



## 1999 ASSEMBLY BILL 504

October 5, 1999 - Introduced by Representatives GARD, AINSWORTH, KESTELL, GUNDERSON, UNDERHEIM, SYKORA, MUSSER, HASENOHRL, BOYLE and WAUKAU, cosponsored by Senators BRESKE, DRZEWIECKI, BURKE, FARROW and RUDE. Referred to Committee on Rural Affairs and Forestry.

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.

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### ***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

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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.

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***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:

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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

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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.**

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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.

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

21 26.05 (3) (c) In addition to any other penalty, a person who violates this section,  
22 or a rule promulgated under this section, is liable for the reasonable costs incurred  
23 to establish the volume and value of the raw forest products cut, removed or  
24 transported.

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

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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).

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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

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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.

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

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:

