

# State of Wisconsin



1995 Assembly Bill 495

Date of enactment: April 25, 1996

Date of publication\*: May 9, 1996

## 1995 WISCONSIN ACT 290

AN ACT to *renumber and amend* 30.681 (1) (b), 30.681 (2) (b) and 30.681 (2) (d); to *amend* 23.50 (1), 23.65 (1), 144.98, 144.99 (1) and 973.075 (5) (intro.); and to *create* 30.50 (3d), 30.681 (1) (b) 2., 30.681 (2) (b) 2., 30.681 (2) (d) 2., 144.78, 144.783, 144.985 and 973.075 (1) (d) of the statutes; **relating to**: requiring certain tank vessels to have double hulls or tug escorts, the operation of motorboats for commercial purposes under the intoxicated boating law, prohibiting open burning on vessels operated for commercial purposes, inspecting vessels and providing penalties.

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

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

23.50 (1) The procedure in ss. 23.50 to 23.85 applies to all actions in circuit court to recover forfeitures, penalty assessments, jail assessments, applicable weapons assessments, applicable environmental assessments, applicable wild animal protection assessments, applicable natural resources assessments, applicable fishing shelter removal assessments, applicable snowmobile registration restitution payments and applicable natural resources restitution payments for violations of ss. 77.09, 134.60, 144.421 (2), 144.422 (2), (2m) (c) and (2r), 144.783 (2), 146.20 (2) to (5), 147.021, 159.07, 159.08, 159.81, 167.10 (3) and 167.31 (2), subch. VI of ch. 77, this chapter and chs. 26 to 31 and of ch. 350, and any administrative rules promulgated thereunder, violations of rules of the Kickapoo valley governing board under s. 16.21 (7) (k) or violations of local ordinances enacted by any local authority in accordance with s. 23.33 (11) (am) or 30.77.

**SECTION 2.** 23.65 (1) of the statutes is amended to read:

23.65 (1) When it appears to the district attorney that a violation of s. 134.60, 144.421 (2), 144.422 (2), (2m) (c) or (2r), 144.783 (2), 146.20 (2) to (5), 147.021, 159.07, 159.08 or 159.81, this chapter or ch. 26, 27, 28, 29, 30, 31 or 350, or any administrative rule promulgated pursuant thereto, has been committed the district attorney may proceed by complaint and summons.

**SECTION 3.** 30.50 (3d) of the statutes is created to read:

30.50 (3d) "Commercial motorboat" means a motorboat while it is being operated to transport property or passengers for hire or while it is being used by its operator or owner to earn a livelihood or to gain a profit or both.

**SECTION 4.** 30.681 (1) (b) of the statutes is renumbered 30.681 (1) (b) 1. and amended to read:

30.681 (1) (b) 1. No person may engage in the operation of a motorboat while the person has a blood alcohol concentration of 0.1% or more by weight of alcohol in his or her blood. No person may engage in the operation of a motorboat while the person has 0.1 grams or more of alcohol in 210 liters of his or her breath. This subdivision does not apply to commercial motorboats.

**SECTION 5.** 30.681 (1) (b) 2. of the statutes is created to read:

\* Section 991.11, WISCONSIN STATUTES 1993-94: Effective date of acts. "Every act and every portion of an act enacted by the legislature over the governor's partial veto which does not expressly prescribe the time when it takes effect shall take effect on the day after its date of publication as designated" by the secretary of state [the date of publication may not be more than 10 working days after the date of enactment].

30.681 (1) (b) 2. No person may engage in the operation of a commercial motorboat while the person has a blood alcohol concentration of 0.04% or more by weight of alcohol in his or her blood. No person may engage in the operation of a commercial motorboat while the person has 0.04 grams or more of alcohol in 210 liters of his or her breath.

**SECTION 6.** 30.681 (2) (b) of the statutes is renumbered 30.681 (2) (b) 1. and amended to read:

30.681 (2) (b) 1. No person who has a blood alcohol concentration of 0.1% or more by weight of alcohol in his or her blood may cause injury to another person by the operation of a motorboat. No person who has 0.1 grams or more of alcohol in 210 liters of his or her breath may cause injury to another person by the operation of a motorboat. This subdivision does not apply to commercial motorboats.

