



2005 ASSEMBLY BILL 409

May 10, 2005 - Introduced by Representatives PETTIS, GUNDERSON, MUSSER, AINSWORTH, ALBERS, HAHN, HINES, KESTELL, KREIBICH, PRIDEMORE, TOWNSEND, BIES, LOTHIAN and SHILLING, cosponsored by Senators STEPP and GROTHMAN. Referred to Committee on Natural Resources.

1 **AN ACT** *to amend* 23.33 (3) (c), 23.50 (1), 23.62 (2), 23.65 (1), 29.011 (2), 29.921
2 (5), 29.924 (1), 29.924 (2), 29.924 (3), 29.924 (4), 29.931 (1), 29.931 (2) (a), 29.931
3 (2) (b), 29.934 (1) (a), 29.934 (2) and 350.10 (1) (f); and *to create* 23.86, 29.921
4 (4m), 814.75 (17m), 814.77 (10m), 814.80 (13m) and 943.13 (3g) of the statutes;
5 **relating to:** the authority of the Department of Natural Resources to enforce
6 certain violations of the trespass law; revocation, suspension, and denial of
7 certain approvals and privileges relating to wild animals and plants for certain
8 violations of the trespass law; the imposition of a surcharge on a forfeiture for
9 certain violations of the trespass law; service outside the state of forfeiture
10 citations issued for violations of certain natural resources laws; title to wild
11 animals; operation of snowmobiles and all-terrain vehicles on land without
12 permission; and providing a penalty.

Analysis by the Legislative Reference Bureau

Current law grants the Department of Natural Resources (DNR) and its wardens enforcement authority to enforce fish and game laws, laws relating to

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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 involves hunting, fishing, trapping, cutting timber, snowmobiling, and other outdoor recreational or natural resources activities regulated by laws administered by DNR (natural resources activities).

For a violation of the trespass law while a person is engaged in natural resource activities, the bill authorizes a court to revoke or suspend for up to three years all hunting, fishing, and trapping licenses issued to the violator and all other approvals issued to, and privileges enjoyed by, the violator that relate to the wild animals found in the wild and wild plants and that relate to the hunting and trapping of captive wildlife. The bill requires a court to revoke all of these licenses, approvals and privileges, and prohibit the issuance of such licenses and approvals, for a period of five years if the violator is convicted of a crime that was committed at the same time as the trespass violation.

The bill requires a court to impose a surcharge for a trespass violation that is committed by a person engaged in natural resource activities. The surcharge imposed equals 35 percent of the amount of the forfeiture for the trespass violation. Under the bill, the surcharge is used for certain DNR enforcement activities.

The bill expands the prohibition under the laws regulating the operation of all-terrain vehicles and snowmobiles on land without the consent of the owner or lessee to include all land, not just private land.

Finally, the bill allows the service by mail of citations to persons outside the state for violations of certain natural resources laws.

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.** 23.33 (3) (c) of the statutes is amended to read:

2 23.33 (3) (c) On the ~~private~~ property of another without the consent of the
3 owner or lessee. Failure to post ~~private~~ such property does not imply consent for
4 all-terrain vehicle use.

5 **SECTION 2.** 23.50 (1) of the statutes is amended to read:

6 23.50 (1) The procedure in ss. 23.50 to 23.85 applies to all actions in circuit
7 court to recover forfeitures, plus costs, fees, and surcharges imposed under ch. 814,

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1 for violations of ss. 77.09, 90.21, 134.60, 167.10 (3), 167.31 (2), 281.48 (2) to (5),
2 283.33, 285.57 (2), 285.59 (2), (3) (c), and (4), 287.07, 287.08, 287.81, and 299.64 (2),
3 subch. VI of ch. 77, this chapter, and chs. 26 to 31, ch. 169, and ch. 350, and any
4 administrative rules promulgated thereunder, violations specified under s. 285.86,
5 violations of s. 943.13 pursuant to s. 29.921 (4m), violations of ch. 951 if the animal
6 involved is a captive wild animal, violations of rules of the Kickapoo reserve
7 management board under s. 41.41 (7) (k), violations to which s. 299.85 (7) (a) 2. or
8 4. applies, or violations of local ordinances enacted by any local authority in
9 accordance with s. 23.33 (11) (am) or 30.77.

10 **SECTION 3.** 23.62 (2) of the statutes is amended to read:

11 23.62 (2) A citation may be issued or served anywhere in the state by delivering
12 a copy to the defendant personally or it shall be served by leaving a copy at the
13 defendant's usual place of abode with a person of discretion residing therein or by
14 mailing a copy to the defendant's last-known address. A citation may be issued or
15 served outside the state by mailing a copy to the defendant's last-known address.

