

CHAPTER 192.

RAILROADS.

REGULATIONS AND LIABILITIES.

192.01	Stations maintained; train stops.	192.34	Fences; complaint of insufficient; hearing; order.
192.03	Train time bulletins.	192.35	Fences; interference with, etc., trespassers on track.
192.05	Telephones in depots and offices.	192.355	Depositing debris on railroad right of way.
192.06	Sanitary inspection of depots.	192.36	Fences, occupant of land may build or repair.
192.07	Tickets, good for thirty days.	192.37	Fences, farm crossings; railroads to provide.
192.08	Cash fares, extra charge.	192.38	Contracts not affected.
192.09	Passenger refusing to pay may be put off.	192.39	Railroad construction; laborers' liens.
192.11	Locking cars; lighting.	192.40	Successor to railroad, liability for wages.
192.12	Steps, boarding and alighting trains.	192.41	Priority of labor claims in receiver-ships.
192.13	Wooden and steel coaches in trains.	192.42	Common carriers, joint liability, enforcement.
192.14	Caboose equipment.	192.43	Liability of carrier of passengers made absolute.
192.16	Gaming in cars, forfeiture, arrest of offenders.	192.44	Fires; railroad liability; action for damages.
192.17	Arrest of passenger; police power of conductors.	192.45	Standard headlights.
192.18	Shipment of grain, delivery.	192.455	Engine doors, mechanically operated.
192.19	Live stock shipments.	192.456	Engine, power reverse gear.
192.20	Shipment of live stock.	192.457	Stokers.
192.21	Live stock in transit not detained.	192.46	Express company, interest on claims against.
192.23	Railroad telegraphers; required age and experience.	192.465	Express companies, free deliveries.
192.24	Railroad employes; hours on and off duty.	192.47	Railroad police; oath; powers.
192.25	Railroad train crews.	192.48	Highway crossings, advance warning signs.
192.255	Qualifications of conductors and flagmen.	192.49	Limitation on officers, agents, etc.; competing lines.
192.26	Switching crews.	192.50	Personal injury liability; employes, negligence, risk, jury.
192.265	Whistles on locomotives.	192.51	Bridges at Superior.
192.266	Lights on track motor cars.	192.52	Terminals and shops, removal.
192.268	Windshield and canopy on track motor cars.	192.53	Railroad track clearance.
192.27	Connecting tracks and switching.	192.54	General penalty for chapter 192.
192.28	Railroad crossings; trains to stop.	192.55	Special penalties for chapter 192.
192.29	Train speed at street and highway crossings.	192.56	Abandoning of railroad stations.
192.291	Locking cars; dangerous articles.	192.71	Lands may be sold.
192.292	Trains obstructing highways.	192.72	Lands may be mortgaged.
192.295	Wilful neglect of railroad employes.		
192.30	Frog guards.		
192.31	Telltails over railroads.		
192.32	Trespassing on railroad.		
192.321	Getting on and off cars.		
192.324	Railroad bridges to be safe for employes.		
192.33	Fences, cattle guards, crossings.		

192.01 **Stations maintained; train stops.** Every corporation operating a railroad shall maintain a station at every village, whether incorporated or not, having a post office and containing 200 inhabitants or more, through or within one-eighth of a mile of which its line of road runs, and shall provide the necessary arrangements, receive and discharge freight and passengers, and shall stop at least one passenger train each day each way at such station, if trains are run on such road to that extent. Every such corporation neglecting or refusing fully to comply with this section, after demand therefor by any resident of such village, shall forfeit not less than \$25 nor more than \$50 for each and every day such neglect or refusal shall continue, one-half to the use of the person prosecuting therefor; but the public service commission may by order relieve any railroad corporation from compliance with all or any part of this section as to any such village.

192.03 **Train time bulletins.** Every corporation operating a railroad shall place in a conspicuous place in each passenger depot at which there is a telegraph office, a blackboard of suitable size, upon which it shall cause to be written, at least twenty minutes before the schedule time for the arrival of each passenger train stopping at such station, the fact whether such train is on schedule time or not, and if late, how much. Provided that any passenger train not more than five minutes late shall be deemed to be on time.

192.05 **Telephones in depots and offices.** Every railroad company shall furnish reasonably adequate telephonic connection with its offices, buildings and grounds.

192.06 **Sanitary inspection of depots.** The local health officer shall inspect depot toilets from time to time, and if they are found to be in an insanitary condition, he shall at once notify the proper officials of the railroad company, stating in what respects they are

insanitary. It shall then be the duty of the railroad company, within a reasonable time, to make such alterations or repairs as will remove the condition complained of.

192.07 Tickets, good for thirty days. Every railroad ticket sold in this state at the regular rate for transportation between points and over lines entirely within the state shall entitle the holder thereof to use the same at any time within thirty days following the date of sale.

192.08 Cash fares, extra charge. If a passenger has no ticket ten cents in excess of the regular full rate may be charged and collected by the carrier; provided, however, that when the ticket office is closed, or where reasonable opportunity for the purchase of tickets is not provided, this section shall not apply.

192.09 Passenger refusing to pay may be put off. If any passenger shall refuse to pay his fare the conductor and the servants of the corporation may eject him and his baggage on stopping the train and using no unnecessary force, at any usual stopping place or near any dwelling house, as the conductor shall elect.

192.11 Locking cars; lighting. No car used for transporting passengers upon any railroad shall be locked while such car is occupied by any passenger nor be locked so as to prevent free exit from the same at all times; and no material of an explosive nature shall be used for lighting any such car.

192.12 Steps, boarding and alighting trains. (1) Every railroad corporation shall provide a stool for the use of passengers in getting on or off any coach of any train.

(2) The brakeman in charge of the coach shall place such stool in a proper position at each place at which such train stops to take on or let off a passenger, whenever the distance between the lowest step of the coach and the surface upon which such passenger must alight is more than nineteen inches.

192.13 Wooden and steel coaches in trains. (1) No railroad company shall cause or permit any mail, mail-apartment, express, baggage or passenger car constructed principally of wood, unless the same has steel underframing or steel center sills of strength equal to that of steel underframing, to be used or drawn in any passenger train between the engine and any two or more steel cars or other cars of substantially the same weight as steel passenger cars, included in any train operated wholly between points in this state.

192.14 Caboose equipment. (1) No railroad which is subject to the regulative power of this state shall use on its lines any caboose car or other car used for like purpose unless it shall be at least twenty-four feet in length, exclusive of the platforms, and be equipped with two four-wheel trucks, and shall be of structural strength equal to that of the eighty thousand pound capacity freight cars, and be provided with a door in each end, and with an outside platform across each end, not less than twenty-four inches in width and be equipped with proper guard rails and with grab irons and steps for the safety of persons getting on and off. The steps shall be equipped with a suitable rod, board or other guard at each end and at the back thereof properly designed to prevent slipping. Said caboose shall have a cupola or side bay windows and necessary closets and windows, and the glass in the door at each end of the caboose and the glass in side bay windows, if any, shall be shatter-proof glass, and all cabooses operating in Wisconsin shall be so equipped on or before April 1, 1941. As to railroad companies operating less than twenty-five miles of main line of railroad within this state, the said minimum structural strength shall be equal to that of sixty thousand pound capacity freight cars.