**SECTION 7.** 30.681 (2) (b) 2. of the statutes is created to read:

30.681 (2) (b) 2. No person who has a blood alcohol concentration of 0.04% or more by weight of alcohol in his or her blood may cause injury to another person by the operation of a commercial motorboat. No person who has 0.04 grams or more of alcohol in 210 liters of his or her breath may cause injury to another person by the operation of a commercial motorboat.

**SECTION 8.** 30.681 (2) (d) of the statutes is renumbered 30.681 (2) (d) 1. and amended to read:

30.681 (2) (d) 1. In an action under this subsection for a violation of the intoxicated boating law where the defendant was operating a motorboat that is not a commercial motorboat, the defendant has a defense if he or she proves by a preponderance of the evidence that the injury would have occurred even if he or she had been exercising due care and he or she had not been under the influence of an intoxicant or did not have a blood alcohol concentration of 0.1% or more by weight of alcohol in his or her blood or 0.1 grams or more of alcohol in 210 liters of his or her breath.

**SECTION 9.** 30.681 (2) (d) 2. of the statutes is created to read:

30.681 (2) (d) 2. In an action under this subsection for a violation of the intoxicated boating law where the defendant was operating a commercial motorboat, the defendant has a defense if he or she proves by a preponderance of the evidence that the injury would have occurred even if he or she had been exercising due care and he or she had not been under the influence of an intoxicant or did not have a blood alcohol concentration of 0.04% or more by weight of alcohol in his or her blood or 0.04 grams or more of alcohol in 210 liters of his or her breath.

**SECTION 10.** 144.78 of the statutes is created to read:

**144.78 Environmental protection requirements for tank vessels. (1) DEFINITIONS.** In this section:

(a) “Bulk” means an undivided quantity of a substance that is loaded directly into a vessel and is not divided into individual containers.

(am) “Discharge” has the meaning given in s. 144.76 (1) (a).

(b) “Double hull” has the meaning given in 33 CFR 157.03 (kk).

(c) “Hazardous material” has the meaning given in 46 USC 2101 (14).

(d) “Oil” means hydrocarbon, vegetable or mineral oil of any kind or in any form and includes oil mixed with wastes other than dredged spoil.

(e) “Tank vessel” means a vessel that is constructed or adapted to carry, or that carries, oil or hazardous material in bulk as cargo or cargo residue.

**(2) PROHIBITION.** (a) Except as provided in par. (b) or (c), no tank vessel of under 5,000 gross tons may transport oil or hazardous material in bulk on that part of the Mississippi River over which this state has jurisdiction from the northern boundary of the Upper Mississippi River National Wildlife and Fish Refuge to the southernmost point of the Upper Mississippi River National Wildlife and Fish Refuge in this state unless the tank vessel has a double hull.

(b) Paragraph (a) does not apply to a tank vessel when the tank vessel and its crew are in danger due to extreme weather conditions.

(c) Paragraph (a) does not apply to a self-propelled tank vessel or a tank vessel that is propelled by a towing vessel if a tugboat accompanies the self-propelled tank vessel or tank vessel and towing vessel.

**(3) PENALTIES.** (a) Except as provided under par. (b), any person who owns or controls the movement of a tank vessel violating sub. (2) shall be required to forfeit not less than \$5,000 nor more than \$10,000.

(b) Any person who owns or controls the movement of a tank vessel violating sub. (2) and who, within 5 years before the commission of the current violation, was previously convicted of violating sub. (2) shall be fined not less than \$10,000 nor more than \$25,000 or imprisoned for not more than 6 months or both.

(c) In addition to any penalty under par. (a) or (b), any person who owns or controls the movement of a tank vessel violating sub. (2) from which oil or a hazardous material is discharged shall be required to forfeit triple the amount of the damage to the environment.

**SECTION 11.** 144.783 of the statutes is created to read:

**144.783 Open burning on commercial vessels. (1)**

**DEFINITIONS.** In this section:

(a) “Commercial vessel” means a vessel that is operated to transport property or passengers for hire or used by its operator or owner to earn a livelihood.

(b) “Open burning” has the meaning given in s. 144.436 (1) (b).

(2) PROHIBITION. No person may engage in or permit open burning on a commercial vessel in the waters of the state.