16 It shall be issued or served by a law enforcement officer.

17 **SECTION 4.** 23.65 (1) of the statutes is amended to read:

18 23.65 (1) When it appears to the district attorney that a violation of s. 90.21,
19 134.60, 281.48 (2) to (5), 283.33, 285.57 (2), 285.59 (2), (3) (c), and (4), 287.07, 287.08,
20 287.81, or 299.64 (2), this chapter or ch. 26, 27, 28, 29, 30, 31, 169, or 350, or any
21 administrative rule promulgated pursuant thereto, a violation specified under s.
22 285.86, violations of s. 943.13 pursuant to s. 29.921 (4m), or a violation of ch. 951, if
23 the animal involved is a captive wild animal, has been committed the district
24 attorney may proceed by complaint and summons.

25 **SECTION 5.** 23.86 of the statutes is created to read:

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1 **23.86 Natural resources trespass surcharge. (1) LEVY OF NATURAL**
2 RESOURCES TRESPASS SURCHARGE. (a) If a court imposes a forfeiture for a violation of
3 s. 943.13 that a person commits while engaged in an activity regulated under this
4 chapter or ch. 26, 27, 28, 29, 169, or 350, the court shall impose a natural resources
5 trespass surcharge under ch. 814 equal to 35 percent of the amount of the forfeiture.

6 (b) If a forfeiture is suspended in whole or in part, the natural resources
7 trespass surcharge shall be reduced in proportion to the suspension.

8 (c) If any deposit is made for an offense to which this section applies, the person
9 making the deposit shall also deposit a sufficient amount to include the natural
10 resources trespass surcharge under this section. If the deposit is forfeited, the
11 amount of the natural resources trespass surcharge shall be transmitted to the
12 secretary of administration under par. (d). If the deposit is returned, the natural
13 resources trespass surcharge shall also be returned.

14 (d) The clerk of the court shall collect and transmit to the county treasurer the
15 natural resources trespass surcharge and other amounts required under s. 59.40 (2)
16 (m). The county treasurer shall then make payment to the secretary of
17 administration as provided in s. 59.25 (3) (f) 2. The secretary of administration shall
18 deposit the amount of the natural resources trespass surcharge into the conservation
19 fund.

20 **(2) USE OF NATURAL RESOURCES TRESPASS SURCHARGE FUNDS.** All moneys collected
21 from natural resources trespass surcharges shall be credited to the appropriation
22 under s. 20.370 (3) (mu).

23 **SECTION 6.** 29.011 (2) of the statutes is amended to read:

24 29.011 **(2)** The legal title to a wild animal or carcass, taken or reduced to
25 possession in violation of this chapter, remains in the state. The title to a wild animal

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1 or carcass, lawfully acquired, is subject to the condition that upon the violation of this
2 chapter the laws of this state relating to the possession, use, giving, sale, barter or
3 transportation of a wild animal or carcass by the owner, the ownership shall revert,
4 as a result of the violation, to the state.

5 **SECTION 7.** 29.921 (4m) of the statutes is created to read:

6 29.921 (4m) TRESPASS. The department and its wardens may execute and serve
7 warrants and processes issued for a violation of s. 943.13, if the violation was done
8 while the person was engaged in an activity regulated under this chapter or ch. 23,
9 26, 27, 28, 169, or 350, in the same manner as any constable may serve and execute
10 the process; and may arrest, with or without a warrant, any person detected in the
11 actual violation, or whom the warden has probable cause to believe is guilty of such
12 a violation, and may take the person before any court in the county where the
13 violation was committed and make a proper complaint. For the purpose of enforcing
14 any of the laws of this state, any warden may stop and board any boat and stop any
15 vehicle, if the warden reasonably suspects there is a violation of the law.

16 **SECTION 8.** 29.921 (5) of the statutes is amended to read:

17 29.921 (5) ADDITIONAL ARREST POWERS. In addition to the arrest powers under
18 sub. ~~subs.~~ (1) and (4m), a warden who has completed a program of law enforcement
19 training approved by the law enforcement standards board, has been certified as
20 qualified to be a law enforcement officer under s. 165.85 (4) (b) 1. and has complied
21 with any applicable requirements under s. 165.85 (4) (bn) 1. while on duty and in
22 uniform or on duty and upon display of proper credentials may assist another law
23 enforcement agency as defined under s. 165.83 (1) (b) including making an arrest at
24 the request of the agency, may arrest a person pursuant to an arrest warrant
25 concerning the commission of a felony or may arrest a person who has committed a