(2) If the commission shall find upon investigation that it is impossible for any railroad company to comply with this section it may grant to such company the right to use a caboose which in the judgment of the commission will comply as near as possible with subsection (1), and which in its judgment will be safe and convenient for the employes and traveling public, but said commission shall not grant permission to use a caboose that has less than two four-wheel trucks.

(3) This section shall not apply to the use of caboose cars operated in yards and in transfer service. In case of unusual and unforeseen demands of traffic, caboose cars not constructed in compliance with this section may be used temporarily, after the railroad company desiring to use the same shall have obtained an order from the commission granting such temporary use.

(5) The commission may limit the maximum height of any caboose to be used upon any railroad operating in this state.

192.16 Gaming in cars, forfeiture, arrest of offenders. If any railroad corporation or any agent or servant of any such corporation shall suffer any game to be played for gain or any betting or gambling by means of any game, machine, device or chance of any description whatsoever in any car, depot, station house, building or other place whatsoever

within the care, custody, possession or control of such corporation, agent or servant such corporation and such agent and servant shall each forfeit not less than fifty nor more than two hundred dollars for each offense, one-half to the use of the person prosecuting; and every such agent or servant shall have authority summarily to arrest without warrant any person found in the act of so betting or gambling in any place aforesaid and bring him before any court of competent jurisdiction or deliver him to a proper officer to be brought before such court to be dealt with according to law.

192.17 Arrest of passenger; police power of conductors. If it shall become necessary for the protection of the passengers on any railroad car from the violent, abusive, profane or indecent language or conduct of any passenger, the conductor may arrest such passenger and keep him in the baggage car or some other safe and secure place on such train until its arrival at some usual stopping place, when he may be put off the train and given into the custody of some officer for prosecution; and for this purpose conductors, while in charge of trains, may exercise the powers of sheriffs.

See note to 954.47, citing *Hotzel v. Simmons*, 253 W 234, 45 NW (2d) 633.

192.18 Shipment of grain, delivery. Every corporation operating a railroad shall receive all grain offered to it in carload lots for transportation, and shall transport such grain at the rates then in force to the elevator, warehouse or mill to which the same may be directed by the shipper, and deliver the same to the consignee at the place designated for the delivery thereof, if there be any track connecting therewith, over which such corporation shall have the right to run its cars, and such place of delivery be not more than one-half mile from its railroad; and shall make no additional charge for transportation of such grain because of such delivery nor charge for such delivery, except such sum as such corporation shall be actually required to pay for the use of such connecting track for such delivery.

192.19 Live stock shipments. Every corporation operating a railroad in this state shall receive all live stock offered to it for transportation, in mixed carloads, but it shall be unlawful to load live stock in mixed carloads unless the different kinds of stock are separated by suitable partitions; and such corporation shall furnish, for mixed cars of live stock, suitable partitions, subject to the approval of the commission, upon such terms and conditions as shall be ordered by the commission after public hearing. In case the partitions shall become loose or broken so as to allow such live stock to become mingled in the car during the transportation, the carrier shall as soon as practicable repair and replace the partitions. Said carrier shall feed and water, at its own expense, such stock as shall be unloaded where stock shall be detained for a longer period than six hours. The corporation may charge for the entire car the current rate for the highest class of live stock shipped in each mixed car.

192.20 Shipment of live stock. Between November 15 and March 15 no shipper shall transport any live stock unless a reasonable amount of dry bedding is placed in the car, truck or other shipping facility prior to the loading of the live stock. During the same period no shipper shall transport any live calves weighing under 350 pounds or horses of any description unless such animals are protected from the elements by material such as paper on the sides of the cars or trucks to a height of 4 feet or not to exceed two-thirds of the open section. Ventilated, closed sides shall be deemed sufficient protection.

192.21 Live stock in transit not detained. No corporation operating a railroad shall detain in any freight terminal in this state, not the point of origin, for more than five hours any carload of live stock in transit from any point in Wisconsin to any point beyond said terminal, except when prevented from moving the same by severe storms, other unpreventable conditions, or by statute of this state or of the United States.

192.23 Railroad telegraphers; required age and experience. It shall be unlawful for any common carrier to employ any telegrapher (except an assistant under an experienced operator), who shall not have attained the age of eighteen years, and who shall not have had actual experience as a telegraph operator, or who shall not have had at least six months' actual experience under the tutelage of an experienced railroad telegraph operator, or who shall not have been graduated from a school of telegraphy having at least a six months' course.

192.24 Railroad employes; hours on and off duty. (1) HOURS OF LABOR. No common carrier, its officers or agents, shall permit any employe to be on duty more than sixteen consecutive hours, and whenever any such employe shall have been continuously on duty for sixteen hours he shall be relieved and not permitted again to go on duty until he has had at least ten consecutive hours off duty, and no such employe who has been on duty sixteen hours in the aggregate in any twenty-four hour period shall be permitted to continue or again go on duty without having had at least eight consecutive hours off duty.

(2) **EMERGENCIES EXCEPTED.** The provisions of this section shall not apply in case of casualty or unavoidable accident or the act of God; nor where a delay was the result of a cause not known to the carrier or its officers or agents in charge of an employe at the time he left the terminal and which could not have been foreseen; nor to the crews of wrecking or relief trains.

192.25 Railroad train crews. (1) PASSENGER CREWS; EXEMPTIONS. No railroad shall run outside of the yard limits any passenger train without a full passenger crew, which for a train of three cars or units or less shall consist of one engineer, one fireman, one conductor and one brakeman; and for more than three cars or units, of an additional brakeman. On all passenger trains the conductor and brakeman shall not be required to perform the duties of the baggagemaster or express agent. Nothing in this subsection shall apply to trains picking up cars or units between terminals in emergencies or to trains propelled by electricity except that on trains propelled by electricity, gas or oil, the conductor shall not be required to perform the duties of baggagemaster or express agent. This subsection shall not apply to interurban electric railways not operated as a part of a steam railway system.

(2) **FREIGHT CREW.** No railroad shall run outside of yard limits any freight train of three cars or more with less than a full train crew consisting of an engineer, a fireman, a conductor and two brakemen.

(3) **APPRENTICESHIP OF ENGINEERS.** No person shall run or operate any steam locomotive upon any railroad in this state without having been on a service list for three years as a locomotive fireman. Provided, that the provisions of this subsection shall not apply to the following: 1. Persons employed, on or prior to May 1, 1929, to run or operate steam locomotives. 2. Persons employed as steam locomotive watchmen or steam locomotive handlers on other than main lines.

(4) **ENGINE CREW.** It shall be unlawful for any railroad company in the state of Wisconsin to move over its main line outside of yard limits an engine with no cars attached with less than a full crew consisting of one engineer, one fireman and one pilot; said pilot to have had not less than three years' experience in train or engine service and who shall have passed standard examination on book of rules and has qualified as a conductor or an engineer; except that such pilot need not be used if one is not available when it is necessary to run engine to the relief of an injured person or to raise a blockade of traffic.

