

1999 DRAFTING REQUEST

Bill

Received: **01/14/2000**

Received By: **gibsom**

Wanted: **As time permits**

Identical to LRB:

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

By/Representing: **Don Nelson**

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

Drafter: **rkite**

May Contact:

Ah. Drafters:

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

Extra Copies: **Gordon Anderson - Leg. Cour**

Pre Topic:

No specific pre topic given

Topic:

Failure to pay for raw forest products

Instructions:

See Attached

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>
/1	rkite 01/14/2000	wjackson 01/18/2000	jfrantze 01/18/2000	_____	lrb_docadmin 01/18/2000	lrb_docadminS&L 01/20/2000	

FE Sent For:

<END>

01-24-00

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/?	rkite	1 wlj 1/18	26/1/18	26 / Km 1/18			

FE Sent For:

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9/20

BNK -

wants a bill being not germane

Assembly Bill 555

" A person who fails to pay for the forest products

w/ intent to defraud the owner of the forest products

may be punished 943.20 for theft."

sub drafted by Robin plus above into a bill



RNK
or
MGG

WISCONSIN LEGISLATIVE COUNCIL STAFF MEMORANDUM

One East Main Street, Suite 401; P.O. Box 2538; Madison, WI 53701-2536

Telephone: (608) 266-1304

Fax: (608) 266-3830

Email: leg.council@legis.state.wi.us

DATE: December 16, 1999

TO: REPRESENTATIVE JOHN AINSWORTH, CHAIRPERSON; AND
MEMBERS OF THE ASSEMBLY COMMITTEE ON RURAL AFFAIRS
AND FORESTRY

FROM: Gordon A. Anderson, Senior Staff Attorney

SUBJECT: Assembly Substitute Amendment (LRBs0229/1) to 1999 Assembly Bill
555, Relating to Failure to Pay Owners of Raw Forest Products

The Assembly Committee on Rural Affairs and Forestry held a public hearing on 1999 Assembly Bill 555, relating to failure to pay owners of raw forest products on November 18, 1999.

Assembly Substitute Amendment (LRBs0229/1) was developed to address issues raised at that hearing.

A. 1999 ASSEMBLY BILL 555

Under the bill, as introduced, a new provision is created in s. 26.05, Stats., relating to timber theft. The new provision provides that no person who enters into a contract with the owner of raw forest products under which the person receives the owner's consent to cut, remove or transport raw forest products may fail to pay the owner the total amount of any compensation for the raw forest products as agreed upon under the contract.

It also provides that, in addition to any other penalty, a person who violates s. 26.05 (2), Stats. (theft of timber products), or a rule promulgated under that provision is liable for the reasonable cost incurred to establish the volume and value of the raw forest products cut, removed or transported.

B. ASSEMBLY SUBSTITUTE AMENDMENT - (LRBs0229/1)

Assembly Substitute Amendment differs from the original bill in the following:

1. **SECTION 1** creates s. 26.014, Stats., a provision not contained in the original bill. It provides that if a court enters a judgment in an action to recover the amount of any compensation due under a contract to cut, remove or transport raw forest products, the court shall also award costs and attorney fees.

2. **SECTION 3** amends s. 26.05 (3) (b), Stats., a provision not contained in the **original** bill. It provides that instead of the forfeiture provided for violation of the law a person who intentionally violates s. 26.05 (2), Stats. (theft of timber products), or a rule promulgated under that provision may be punished under s. 943.20, Stats., for theft. The effect of the change is to clarify that a person who violates the new s. 26.05 (2m), Stats., relating to failure to pay for forest products, could not be punished under s. 943.20, Stats., for theft. Intentionally failing to pay the owner the total amount of compensation for raw forest products as agreed upon under the contract, a violation of new s. 26.05 (2m), Stats., does not appear to be “theft” under s. 943.20, Stats.

3. **SECTION 4** amends s. 26.05 (3) (c), Stats., but in a different manner than the original bill. The original bill limited the duty to pay for reasonable costs to establish the value **and** volume of the forest products to **theft of timber products**; it does not include failure to pay for forest products. The substitute amendment provides that a person who violates the s. 26.05, Stats., provisions on theft of timber products [s. 26.05 (2), Stats.] or failure to pay the owner for **forest** products [s. 26.05 (2m), Stats.] or a rule promulgated under the new s. 26.05 (2m), is liable for the reasonable costs incurred to establish the value and volume of the raw **forest** products cut, removed or transported.

If you have any further questions or I can be of further assistance, please let me know.

GAA:tlw:wu;tlu

1-14-2000

Talked to Gordon Anderson re: X-ref to
943.20

Is purpose to incorporate the elements
of theft under 943.20(1)(d) or
only the penalties under 943.20(3)?
Intention, according to Gordon is to
incorporate the penalties
only need to show failure to pay &
intent to defraud

Also -

discussing language in s 26.04 with Gordon
agreed that it should say "reasonable" attorney
fees & costs & fees go to ~~the prevailing party~~
successful party if they refused to make or
accept reasonable payment before action
commenced

Soon

D-Note

ASSEMBLY SUBSTITUTE AMENDMENT
TO 1999 ASSEMBLY BILL 555

1999 BILL

if the unsuccessful party, before the commencement of the action, unreasonably refused to pay a demand for damages or to accept an offer of payment for damages

regenerate cat

1 **AN ACT to amend** 26.05 (3) (b) and 26.05 (3) (c); and **to create** 26.04 and 26.05
2 (2m) of the statutes; **relating to:** failure to pay owners of raw forest products.