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1 crime in the presence of the warden. If the warden makes an arrest without the
2 presence of another law enforcement agency, the warden shall cause the person
3 arrested to be delivered to the chief of police or sheriff in the jurisdiction where the
4 arrest is made, along with the documents and reports pertaining to the arrest. The
5 warden shall be available as a witness for the state. A warden may not conduct
6 investigations for violations of state law except as authorized in ss. 23.11 (4), 29.924
7 (1) and 41.41 (12). A warden acting under the authority of this subsection is
8 considered an employee of the department and is subject to its direction, benefits and
9 legal protection. The authority granted in this section does not apply to county
10 conservation wardens or special conservation wardens.

11 **SECTION 9.** 29.924 (1) of the statutes is amended to read:

12 29.924 (1) INVESTIGATIONS. ~~The department and its wardens shall, upon~~ Upon
13 receiving notice or information of the violation of any of the laws cited ins. for which
14 the department and its wardens have enforcement authority under s. 29.921 (1), to
15 (4m), the department and its wardens shall as soon as possible make a thorough
16 investigation and institute proceedings if the evidence warrants it.

17 **SECTION 10.** 29.924 (2) of the statutes is amended to read:

18 29.924 (2) DRIVING WITHOUT HEADLIGHTS. In the performance of their law
19 enforcement duties, wardens may operate motor vehicles owned or leased by the
20 department upon a highway, other than an interstate, a state trunk highway or any
21 highway within the limits of any incorporated area, during hours of darkness
22 without lighted headlamps, tail lamps or clearance lamps, contrary to s. 347.06, if
23 the driving will aid in the accomplishment of a lawful arrest for violation of ~~this~~
24 chapter any of the laws for which the department and its wardens have enforcement
25 authority under s. 29.921 (1) to (4m) or in ascertaining whether a violation of ~~this~~

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1 ~~chapter~~ these laws has been or is about to be committed. Any civil action or
2 proceeding brought against any warden operating a motor vehicle under this
3 subsection is subject to ss. 893.82 and 895.46.

4 **SECTION 11.** 29.924 (3) of the statutes is amended to read:

5 29.924 (3) OPENING PACKAGES. The department and its wardens may examine
6 and open any package in the possession of a common carrier which they have
7 probable cause to believe contains wild animals, or carcasses, in violation of this
8 ~~chapter, or carcasses,~~ any of the laws for which the department and its wardens have
9 enforcement authority under s. 29.921 (1) to (4m), or is falsely labeled in violation
10 of ~~this chapter~~ these laws. Each common carrier and its agent or employee shall
11 permit the officer to examine and open the package. Any opened package shall be
12 restored to its original condition.

13 **SECTION 12.** 29.924 (4) of the statutes is amended to read:

14 29.924 (4) ACCESS TO STORAGE PLACES. The owner or occupant of any
15 cold-storage warehouse or building used for the storage or retention of wild animals,
16 or their carcasses, that are subject to regulation under ~~this chapter~~ any of the laws
17 for which the department and its wardens have enforcement authority under s.
18 29.921 (1) to (4m) shall permit the department and its wardens to enter and examine
19 the premises subject to s. 66.0119. The owner or occupant, or the agent or employee
20 of the owner or occupant, shall deliver to the officer any such wild animal or carcass,
21 in his or her possession during the closed season, whether taken within or without
22 the state

23 **SECTION 13.** 29.931 (1) of the statutes is amended to read:

24 29.931 (1) SEIZURE AND CONFISCATION OF WILD ANIMALS OR PLANTS. The
25 department and its wardens shall seize and confiscate any wild animal, carcass or

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1 plant caught, killed, taken, had in possession or under control, sold or transported
2 in violation of ~~this chapter or ch. 169~~ any of the laws for which the department and
3 its wardens have enforcement authority under s. 29.921 (1) to (4m). The officer may,
4 with or without warrant, open, enter and examine all buildings, camps, boats on
5 inland or outlying waters, vehicles, valises, packages and other places where the
6 officer has probable cause to believe that wild animals, carcasses or plants, taken or
7 held in violation of ~~this chapter or ch. 169~~ these laws, are to be found.