(4a) **EXTENSION FULL TRAIN CREW REQUIREMENT.** It shall be unlawful for any railroad company in the state of Wisconsin to operate any locomotive, locomotive crane, pile driver, steam shovel, cut widener, gas-electric motor car, or gas-electric switch engine or any other similar self-propelled vehicle propelled by any form of energy whether properly denominated an engine or locomotive, when used on its tracks for the purpose of switching cars, with less than a full train crew consisting of one engineer, one fireman, one conductor and two helpers. Said train crew shall be selected from seniority lists of train and locomotive engine employes on the division of the railroad on which the crew is to be worked.

(5) **SELF-PROPELLED PASSENGER UNITS.** A single railroad passenger car unit equipped for and capable of self-propulsion, or multiples of such units combined, may be operated on any railroad line not having regularly scheduled passenger train service or which would be otherwise deprived of railway passenger service and rail services incidental thereto because of its inability to support such service thereon by means of other passenger trains. Subsection (1) shall not apply to the operation on any railway of such single railroad passenger car unit or of multiples of such units combined. This subsection shall not apply to street or interurban electric railways not operated as part of a steam railway system.

History: 1955 c. 74.

A reasonable construction of (4a) permits the conclusion that the seniority list of employes on a particular portion of one division may be identical with the seniority list for another division, where the facts establish that such list includes the employes experienced in the particular operation. 38 Atty. Gen. 551.

A 3-unit-electric diesel locomotive towing 5 steam locomotives is not subject to the provisions of this section. A "diesel-mail and express" car, which has the power plant located forward with a 40-foot space for mail, express, and baggage in the rear, is not subject to the provisions of this section. Weed mowers and weed disks used by rail-

roads to cut weeds along their rights of way are not subject to the provisions of this section. 41 Atty. Gen. 355.

(4a) does not apply to switching of boxcars by employes of industrial plant using rubber-tired tractors as motive power on sidetracks located on the employer's premises and crossing a public street, since such employer is not a "railroad company" and rubber-tired tractor is not a vehicle covered by the statute. 43 Atty. Gen. 264.

Movement of railroad cars by means of a locomotive crane in repair yards of railroad constitutes "switching cars" within (4a), and hence requires a full train crew as defined in that statute. 43 Atty. Gen. 273.

192.255 Qualifications of conductors and flagmen. (1) No person shall act or be engaged to act as a conductor on a railroad freight or passenger train in this state

without having for at least three years prior thereto served or worked in the capacity of a railroad brakeman.

(2) No person shall act or be engaged to act as a flagman on a railroad train in this state without having for at least two years prior thereto served or worked as a brakeman on a freight train or passenger train.

(3) No railroad company by its officers, agents or employes shall knowingly engage or employ any person to act in the capacity of conductor or flagman in violation of the provisions of this section.

(4) Nothing in this section shall be construed as applying to the running or operating of trains in the case of disability of a conductor or a flagman while out on the road between divisional terminals, or in case of an accident or wreck, or the shifting of cars or making up trains or doing any work appurtenant thereto, by a switchman or yardman in divisional terminals.

(5) The provisions of this section as to brakeman shall not apply unless there are available at the terminal from which the train is starting brakemen who meet the requirements of this section and who are not assigned to regular runs nor shall the provisions of this section apply to any railroad company within the state nor the receiver or lessee thereof, whose line of railroad is less than thirty miles in length nor shall anything herein contained relieve any railroad company from the negligence of any of its employes.

(6) Any person who shall violate any of the provisions of this section shall be deemed guilty of a misdemeanor and shall upon conviction be punished by a fine of not more than one hundred dollars nor less than twenty-five dollars or confined in the county jail not exceeding ninety days, or by both such fine and imprisonment in the discretion of the court.

192.26 Switching crews. (1) It shall be unlawful for any railway company in the state of Wisconsin to establish, enforce or permit unreasonable conditions pertaining to or affecting the employment of switching crews in or about yard limits, or to require or permit any switching crew to consist of less than such reasonable number of employes, as shall be necessary to protect the life, health and safety of such employes or the public.

(2) It shall be the duty of the public service commission, and it shall have power, jurisdiction and authority to investigate, ascertain and determine such reasonable conditions of employment, and such reasonable number of employes in each switching crew in or about each switching yard in the state, and to issue such lawful orders as may be necessary to comply with this purpose of this section.

Cross Reference: See 192.25 (4a) for full train crew requirements for switching cars.

192.265 Whistles on locomotives. It shall be the duty of the public service commission and it shall have power, jurisdiction and authority to investigate, ascertain and determine the placing of whistles on locomotives in such manner as not to be injurious to the hearing of men in the cabs of locomotives.

192.266 Lights on track motor cars. It shall be unlawful after July 1, 1950, for any person, firm or corporation operating or controlling any railroad running through or within the state to operate or use in motion any track motor car during the period from 30 minutes after sunset to 30 minutes before sunrise, which is not equipped with an electric headlight either portable or fixed of such construction and with sufficient candle power to render plainly visible at a distance of not less than 200 feet in advance of such track motor car any track obstruction, landmarks, warning sign or grade crossing and which is not further equipped with a red rear electric light or reflector.

192.268 Windshield and canopy on track motor cars. It shall be unlawful after July 1, 1955 for any person, firm or corporation operating or controlling any railroad running through or within the state to operate or use in motion any track motor car, without a canopy or top, and a windshield and windshield wiper to adequately protect the occupants thereof from the weather, except that this section shall not apply to track motor cars which operate within the confines of the railroad yards.

History: 1953 c. 552.

192.27 Connecting tracks and switching. (1) When the track of a railway corporation crosses the track of any other railway corporation at grade, or when their tracks and right of way shall be adjacent, except in counties having one hundred fifty thousand population, the corporations shall, within sixty days after a written request of the commission or the council or board of the city, town or village within which the tracks so cross or are adjacent, make a track connection within such town, city or village to afford reasonable and proper facilities for the interchange of traffic between their respective lines for forwarding and delivering freight, and the expense thereof shall be borne equally by the said corporations, unless otherwise ordered by the commission.

(2) Any railroad corporation neglecting or refusing to comply with the provisions of

this section shall be liable to a forfeiture of not less than twenty-five dollars nor more than one hundred dollars for each offense, and each day shall constitute a separate offense.

192.28 Railroad crossings; trains to stop. (1) Every train and every locomotive shall come to a full stop before crossing another railroad at grade and within four hundred feet thereof; and the train or locomotive arriving near said crossing first shall cross and move on first; and every train or locomotive shall also come to a full stop before running upon any drawbridge during the season of navigation and within six hundred feet of such bridge.

(2) No such stop need be made before crossing such drawbridge or crossing of railroads operated by the same company if at the time an employe of the company, standing on such bridge or crossing, shall signal such train to proceed, or if said drawbridge be provided with an interlocking arrangement which prevents the bridge being unlocked until a distance signal is set indicating danger, or is supplied with mechanical appliances so as to render it safe to cross without stopping, and the plan of such appliances has been filed with and approved by the commission or where any railroad tracks cross at grade and such crossing is equipped with appliances which render it safe to proceed without stopping, and the plans of such appliances have been filed with and approved by the commission.

