

1993 Assembly Bill 91

Date of enactment: **March 29, 1994**

Date of publication*: **April 12, 1994**

1993 WISCONSIN ACT 169

AN ACT to amend 29.05 (8) (a), 29.06 (1), 973.075 (1) (b) (intro.) and 973.075 (2) (d); and to create 29.03 (11) and 973.075 (1) (c) of the statutes, relating to: vehicles, equipment and devices used in certain archaeological site violations and making appropriations.

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

SECTION 1. 29.03 (11) of the statutes is created to read:

29.03 (11) Any vehicle, as defined in s. 939.22 (44), remote sensing equipment, navigational device, survey equipment, scuba gear or other equipment or device used in the commission of a crime relating to a submerged cultural resource in violation of s. 44.47.

SECTION 2. 29.05 (8) (a) of the statutes is amended to read:

29.05 (8) (a) The department and its wardens shall seize and hold subject to the order of the court for the county in which the alleged offense was committed, any apparatus, appliance, equipment, vehicle or device, declared by this chapter to be a public nuisance, which they have probable cause to believe is being used in violation of this chapter, an administrative rule promulgated under this chapter or s. 159.81, 167.31, 940.24, 941.20, 948.60, 948.605 or 948.61 or is being used in the commission of a crime relating to a submerged cultural resource in violation of s. 44.47. If it is proven that within 6 months previous to the seizure the apparatus, appliance, equipment, vehicle or device was used in violation of this chapter or an administrative rule promulgated under this chapter or s. 159.81, 167.31, 940.24, 941.20, 948.60, 948.605 or 948.61 or was used in the commission of a crime relating to a submerged cultural resource in violation of s. 44.47, it shall be confiscated if the court directs in its order for judgment.

SECTION 3. 29.06 (1) of the statutes is amended to read:

29.06 (1) All confiscated wild animals, or carcasses or parts thereof, and all confiscated apparatus, appliances, equipment, vehicles or devices shall, if not destroyed as authorized by law, be sold at the highest price obtainable, by the department or its wardens, or by an agent on commission under the written authority and supervision of the department. The net proceeds of such sales, after deducting the expense of seizure and sale and any such commissions, shall be promptly remitted by the warden by whom or under whose authority and supervision the sales are made, to the department; the remittance to be accompanied by a complete and certified report of such sales, supported by proper vouchers covering all deductions made for expenses and commissions, to be filed with the department. Of the remittance from such sales of confiscated apparatus, appliances, equipment, vehicles or devices, 18% shall be paid into the conservation fund to reimburse it for expenses incurred in seizure and sale, and the remaining 82% shall be paid into the common school fund. In the case of the proceeds from the sale of a confiscated motor vehicle if the holder of a security interest perfected by filing with such motor vehicle as security, satisfies (and the burden of proof shall be upon the holder of a security interest) the court, or after judgment of confiscation, the department, that the violation that led to such confiscation was not with his or her knowledge, consent or connivance or with that of some person employed or trusted by the holder of a security interest, there shall also be deducted the amount due

1993 Assembly Bill 91

under the security agreement from the proceeds of such sale and the amount due shall be paid to the one entitled; in case a sufficient amount does not remain for such purpose after the other deductions then the amount remaining shall be paid. The department shall make a reasonable effort within 10 days after seizure to ascertain if a security interest in the seized motor vehicle exists, and shall within 10 days after obtaining actual or constructive notice of such security interest give the secured party notice of the time and place when there is to be any proceeding before the court or the judge pertaining to such confiscation and shall also give such secured party at least 10 days' notice of the time and place of sale. Constructive notice shall be limited to security interests perfected by filing. In all such cases the time of sale of the confiscated motor vehicle shall be within 20 days after judgment of confiscation provided in s. 29.05 (8). The provisions of s. 973.075 (1) (b) 1 to 3 and (5) apply to vehicles other than motor vehicles under this subsection. This subsection shall not apply to a deer killed, or so injured that it must be killed, by a collision with a motor vehicle on a highway. Such deer carcass shall be released free of charge to the motor vehicle operator under s. 29.40 (5) by the department or its agent, but shall be retained by the department or its agent if the motor vehicle operator declines to accept the carcass.

SECTION 4. 973.075 (1) (b) (intro.) of the statutes is amended to read:

973.075 (1) (b) (intro.) All vehicles, as defined in s. 939.22 (44), which are used to transport any property or weapon used or to be used or received in the commission of any felony, which are used in the commission of a crime in violation of s. 944.30, 944.31, 944.32, 944.33 or 944.34, which are used in the commission of a crime relating to a submerged cultural resource in violation of s. 44.47 or which are used to cause more than \$1,000 worth of criminal damage to cemetery property in violation of s. 943.01 (2) (d) or 943.012, but:

SECTION 5. 973.075 (1) (c) of the statutes is created to read:

973.075 (1) (c) All remote sensing equipment, navigational devices, survey equipment and scuba gear and any other equipment or device used in the commission of a crime relating to a submerged cultural resource in violation of s. 44.47.

SECTION 6. 973.075 (2) (d) of the statutes is amended to read:

973.075 (2) (d) The officer has probable cause to believe that the property was derived from or realized through a crime or that the property is a vehicle which was used to transport any property or weapon used or to be used or received in the commission of any felony, which was used in the commission of a crime relating to a submerged cultural resource in violation of s. 44.47 or which was used to cause more than \$1,000 worth of criminal damage to cemetery property in violation of s. 943.01 (2) (d) or 943.012.

SECTION 6m. Nonstatutory provisions; natural resources. Notwithstanding section 16.42 (1) (e) of the statutes, in submitting information under section 16.42 of the statutes for the purposes of the 1995-97 biennial budget bill, the department of natural resources shall submit information concerning the appropriation under section 20.370 (3) (ma) of the statutes as though the increase in the dollar amount of that appropriation by SECTION 8 (2) of this act had not been made.

SECTION 7. Appropriation changes; historical society. In the schedule under section 20.005 (3) of the statutes for the appropriation to the historical society under section 20.245 (3) (a) of the statutes, as affected by the acts of 1993, the dollar amount is increased by \$69,300 for fiscal year 1994-95 to fund the duties of the historical society under section 44.47 (5m) of the statutes and to increase the authorized FTE positions for the historical society by 1.0 GPR position, for the purpose of performing such duties.

SECTION 8. Appropriation changes; natural resources. (1) In the schedule under section 20.005 (3) of the statutes for the appropriation to the department of natural resources under section 20.370 (3) (ma) of the statutes, as affected by the acts of 1993, the dollar amount is increased by \$45,500 for fiscal year 1994-95 to fund the duties of the department under section 44.47 (5m) of the statutes and to increase the authorized FTE positions for the department by 1.0 GPR position, for the purpose of performing such duties.

(2) In the schedule under section 20.005 (3) of the statutes for the appropriation to the department of natural resources under section 20.370 (3) (ma) of the statutes, as affected by the acts of 1993, the dollar amount is increased by \$38,200 for fiscal year 1994-95 to fund the acquisition of equipment for the performance of duties of the department under section 44.47 (5m) of the statutes.