8 **SECTION 14.** 29.931 (2) (a) of the statutes is amended to read:

9 29.931 (2) (a) The department and its wardens shall seize and hold, subject to
10 the order of the court for the county in which the alleged offense was committed, any
11 vehicle, boat or object declared by this chapter to be a public nuisance, or which they
12 have probable cause to believe is being used in violation of ~~this chapter or ch. 169 or~~
13 ~~s. 167.31, 287.81, 940.24, 941.20, 948.60, 948.605 or 948.61, is being used in the~~
14 ~~commission of a crime involving an animal normally found in the wild in violation~~
15 ~~of s. 951.09, or is being used in the commission of a crime relating to a submerged~~
16 ~~cultural resource in violation of s. 44.47~~ any of the laws for which the department and
17 its wardens have enforcement authority under s. 29.921 (1) to (4m). If it is proven
18 that the vehicle, boat or object is a public nuisance or that within 6 months previous
19 to the seizure the vehicle, boat or object was used in violation of ~~this chapter or ch.~~
20 ~~169 or s. 167.31, 287.81, 940.24, 941.20, 948.60, 948.605 or 948.61, was used in the~~
21 ~~commission of a crime involving an animal normally found in the wild in violation~~
22 ~~of s. 951.09, or was used in the commission of a crime relating to a submerged cultural~~
23 ~~resource in violation of s. 44.47~~ any of the laws for which the department and its
24 wardens have enforcement authority under s. 29.921 (1) to (4m), it shall be
25 confiscated if the court directs in its order for judgment.

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1 **SECTION 15.** 29.931 (2) (b) of the statutes is amended to read:

2 29.931 (2) (b) Any perishable property seized by the department or its wardens
3 under this section may be sold at the highest available price, and the proceeds of the
4 sale turned into court for disposition as the court directs.

5 **SECTION 16.** 29.934 (1) (a) of the statutes is amended to read:

6 29.934 (1) (a) All wild animals, carcasses ~~or~~, plants, vehicles, boats, or objects
7 that are not destroyed as authorized by law and that are confiscated by the
8 department for a violation of ~~this chapter or ch. 169~~ and all vehicles, boats or objects
9 confiscated by the department for a violation of ~~this chapter or ch. 169~~ shall, if not
10 ~~destroyed as authorized by law,~~ any of the laws for which the department and its
11 wardens have enforcement authority under s. 29.921 (1) to (4m), shall be sold at the
12 highest price obtainable, except as provided in s. 29.936, by the department, or by
13 an agent on commission under supervision of the department. The net proceeds of
14 sales under this subsection, after deducting the expense of seizure and sale and any
15 commissions and any amounts owing to holders of security interests under par. (c)
16 or (d), shall be remitted to the department. The remittance shall be accompanied by
17 a report of the sales, supported by vouchers for expenses and commissions, and shall
18 be filed with the department.

19 **SECTION 17.** 29.934 (2) of the statutes is amended to read:

20 29.934 (2) On any sales under this section of wild animals or carcasses, the
21 department or the agent selling them shall issue to each purchaser a certificate, on
22 forms prepared and furnished by the department, covering the sales. The wild
23 animals or carcasses so purchased shall be consumed, resold, or otherwise disposed
24 of by the purchaser within a period to be set by the department, but may not be resold

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1 or exchanged, in whole or in part, to any other person, except as provided in sub. (3)
2 or as authorized by the department.

3 **SECTION 18.** 350.10 (1) (f) of the statutes is amended to read:

4 350.10 (1) (f) On the ~~private~~ property of another without the consent of the
5 owner or lessee. Failure to post ~~private~~ such property does not imply consent for
6 snowmobile use. Any other motor-driven craft or vehicle principally manufactured
7 for off-highway use shall at all times have the consent of the owner before operation
8 of such craft or vehicle on ~~private~~ lands of another.

9 **SECTION 19.** 814.75 (17m) of the statutes is created to read:

10 814.75 (17m) The natural resources trespass surcharge.

11 **SECTION 20.** 814.77 (10m) of the statutes is created to read:

12 814.77 (10m) The natural resources trespass surcharge under s. 23.86.

13 **SECTION 21.** 814.80 (13m) of the statutes is created to read:

14 814.80 (13m) The natural resources trespass surcharge.

15 **SECTION 22.** 943.13 (3g) of the statutes is created to read:

16 943.13 (3g) (a) The department of natural resources may follow the procedures
17 for the issuance of a citation under ss. 23.50 to 23.99 to collect a forfeiture for a
18 violation of this section pursuant to s. 29.921 (4m).

19 (b) If a person is convicted of a violation of this section while engaged in an
20 activity regulated under ch. 23, 26, 27, 28, 29, 169, or 350, the court may revoke or
21 suspend any or all approvals and privileges granted to the person under ch. 29, and
22 may revoke or suspend any or all licenses and privileges granted to the person under
23 ch. 169 that relate to hunting or trapping, for a period of not more than 3 years from
24 the date of conviction.