(3) This section shall not apply to trains operated by steam at crossings of electric railways.

The plaintiff, engineer of a railroad company, injured when the engine which he was operating and an engine of the defendant company collided at a crossing of the 2 roads, was not entitled to rely on the presumption that the defendant's engineer would obey (1), requiring a full stop before crossing another railroad at grade, when the plaintiff himself was then in the process of violating the statute by merely shutting off the throttle and letting his engine and train drift at 6 miles per hour; and if he did indulge such presumption, he must have observed in the exercise of ordinary care that the defendant was not going to perform its duty at a time when, at the plaintiff's slow speed, there was still time to have avoided the collision. *Foulkes v. Chicago, St. P., M. & O. R. Co.* 256 W 146, 40 NW (2d) 507.

192.29 Train speed at street and highway crossings. (1) **SETTING MAXIMUM SPEED.** Upon petition to the public service commission by the governing body of any city or village or by any railroad corporation alleging that any railroad crossing of one or more public highways or streets in such city or village is dangerous to human life and that public safety requires a designation of the maximum speed of a train over such crossing or crossings, or that an order previously made by the commission should be modified, the commission shall give notice to the parties in interest and order a hearing thereon in the manner provided by section 196.26. If, after such hearing, the commission shall determine that the crossing or crossings described in such petition are dangerous to human life, it may by order determine what maximum speed of a train over such crossing is reasonably required by public safety and is consistent with the public need for adequate and expeditious passenger and freight service by railroad, having due regard for other orders entered by the commission and to practical railroad operating conditions. Where the commission has so designated the maximum speed of any train or trains over such crossing or crossings, such rate of speed shall be the lawful maximum speed at which any train affected by such order can be operated over such public highway or street crossing, until changed by subsequent order of the commission. Every railroad corporation violating any order entered under this subsection shall for every violation forfeit to the state not less than \$10 nor more than \$100. The jurisdiction over train speeds hereby vested in the commission shall be exclusive, but any order entered by the commission hereunder shall be subject to judicial review in the manner provided by chapter 227.

(2) **ARTERIAL STOP SIGNS.** In any proceeding under sub. (1) or under s. 195.28, the commission may by order require that the state or municipality install at any crossing involved in such proceeding an official stop sign of the size and type prescribed by the state highway commission pursuant to s. 349.08.

(3) **BELL TO RING, MUNICIPAL AUTHORITY.** (a) No railroad train or locomotive shall run over any public traveled grade crossing within any city or village, except where gates are operated, or a flagman is stationed, unless the engine bell shall be rung continuously within twenty rods of and until such crossing shall be reached.

(b) Flagmen or gates shall be placed and maintained, or such mechanical safety appliances shall be installed upon such public traveled grade crossings in villages and cities as the city or village authorities and the railroad company may by agreement decide; such agreement may include the apportionment of the cost of installation of such mechanical devices.

(4) **HIGHWAYS, WHISTLE, HORN, BELL.** No railroad train or locomotive shall run over any public traveled grade highway crossing outside of the limits of municipalities unless the whistle or horn shall be blown 80 rods from such crossing and the engine bell

rung continuously from thence until such crossing be reached. But the public service commission may order that the ringing of the bell or the blowing of the whistle, or horn, or both, as required by this subsection shall be omitted at any crossing.

(5) DANGER SIGNS. Wherever its tracks crosses a public highway or street, every railroad corporation shall maintain on each side of the track and near such crossing a large signboard with the following inscription, painted in large letters: "Railroad Crossing," in such manner as to be visible to approaching traffic on the highway or street at least 100 feet distant.

History: 1951 c. 199; 1951 c. 247 s. 44; 1957 c. 97, 260.

In an action for the death of the driver of a truck in a collision with a train at a grade crossing in a village, evidence as to the unlawful speed of the train, and as to buildings obstructing the truck driver's view for some distance of the track on which the train was approaching, and evidence that, at the points of observation, a train coming at a lawful rate of speed would not interfere with or prevent an adequate calculation of the speed of the train by the traveler on the highway, raised a jury question as to the causal connection between the excessive speed of the train and the accident. *DeRousseau v. Chicago, St. P., M. & O. R. Co.* 256 W 19, 39 NW (2d) 764.

The physical features surrounding the intersection—including buildings which obstructed the motorist's view along the railroad tracks at intervals, and the angle at which the tracks and the street met—were factors which, in combination with the speed of the train at 3 times the legal rate, made the causal connection between the prohibited speed and the collision a question for the jury. *Carr v. Chicago & N. W. R. Co.* 257 W 315, 43 NW (2d) 461.

The provision in 192.29 (6), Stats. 1947, that a slight want of ordinary care contributing to the injury shall not bar a recovery, is changed by reason of the later-enacted comparative-negligence statute, 331.045, which does not except any kind or class of litigants from its application; the question of comparative negligence should be submitted in railroad cases as in other negligence actions whenever the plaintiff's contributory negligence is a question for the jury. A question in the special verdict asking whether the want of ordinary care on the part of the person injured or killed was more than slight serves no purpose since the enactment of the comparative-negligence statute. *Carr v. Chicago & N. W. R. Co.* 257 W 315, 43 NW (2d) 461.

A motorist has an absolute duty to look and listen before crossing a railway track, to give vigilant attention in all directions from which a train may come, and he is not absolved from such duty by the existence of safety measures or devices maintained by the railroad at the crossing, although such measures and devices are to be considered in determining whether the person exercised ordinary care under the circumstances and conditions then present. *Reuling v. Chicago, St. P., M. & O. R. Co.* 257 W 485, 44 NW (2d) 253.

A road situated on land leased from the railroad company, not a recorded highway nor worked as a public highway, and permissively used for purposes associated with railroad property, was not a public highway. *Employers Mut. v. Minneapolis, St. P. & S. M. R. Co.* 258 W 133, 44 NW (2d) 912.

The purpose of devices such as a light or bell or moving signal at a railroad crossing is to herald the approach of a train which otherwise might remain unknown to the traveler until too late for him to save himself, but not to show more clearly than the statutory crossing sign where the railroad tracks are located nor to replace the statutory sign under conditions of bad visibility, and such devices are not required for the purpose of showing the location of tracks,

distinct from giving warning of the approach of a train. *Schulz v. Chicago, M., St. P. & P. R. Co.* 260 W 541, 51 NW (2d) 542.

A railroad company, maintaining the statutory railroad-crossing sign at a certain crossing, was not causally negligent in the matter of giving warning of the crossing as to a motorist who approached the crossing on such a snowy and stormy night that he did not see the crossing sign and passed over the railroad tracks without knowing it although driving very slowly, and then, believing that he was on the tracks and intending to avoid collision with an approaching train, backed his car directly onto the tracks and in front of the train. *Schulz v. Chicago, M., St. P. & P. R. Co.* 260 W 541, 51 NW (2d) 542.

If the public service commission, under authority of 195.28, has directed that a railroad-highway crossing be guarded in a particular manner and the railroad company has done as directed, the railroad company may not be required to go further to satisfy a jury's idea of adequate protection to users of the highway, but compliance with the requirement of 192.29 (5) as to maintaining a large signboard with the painted words "Railroad Crossing" does not relieve the railroad company of its common-law duty to take such additional precautions as the exercise of due care requires until such time as the commission may exercise its jurisdiction over a particular crossing. *Schulz v. Chicago, M., St. P. & P. R. Co.* 260 W 541, 51 NW (2d) 542.

