of the law.

SECTION 3. 29.984 of the statutes is created to read:

INS

3-6

LPS:
Please check spacing.

INS
3-6

29.984 Hunting and fishing trespass forfeiture and surcharge. (1)

IMPOSITION OF FORFEITURE AND SURCHARGE. (a) If a court finds a violation under s. 943.13 that was committed while being engaged in an activity relating to hunting or fishing, the court shall calculate a penalty amount that consists of a forfeiture and a hunting and fishing trespass surcharge, the total of which may not exceed \$1,000.

by a person who was violated s. 943.13 was

Thirty-five percent of the amount shall be the forfeiture imposed, and 65 percent of the amount shall be a hunting and fishing trespass surcharge imposed under ch. 814.

(b) If a deposit is made for a violation to which this section applies, the person making the deposit shall also deposit a sufficient amount to include the forfeiture and the hunting and fishing trespass surcharge imposed under this section. If the deposit is forfeited, the amount of the hunting and fishing trespass surcharge shall be submitted to the secretary of administration under s. 59.25 (3) (f) 2. If the forfeiture is returned, the hunting and fishing trespass surcharge shall also be returned.

(2) DEPOSIT OF HUNTING AND FISHING TRESPASS SURCHARGE. All moneys collected from hunting and fishing trespass surcharges shall be deposited in the conservation fund.

SECTION ~~4~~ 814.75 (13m) of the statutes is created to read:
814.75 (13m) Hunting and fishing trespass surcharge.
SECTION ~~5~~ 814.80 (6m) of the statutes is created to read:
814.80 (6m) Hunting and fishing trespass surcharge.

STET
ENTIRE
PART

SECTION ~~6~~ 943.13 (1m) (intro.) of the statutes is amended to read:

943.13 (1m) (intro.) Whoever does any of the following is subject to a Class B forfeiture, or the amount of the forfeiture calculated under s. 29.984 (1) (a):

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-1563/2dn

MGG: /:....

WLJ

LPS:
Please
check
spacing.

It may be possible ^{that} the provision ^{that} which requires the calculation of the amount to be paid by a violator of the trespass law is in violation of Art. X, sec. 2 of the state constitution, which requires forfeitures to be deposited in ^{to} the school fund. A lower percentage of the total amount ^{to} going into the conservation fund *may* support the position that the provision does not violate the constitution. Also, it may be constitutionally required that the amount of the surcharge not exceed the cost of prosecuting the trespass violation.

In light of this, if you prefer to set up a calculation that is similar to provisions under current law ^{that} which have not been challenged as violating the state constitution, you should note the following:

1. Provisions where the surcharge is a percentage of the forfeiture. ^{which} These range from 10% ^{SP} to 75%. See ^{SP} ss. 29.987 (1) (a), 167.31 (5) (a), 299.93 (1), and 757.05 (1) (a).
2. Provisions where the surcharge is a set amount: ss. 29.983 (1) (a), 29.989 (1) (a), 167.55 (1) (a), 350.115 (1) (a) ^{SP}
3. A provision where the surcharge represents a cost to the state: ss. 29.985 (1) ^{SP}
4. A provision where ^{the surcharge} it is a percentage or amount, whichever is greater: 304.26 (1) (a) ^{SP}

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

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-1563/2dn
MGG:wlj:pg

March 7, 2005

It may be possible that the provision that requires the calculation of the amount to be paid by a violator of the trespass law is in violation of art. X, sec. 2, of the state constitution, which requires forfeitures to be deposited into the school fund. A lower percentage of the total amount going into the conservation fund *may* support the position that the provision does not violate the constitution. Also, it may be constitutionally required that the amount of the surcharge not exceed the cost of prosecuting the trespass violation.

In light of this, if you prefer to set up a calculation that is similar to provisions under current law that have not been challenged as violating the state constitution, you should note the following:

1. Provisions where the surcharge is a percentage of the forfeiture, which ranges from 10 percent to 75 percent: ss. 29.987 (1) (a), 167.31 (5) (a), 299.93 (1), and 757.05 (1) (a).
2. Provisions where the surcharge is a set amount: ss. 29.983 (1) (a), 29.989 (1) (a), 167.55 (1) (a), 350.115 (1) (a).
3. A provision where the surcharge represents a cost to the state: ss. 29.985 (1).
4. A provision where the surcharge is a percentage or amount, whichever is greater: 304.26 (1) (a).

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

Northrop, Lori

From: Liedl, Kimberly
Sent: Friday, March 11, 2005 3:28 PM
To: Northrop, Lori
Subject: RE: LRB 05-1391/4 attached as requested

Hi, could please get the bill jacket for LRB 1563/2?

Thanks,
Kimber
Office of Rep. Mark Pettis

-----Original Message-----

From: Northrop, Lori
Sent: Friday, March 11, 2005 3:26 PM
To: Liedl, Kimberly
Subject: LRB 05-1391/4 attached as requested

<< File: 05-1391/4 >>

Lori Northrop
Legislative Program Assistant
State of WI Legislative Reference Bureau
phone(608)266-3561 fax(608)264-6948
lori.northrop@legis.state.wi.us