Insert Analysis

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

3 **SECTION 1.** 26.04 of the statutes is created to read:

the successful party court

4 **26.04 Recovery of costs under timber contracts.** Notwithstanding s.
5 814.04, if a court enters a judgment in ~~an~~ ^{a civil} action to recover the amount of any
6 compensation due under a contract to cut, remove or transport raw forest products,
7 the court shall also award ^{reasonable} costs and attorney fees.

8 **SECTION 2.** 26.05 (2m) of the statutes is created to read:

9 26.05 **(2m) PAYMENT TO OWNER REQUIRED.** No person who entered into a contract
10 with the owner of raw forest products under which the person received the owner's
11 consent to cut, remove or transport the raw forest products may fail to pay to the

failure to pay was with the intent to defraud the owner of the products, to the penalties ~~that apply~~ for theft.

¶ The bill also provides that if a court enters a judgment in a ^{civil} action to recover the amount of compensation due under a contract to cut or

remove raw forest products, the court must also award ^{court} costs and ^{reasonable} attorney fees to the ~~party~~ ^{successful} party if the unsuccessful

FE-S/L

party, before commencement of the action, unreasonably refused to pay a demand for damages or to accept an offer of payment for damages.

Insert 2-6

SECTION #. CR; 26.05(3)(bn)✓

26.05(3)(bn) Instead of the forfeiture provided under par. (a)✓, a person who fails to pay for raw forest products under sub. (2m)✓ with intent to defraud the owner of the raw forest products, may be penalized as provided under S. 943.20(3)✓!

1999

Nonstat File Sequence: **EEE**

LRB 422811

RNK: _____

INITIAL APPLICABILITY

Insert 2-11

- In the component bar:
 For the action phrase, execute: **create → action: → *NS: → inappl**
 For the budget action phrase, execute: **create → action: → *NS: → 93XX**
 For the text, execute: **create → text: → *NS: → inappl**
- Nonstatutory subunits are numbered automatically if "(#1)", "(#2)", etc., is filled in. Below, for the budget, fill in the **9300** department code; and fill in "___" or "()" only if a "frozen" number is needed.

SECTION # 193 **Initial applicability;**

(#1)

26.04 The treatment of sections ..
 of the statutes
 first applies to

- In the component bar:
 For the action phrase, execute: **create → action: → *NS: → inappl**
 For the text, execute: **create → text: → *NS: → inapplA**
- Nonstatutory subunits are numbered automatically if "(#1)", "(#2)", etc., is filled in. Below, fill in "___" or "()" only if a "frozen" number is needed.

SECTION # _____ **Initial applicability** *yjo*

(#1) This act first applies to *acts committed on the effective date of this subsection*

(End)



LRB-4228/1 dr
RNK:Wlj

D-Note

4# In accordance with your instructions,
this draft incorporates the provisions of
LRB 0229/1 as well as additional changes
made pursuant to
~~in accordance with~~ my discussions
with Gordon Anderson of the Legislative
Council. Please feel free to contact
me if you have any questions.

RNK

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

LRB-4228/1dn
RNK:wlj:jf

January 18, 2000

In accordance with your instructions, this draft incorporates the provisions of LRBs0229/1 as well as additional changes made pursuant to my discussions with Gordon Anderson of the Legislative Council. Please feel free to contact me if you have any questions.

Robin N. Rite
Legislative Attorney
Phone: (608) 266-7291
E-mail: Robin.Kite@legis.state.wi.us

**SUBMITTAL
FORM**

**LEGISLATIVE REFERENCE BUREAU
Legal Section Telephone: 266-3561
5th Floor, 100 N. Hamilton Street**

The attached draft is submitted for your inspection. Please check each part carefully, proofread each word, and sign on the appropriate line(s) below.

Date: 01/18/2000

To: Representative Pettis

Relating to LRB drafting number: LRB-4228

Topic

Failure to pay for raw forest products

Subject(s)

Nat. Res. - forests and parks

1. **JACKET** the draft for introduction

Mark S. Pettis

in the **Senate** _____ or the **Assembly** (check only one). Only the requester under whose name the

drafting request is entered in the **LRB's** drafting records may authorize the draft to be submitted. Please allow one day for the preparation of the required copies.

2. **REDRAFT.** See the changes indicated or attached _____.

A revised draft will be submitted for your approval with changes incorporated.

3. Obtain **FISCAL ESTIMATE NOW**, prior to introduction _____.

If the analysis indicates that a fiscal estimate is required because the proposal makes an appropriation or increases or decreases existing appropriations or state or general local government fiscal liability or revenues, you have the option to request the fiscal estimate prior to introduction. If you choose to introduce the proposal without the fiscal estimate, the fiscal estimate will be requested automatically upon introduction. It takes about 10 days to obtain a fiscal estimate. Requesting the fiscal estimate prior to introduction retains your flexibility for possible redrafting of the proposal.

If you have any questions regarding the above procedures, please call 266-3561. If you have any questions relating to the attached draft, please feel free to call me.

Robin N. Rite, Legislative Attorney
Telephone: (608) 266-7291