Where it was undisputed that the plaintiff driver of a truck, involved in a collision with a railroad locomotive, did not listen for a bell, and could not have heard one ringing because the windows of his truck were closed, and the engineer, fireman, and switchman, as well as a witness living in the vicinity of the railroad crossing, testified that the engine bell was ringing continuously, and the plaintiff himself admitted that the bell may have been ringing, the plaintiff's negative testimony that he did not hear a bell ringing did not raise any issue requiring determination by a jury. The declaration of a person that he performed his duty to look and listen before attempting to cross a railroad track, and yet failed to perceive an approaching train when one was in plain sight or hearing, does not present a jury question. The operators of a locomotive have the right to assume that the driver of an automobile traveling at a comparatively slow rate of speed toward a grade crossing will stop his car in a place of safety. *Odgers v. Minneapolis, St. P. & S. M. R. Co.* 261 W 363, 52 NW (2d) 917.

The causal negligence in respect to management and control of the driver of an automobile, approaching an intersecting arterial highway without even stopping for the stop sign and colliding with an inter-urban train approaching on tracks which paralleled the arterial highway, was at least as great, as a matter of law, as the causal negligence in respect to speed and failing to give adequate warning of the approach of the train on the part of the motorman thereof, approaching at 45 miles per hour in open country and not in violation of any speed statute or ordinance. *Ligman v. Bitter, 270 W 556, 72 NW (2d) 340.*

192.291 Locking cars; dangerous articles. Any officer, agent, conductor or any employe of any railroad company operating within this state who shall wilfully run or cause to be run any railroad train or engine faster than at the rate established by the public service commission under s. 192.29, while passing over the traveled streets of any city or village or until all such streets have been passed by such train or engine, or who

shall lock or cause to be locked the doors of any passenger car occupied by any passenger, while such car is in motion or so as to prevent the free exit therefrom of any passenger at any time, or who shall use or authorize the use of any kerosene oil or other dangerously explosive burning fluid in lighting any passenger car, or who shall knowingly carry or cause or permit to be carried or transported on any baggage, mail, express or passenger car any powder, dynamite or other dangerously explosive substance, and any person who shall, secretly or surreptitiously, or by concealment or misrepresentation, ship or cause to be shipped upon any railroad train or car any powder, dynamite or other dangerously explosive substance without the knowledge of the proper officer, agent, conductor or employe in charge of such train or car shall be fined not exceeding \$100 or imprisoned not more than 6 months.

History: 1955 c. 696 s. 71.

192.292 Trains obstructing highways. It shall be unlawful to stop any railroad train, locomotive or car upon or across any highway or street crossing, outside of cities, or leave the same standing upon such crossing longer than 10 minutes, except in cases of accident; and any conductor, engineer, brakeman or other person in charge thereof or responsible therefor who shall violate this section shall be liable to a fine of not more than \$25 or to imprisonment of not more than 15 days.

History: 1955 c. 696 s. 127.

192.295 Wilful neglect of railroad employes. Any officer, agent, conductor, engineer or employe of any railroad company operating within this state who wilfully neglects or omits to ring or cause to be rung the bell on the engine of any train of cars or on an engine alone or to blow the whistle, as required by s. 192.29 (3) and (4), or to bring or cause to be brought to a full stop any railroad train or engine before arriving at or passing upon the track of another railroad and within 400 feet of the junction or crossing of such railroad, or before arriving at or passing upon any drawbridge over any stream navigated by boats, vessels or other craft during the season of such navigation and when the draw of such bridge is necessary to be used for the passage of such boats, vessels or other craft, within 600 feet of such drawbridge, when required by law, or to allow and permit the railroad train first arriving at such railroad crossing or junction to first pass over shall be imprisoned not more than 6 months or fined not exceeding \$100.

History: 1955 c. 696 s. 70, 135.

192.30 Frog guards. Every railroad corporation shall erect and maintain such sufficient guards or blocks at the front and rear of every frog and of every guard rail in its track, as in either case the public service commission shall prescribe or approve. It shall also erect and maintain such safety clamps or other devices as the commission shall prescribe or approve at all main line switches except where the commission shall, in writing, approve the omission thereof. If any such corporation, its officers, agents or servants shall violate or fail to comply with any of the provisions of this section, or fail to sufficiently guard such frogs or guard rails, it shall, for each and every such violation or failure, forfeit not less than fifty dollars nor more than five hundred dollars, one-half to the person prosecuting, and shall in addition be liable to the person injured for all damages sustained thereby, whether such person shall be a servant or agent of such corporation or not, and notwithstanding such violation or failure shall arise or occur through the negligence of some other agent or servant thereof.

192.31 Telltales over railroads. (1) Every railroad corporation shall maintain suitable telltales wherever any overhead structure or any part thereof is less than 22 feet above the top of rail; except that if the commission finds that the installation of a telltale at any particular place would be impracticable or would result in an increased hazard to either the public or an employe and that either or both such factors outweigh the safety benefit which would result from the installation of a telltale, the commission may enter an order providing an exemption from this statute. Such exemption shall be ordered by the commission only after public hearing as provided by subsection (4).

(2) The commission may determine the materials for and the construction and placing of such telltales.

(3) After July 1, 1949, no overhead structure shall be constructed or reconstructed, not including ordinary repairs necessary for maintenance, which shall have a vertical clearance of less than 22 feet above the top of rail, except as provided in subsection (4).

(4) Upon finding that any such structure will not imperil life or limb, and that the public interest requires or permits such structure to be constructed or reconstructed otherwise than as permitted by subsection (3), the commission may exempt such structure from such provision. Such findings shall be made only upon written application, setting forth fully the grounds therefor and shall be made only after public hearing. The findings and order granting exemption shall be in writing and contain complete pro-

visions and requirements as to the vertical clearance to be maintained in such construction or reconstruction. Such structure shall be constructed or reconstructed only in compliance with such order.

(5) Prior to July 1, in each year every corporation operating a railroad within the state shall file with the commission a verified statement showing the location of every such bridge or other structure over any of its tracks at a height of less than 22 feet above the top of rail, together with a statement showing whether or not the provisions of this section have been fully complied with.

(6) An employe of a railroad corporation who is injured by or because of the existence of any bridge, or other structure over, above or across any of the tracks of said railroad at a height less than that provided in this section, which has not been protected by telltales, shall not be considered to have assumed the risk of such injury, although he continues in the employ of such corporation after the existence of such unguarded structure has been brought to his knowledge.

History: 1951 c. 57.

192.32 Trespassing on railroad. (1) No person, other than a licensee or authorized newspaper reporters or those connected with or employed upon the railroad, shall walk, loiter or be upon or along the track of any railroad. The provisions of this subsection shall not be construed to interfere with the lawful use of a public road or highway by any person, or to prevent any person from driving across any railroad from one part of his land to another part thereof, or from walking directly across the tracks or right of way of any railroad; or with the use of the right of way or track by any person when occasioned by or in connection with, either directly or indirectly, the shipping, loading or unloading of freight, seeking employment, the investigation or securing of evidence with respect to any accident or wreck, or in conducting or transacting any other business for or with said railroad; or with the entry of any employe during or on account of labor disputes by employes.