(3) CITATIONS. The department may follow the procedures for the issuance of a citation under ss. 23.50 to 23.99 to collect a forfeiture for a violation of sub. (2).

(4) PENALTY. Any person who violates sub. (2) shall be required to forfeit no less than \$100 nor more than \$500.

**SECTION 12.** 144.98 of the statutes, as affected by 1995 Wisconsin Act 27, is amended to read:

**144.98 Enforcement; duty of department of justice; expenses.** The attorney general shall enforce this chapter, except ss. 144.421 and 144.422 and 144.783, and all rules, special orders, licenses, plan approvals and permits of the department, except those promulgated or issued under ss. 144.421 and 144.422 and 144.783. The circuit court for Dane county or for any other county where a violation occurred in whole or in part has jurisdiction to enforce this chapter or the rule, special order, license, plan approval or permit by injunctive and other relief appropriate for enforcement. For purposes of this proceeding where this chapter or the rule, special order, license, plan approval or permit prohibits in whole or in part any pollution, a violation is deemed a public nuisance. The department of natural resources may enter into agreements with the department of justice to assist with the administration of this chapter. Any funds paid to the department of justice under these agreements shall be credited to the appropriation account under s. 20.455 (1) (k).

**SECTION 13.** 144.985 of the statutes is created to read:

**144.985 Inspecting vessels.** An employe or agent of the department may board and inspect any vessel that is subject to s. 144.78 or 144.783 to determine the state of compliance with those provisions.

**SECTION 14.** 144.99 (1) of the statutes, as affected by 1995 Wisconsin Act 27, is amended to read:

144.99 (1) Any person who violates this chapter, except ss. 144.30 to 144.426, 144.48 (4) (b), 144.78 (2), 144.783 (2), 144.941 to 144.944 and 144.96 (1), or any rule promulgated or any plan approval, license or special order issued under this chapter, except under those sections, shall forfeit not less than \$10 nor more than \$5,000, for each violation. Each day of continued violation is a separate offense. While the order is suspended, stayed or enjoined, this penalty does not accrue.

**SECTION 15.** 973.075 (1) (d) of the statutes is created to read:

973.075 (1) (d) A tank vessel that violates s. 144.78 (2) that is owned by a person who, within 5 years before the commission of the current violation, was previously convicted of violating s. 144.78 (2), but if the tank vessel is encumbered by a bonafide perfected security interest that was perfected before the date of the commission of the current violation and the holder of the security interest neither had knowledge of nor consented to the commission of that violation, the holder of the security interest shall be paid from the proceeds of the forfeiture.

**SECTION 16.** 973.075 (5) (intro.) of the statutes is amended to read:

973.075 (5) (intro.) All forfeitures under ss. 973.075 to 973.077 shall be made with due provision for the rights of innocent persons under sub. (1) (b) 1. to 3 and (d). Any property seized but not forfeited shall be returned to its rightful owner. Any person claiming the right to possession of property seized may apply for its return to the circuit court for the county in which the property was seized. The court shall order such notice as it deems adequate to be given the district attorney and all persons who have or may have an interest in the property and shall hold a hearing to hear all claims to its true ownership. If the right to possession is proved to the court's satisfaction, it shall order the property returned if:

**SECTION 17. Nonstatutory provisions.**

(1) LEGISLATIVE FINDINGS. The legislature finds that there is a serious threat to the environment of the Upper Mississippi River National Wildlife and Fish Refuge from discharges of oil and hazardous substances and that requiring double-hull construction or tugboat escort of vessels that transport oil and hazardous substances on the portion of the Mississippi River on or along which the refuge is located is the only effective method of preventing those discharges.

**SECTION 18. Initial applicability.**

(1) The treatment of sections 30.50 (3d) and 30.681 (1) (b) and (2) (b) and (d) of the statutes and the creation of section 30.681 (1) (b) 2. and (2) (b) 2. and (d) 2. of the statutes first apply to offenses committed on the effective date of this subsection, but do not preclude the counting of prior convictions when sentencing a person.

**SECTION 19. Effective dates.** This act takes effect on the day after publication, except as follows:

(1) REQUIREMENTS FOR TANK VESSELS. The treatment of sections 144.78 and 973.075 (1) (d) and (5) (intro.) of the statutes takes effect on January 1, 1997.