(2) Each railroad corporation shall post notices containing substantially the provisions and penalties of this section, in one or more conspicuous places in or about each railroad station.

192.321 Getting on and off cars. Any person under the age of 17 years who shall get upon, attempt to get upon, cling to, jump or step from any railroad car or train while the same is in motion shall be punished by fine of not more than \$20 nor less than \$2, provided that this section shall not apply to the employes of any railway or express company.

History: 1955 c. 696 s. 76.

192.324 Railroad bridges to be safe for employes. Whenever a complaint is lodged with the public service commission by any person to the effect that a railroad bridge because of its style of construction does not have walks or railings and for that reason is dangerous to the life and limb of railroad employes and the safety of such employes requires the alteration so as to provide for such walks and railings of such bridge, it shall be the duty of the said commission to give notice to the party in interest, other than the complainant, of the filing of such complaint and furnish such party with a copy thereof, and to order a hearing thereon, in the manner provided for hearings in section 195.31, and after such hearing the commission shall determine what alteration, if any, of such bridge, shall be made. The expense of such alteration shall be borne by the railroad company. The commission may, on its own motion, in the absence of any complaint, when in its opinion the safety of railroad employes requires the alteration of any such bridge after like notice and hearing, proceed in like manner as upon a complaint duly filed.

192.33 Fences, cattle guards, crossings. (1) Every corporation operating any railroad shall erect and maintain on both sides of its road (depot grounds excepted) sufficient fences with openings or gates or bars therein, and suitable and convenient farm crossings for the use of the occupants of the lands adjoining and shall maintain cattle guards at all highway crossings (outside of municipalities) and connect their fences therewith. This section shall not apply to that part of the road where sidetracks or switch tracks are used in cities of the first class.

(2) All roads shall be so fenced and such cattle guards be made within one month from the time of commencing to operate the same, so far as operated. Until such fences and cattle guards shall be made, every railroad corporation owning or operating any such road shall be liable for all damages done to domestic animals, or persons thereon, occasioned in any manner, in whole or in part, by the want of such fences or cattle guards; but after such fences and cattle guards shall have been constructed such liability shall not extend to damages occasioned in part by contributory negligence, nor to defects existing without negligence on the part of the corporation or its agents.

(3) The sufficiency of fences shall be determined according to the provisions of chapter 90; but nothing herein shall render any fence insufficient which was a legal or sufficient fence when built.

(4) No fence shall be required in places where ponds, lakes, watercourses, ditches, hills, embankments or other sufficient protection renders a fence unnecessary to prevent domestic animals from straying upon the right of way.

(5) The maintenance of cattle guards may be omitted by the railroad company with the written consent of the commission specifying the particular crossings.

The words excluding depot grounds from the necessity of fencing constitute a true "exception," so that the burden is on a plaintiff, basing his action on the defend-

ant's failure to fence, to negative the exception in fact. *Garcia v. Chicago & N. W. R. Co.* 256 W 633, 42 NW (2d) 233.

192.34 Fences; complaint of insufficient; hearing; order. Upon complaint by the owner or occupant of any land contiguous to the right of way of any railroad that the railroad company operating such line has failed to construct or keep in good repair such fences as the law requires along its right of way opposite to such land, the commission shall proceed thereon in the manner provided in section 195.04. If it shall appear that the complaint is well founded said commission may order and direct said railroad company to repair such fences so that the same shall be sufficient or to construct legal fences.

192.35 Fences; interference with, etc., trespassers on track. Any person who shall wilfully take down, open or remove any railroad fence, cattle guard or crossing or any portion thereof, or allow the same to be taken down, opened or removed, or who, having lawfully taken down bars or opened gates in such fences for the purpose of passing through the same, shall not immediately replace or close the same, shall forfeit not less than ten nor more than fifty dollars, and in addition be liable to the party injured for all damages resulting from such act or omission; and any person who shall ride, lead or drive any horse or other animal upon such a fenced road, or who shall ride, lead or drive any horse or team lengthwise of an unfenced railroad track (other than at the farm crossings or upon depot grounds or where the same is laid along or across a public road or street), without the consent of the party owning or having control of such road shall, for every such offense, forfeit not exceeding ten dollars, to such party, and shall also pay all damages which shall be sustained by the party aggrieved.

192.355 Depositing debris on railroad right of way. Whoever throws or deposits any type of debris or waste material on or along any railroad right of way shall be fined not more than \$10 or imprisoned not more than 10 days.

History: 1955 c. 696.

192.36 Fences, occupant of land may build or repair. Whenever a railroad corporation shall fail to build or repair any fence, which the law requires it to erect, the owner or occupant of the land adjoining may, between the first day of April and the first day of October, give notice in writing to such corporation to build, within sixty days or repair within thirty days, such fence, after the service of such notice. Such notice shall describe the land on which such fence is required to be built or repaired, and service thereof may be made by delivering the same to any station agent of said corporation. In case the corporation shall fail to build or repair the fence within the time aforesaid, then such owner or occupant may build or repair the same; and may recover from such corporation the cost thereof with interest at one per cent per month from the time such fence shall have been built or repaired.

192.37 Fences, farm crossings; railroads to provide. (1) Whenever any corporation shall operate a railroad through inclosed lands and shall fail to construct the fences, farm crossings or cattle guards required by law, proper for the use of such lands, the owner or occupant thereof may give notice in writing signed by him to such corporation, to be served as a circuit court summons is served, to fence its road through his enclosed lands, describing the same, and construct the necessary farm crossings and cattle guards thereon. If such company, after being so notified, neglect for three months to construct such fences, farm crossings and cattle guards, it shall be liable to pay to such owner or occupant ten dollars for each day after the expiration of said three months until so constructed. But no time between the first day of November and the first day of April succeeding shall be included in the three months aforesaid.

192.38 Contracts not affected. The provisions of sections 192.33 to 192.37 shall not affect any contract entered into between any railroad corporation and the proprietors and occupants of lands adjoining for the construction and maintenance of gates, bars, cattle guards and railroad crossings.

192.39 Railroad construction; laborers' liens. As often as any contractor for the construction or repair of any railroad or part thereof in progress of construction or re-

pair shall be indebted to any laborer for thirty days' labor or less, either manual or team labor, or both, including team and driver, performed in constructing or repairing such road such laborer may, within thirty days after his claim or demand shall have accrued, serve notice in writing, signed by him, his agent or attorney, on the corporation either owning or constructing or repairing such road that he claims such indebtedness, stating the amount thereof, the number of days' labor, and the time when performed, and the name of the contractor from whom due, and thereupon such corporation shall be directly liable to such laborer for the amount so due him, provided he brings his action therefor within sixty days after the service of such notice. Such notice shall be served by delivering a copy thereof to an engineer, agent or superintendent in the employment of the corporation having charge of the part of the road on which such labor was performed, personally, or by leaving the same at his office or usual place of business with some person of suitable age therein.

192.40 Successor to railroad, liability for wages. Whenever any railway corporation shall become the successor of a pre-existing railway corporation which operated a railroad in this state and was indebted to its employes of whatever grade for services performed by them within six months prior to its disposal of its road such first-mentioned railway company shall be liable for the amount then due such employes.

192.41 Priority of labor claims in receiverships. It shall be the duty of the receiver of any railroad corporation to report immediately to the court appointing him the amount due from the railroad company at the date of his appointment to its employes, and it shall be the duty of the court to order the receiver to pay out of the first receipts and earnings of said railway, after paying current operating expenses, under his administration, the wages of all employes which had accrued within six months prior to his appointment.

192.42 Common carriers, joint liability, enforcement. (1) Every common carrier receiving property for intrastate transportation shall issue a bill of lading therefor and shall be liable to the lawful holder thereof for any loss of or injury to such property caused by it or by any common carrier to which such property may pass, and no contract, receipt, rule or regulation shall exempt the issuer from the liability hereby imposed.

(2) Any holder of such bill of lading may bring an action against all of the carriers and on proof that the property was lost, destroyed or damaged in transit, the liability shall attach to all the defendants and judgment shall be entered accordingly against them all unless a carrier shall prove its nonliability, in which case the judgment shall go only against the other defendants.

(3) The carrier issuing such bill of lading shall be entitled to recover from the common carrier on whose line the loss or injury shall have been sustained the amount of damages it may be required to pay to the owner of such property, as may be evidenced by any receipt or judgment.

192.43 Liability of carrier of passengers made absolute. No contract, receipt, rule, or regulation shall exempt any corporation or person engaged in transporting persons for hire, within this state, from the liability of a common carrier, or carrier of passengers, which would exist had no contract, receipt, rule, or regulation, been made.

192.44 Fires; railroad liability; action for damages. (1) Each railroad corporation owning or operating a railroad shall be liable to the owner of property injured or destroyed by fire communicated directly or indirectly by locomotives in use upon such railroad, or by the burning of grass, weeds or rubbish on the right of way by employes of such corporation; and such railroad corporation may procure insurance in its own behalf for its protection against such liability.

(2) To recover such damages, it shall only be necessary for the owner to prove the loss of or injury to his property, and that the fire originated in the manner hereinbefore stated.

See note to 26.14, citing 45 Atty Gen. 17.

192.45 Standard headlights. [*Not printed; 1929 c. 504 s. 120; see 1927 Stats. Abrogated by U. S. Boiler Inspection Act as to all interstate commerce; Cab Curtain Cases, 272 U. S. 605*]

192.455 Engine doors, mechanically operated. [*Not printed; 1929 c. 504 s. 120; see 1927 Stats.*]

192.456 Engine, power reverse gear. [*Not printed; 1929 c. 504 s. 120; see 1927 Stats.*]

192.457 Stokers. [*Not printed; 1929 c. 504 s. 120; see 1927 Stats.*]

192.46 Express company, interest on claims against. Any claim against an express company for damages to any shipment shall, after one hundred and twenty days from the date of filing, bear interest at the rate of ten per cent per annum.

192.465 Express companies, free deliveries. (1) Every express company doing business within any city where there is a United States urban free mail delivery shall make free delivery of all intrastate express matter received for delivery by it at such city within the boundaries of such free delivery.

(2) Every company violating this section shall be subject to a forfeiture of not less than \$50 and not more than \$100, and one-fourth thereof shall be paid to the informer. This section shall not affect the liability of any express company for actual damages.

History: 1953 c. 61.

192.47 Railroad police; oath; powers. Any railway company may, at its own expense, appoint and employ policemen at such stations or other places on the line of its road within this state as it may deem necessary for the protection of its property and the preservation of order on its premises and in and about its cars, depots, depot grounds, yards, buildings or other structures. Each policeman shall take an oath to support the constitution of the United States and showing that he is a citizen of the United States and shall file the same in the office of the commission. Every such policeman shall, when on duty, wear a shield furnished by said company bearing the words "Railroad Police" and the name of the company for which he is appointed. Said policemen may arrest, with or without warrant, any person who in their presence shall commit upon the premises of any such company or in or about its cars, depots, depot grounds, yards, buildings or other structures any offense against the laws of this state or the ordinances of any town, city or village, and shall also have the authority of sheriffs in regard to the arrest or apprehension of any such offenders in or about the premises or appurtenances aforesaid; but in case of the arrest, by any such policeman, of any person without warrant he shall forthwith take such offender before some magistrate having jurisdiction and make complaint against him. Every railway company shall be responsible for the acts of its policemen.

192.48 Highway crossings, advance warning signs. (1) RAILROADS TO FURNISH; COMMISSIONERS TO PLACE. Each steam and each interurban railroad company shall furnish to each county in which it operates, upon request of the county highway commissioner, a sufficient quantity of advance warning signs to enable the county and town to comply with this section. The county highway commissioner on roads maintained by the county and the town board on roads maintained by the town shall immediately install and thereafter maintain such signs in good condition, near each grade crossing (other than state trunk highway crossings and crossings within the limits of cities and incorporated villages). The town board shall requisition its needs for advance warning signs from the county highway commissioner. The cost of such installation and maintenance shall be paid out of moneys received by the county or town, as the case may be, for highway maintenance. The state highway commission shall provide, install and maintain advance warning signs at all railroad grade crossings on the state trunk highway system outside of cities and incorporated villages. The public service commission, upon petition and upon investigation and finding that such signs are impracticable or unnecessary on any highway, may release the town, county or state from the provisions of this section as to such highway.

(2) SIGNS DESCRIBED. Such signs shall consist of a round metal disc of size, colors and indications as may be specified by the state highway commission and approved by the state public service commission. Any change in these signs shall not be retroactive.

(3) LOCATION. Such signs shall be placed in conspicuous locations beside every highway which crosses a railroad at grade (outside of cities and incorporated villages) as near as practicable to the traveled portion of the highway on each side of such crossing, at a location and in a manner to be prescribed by the state highway commission, the county highway commissioner or the town board, or, if the crossing is so near city or village limits that the sign will be within such limits, by the city council or the village board, as the case may be.

(4) DUPLICATES. In case any sign installed as provided in this section, other than that on the state trunk highway system, is destroyed or becomes illegible by any cause whatsoever, the railroad company, upon request from the county highway commissioner, shall forthwith deliver another such sign at the crossing near which it is to be installed; neither the installation of said signs nor the failure to install or maintain the same shall render the town, county or state liable for any accident that may occur by reason of such installation or neglect.

(5) OTHER SIGNS PROHIBITED. No other sign of the general size or appearance of the signs provided for in this section shall be placed or permitted upon any highway, nor any

sign between such advance signs except signs or signals now required by law or permitted by the public service commission for protection at railway crossings.

(6) **PENALTIES.** Any person who removes, throws down, injures or defaces any sign required by this section shall, upon conviction, be fined not to exceed twenty-five dollars.

(7) **PENALTIES.** Any person or corporation upon conviction for the violation of any of the provisions of this section, except subsection (6), shall be fined not less than ten dollars nor more than fifty dollars for each violation.

(8) **PROSECUTIONS.** The district attorney shall prosecute any person violating this section, or begin and maintain any civil action necessary for its enforcement upon the demand of any county highway commissioner, the state highway commission, or the public service commission.

192.49 Limitation on officers, agents, etc.; competing lines. No officer, agent or employe of any railroad or other transportation corporation shall be interested, directly or indirectly, in the furnishing of supplies or materials to such corporation, or in the business of transportation of freight or passengers over the lines owned, leased, controlled or operated by such corporation. No officer of any railroad corporation shall be an officer of any other railroad corporation which owns or controls a parallel or competing line.

192.50 Personal injury liability; employes, negligence, risk, jury. Every railroad company shall be liable for damages for all injuries whether resulting in death or not, sustained by any of its employes, subject to the provisions hereinafter contained regarding contributory negligence and assumption of risk on the part of the injured employe:

(1) When such injury is caused by a defect or insufficiency in any locomotive, engine, car, rail, track, roadbed, machinery, or appliance used by its employes in and about the business of their employment.

(2) When such injury shall have been sustained by any officer, agent, servant or employe of such company, while engaged in the line of his duty as such and which such injury shall have been caused in whole or in greater part by the negligence of any other officer, agent, servant or employe of such company, in the discharge of, or by reason of the failure to discharge his duties as such.

(3) In all actions brought against such railroad company under or by virtue of any of the provisions of this section to recover damages for personal injuries to any employe, or where such injuries have resulted in his death, the fact that the employe may have been guilty of contributory negligence shall not bar a recovery, but the damages shall be diminished by the jury in proportion to the amount of negligence attributable to such employe. Provided, that no such employe who may be injured or killed shall be held to have been guilty of contributory negligence in any case where the violation by such railroad company of any statutes enacted for the safety of employes contributed to the injury or death of such employe. Provided, further, that in any action brought against any common carrier under or by virtue of any of the provisions of this section to recover damages for injuries to, or death of, any of its employes such employe shall not be held to have assumed the risk of his employment in any case where the violation by such common carrier of any statutes enacted for the safety of employes contributed to the injury or death of such employe.

(4) Any contract, rule, regulation or device whatsoever, the purpose or intent of which shall be to enable any railroad company to exempt itself from any liability created by this section shall to that extent be void: Provided, that in any action brought against any such railroad company under or by virtue of any of the provisions of this section such railroad company may set off therein any sum it has contributed or paid to any insurance, relief, benefit or indemnity that may have been paid to the injured employe or the person entitled thereto on account of the injury or death for which said action was brought.

(5) In all cases under this section the question of negligence and contributory negligence shall be for the jury.

(6) No contract or receipt between any employe and a railroad company, no rule or regulation promulgated or adopted by such company, and no contract, rule or regulation in regard to any notice to be given by such employe shall exempt such corporation from the full liability imposed by this section.

(7) The phrase "railroad company," as used in this section, shall be taken to embrace any company, association, corporation or person managing, maintaining, operating, or in possession of a railroad in whole or in part within this state whether as owner, contractor, lessee, mortgagee, trustee, assignee or receiver.

(8) In any action brought in the courts of this state by a resident thereof, or the representative of a deceased resident, to recover damages in accordance with this section, where the employe of any railroad company owning or operating a railroad extending into or through this state and into or through any other state or states shall have received

his injuries in any other state where such railroad is owned or operated, and the contract of employment shall have been made in this state, it shall not be competent for such railroad company to plead or prove the decisions or statutes of the state where such person shall have been injured as a defense to the action brought in this state.

(9) The provisions of this section shall not apply to employes working in shops or offices.

History: 1953 c. 540.

192.51 Bridges at Superior. No person or corporation shall have, construct or operate any railroad or bridge of any kind across the bay of Superior, between Minnesota Point, in the state of Minnesota, and the opposite shores. Every railroad corporation which constructs or operates any railroad or railroad bridge across the St. Louis river or bay, at or above Connor's Point, shall, at some point in Superior, on the navigable water of the bay of Superior, between Namadji river and Connor's Point, establish and maintain a depot and construct and forever maintain proper tracks and sidetracks, docks, piers, warehouses and freight houses and depot accommodations suitable and convenient for the receipt, transfer or shipment of all freights and the general business of railroads; and shall furnish and maintain at such point facilities for such receipt, transfer, shipment and railroad business equal in all respects to the facilities which said corporation may have and maintain at any port in Minnesota, on or upon the St. Louis river or bays of St. Louis or Superior. Every act or charter heretofore passed granting any right to cross the St. Louis river shall be held subject to the foregoing provisions.

History: 1957 c. 523.

192.52 Terminals and shops, removal. (1) The word "terminal" as employed in this section shall mean where trains are customarily and normally made up, or where train and engine crews on through trains are normally and customarily changed on the main line of any steam railroad operating in this state.

(2) The term "shops" shall mean and embrace plants and locations where steam railroads engage in the general work of repairing, painting, overhauling or constructing locomotives, cars, coaches and other rolling stock and appurtenances thereto.

(3) No railroad company operating in this state shall remove its shops from the place where the same are now located to any other point within or without this state or permanently close any shops in this state without first having secured the consent and permission of the public service commission of Wisconsin for such removal, after due notice and public hearing, and in all other respects as provided for hearings in chapter 195. The commission shall render its decision within thirty days after such hearing.

(4) No railroad company operating in this state shall remove or transfer its terminals or permanently close any terminals in this state without the permission or consent of the public service commission of Wisconsin after due hearing had on petition therefor, in compliance with the provisions of chapter 195.

(5) Before any railroad company operating in this state shall make any removal or transfer of shops or terminals or abandon the same it shall file notice of intention so to do with the public service commission, and the public service commission shall have the power to investigate whether such proposed removal, transfer or abandonment, as the case may be, is in the public interest and is not unreasonable or unfair as to the employes of such railroad company. No such removal or transfer shall be made during such investigation, or thereafter, if the commission finds such removal, transfer or abandonment is not in the public interest or is unreasonable or unfair as to the employes of such railroad.

192.53 Railroad track clearance. (1) After July 1, 1931, no building or loading platform shall be constructed or any addition to or reconstruction of a then existing building or loading platform, not including ordinary repairs necessary for maintenance, shall be made which shall have a horizontal clearance of less than eight feet six inches between it and the center line of any railroad track. The same clearance shall be maintained between such track and any material used in and about the construction of any such building or loading platform.

(2) Platforms at passenger stations used for loading and unloading passengers, baggage, mail and express may be constructed and maintained as follows:

(a) Such a platform which is not higher than four inches above the top of the rail shall be not less than four feet six inches from the center line of the adjacent track;

(b) Such a platform which is more than four inches but not higher than eight inches above the top of the rail shall be not less than five feet one inch from the center line of the adjacent track;

(c) Such a platform which is more than eight inches but not higher than one foot nine inches above the top of the rail shall be not less than six feet from the center line of the adjacent track;

(d) Such a platform which is higher than one foot nine inches above the top of the rail of a main track shall be not less than eight feet from the center line thereof.

(3) High platforms in existence on July 1, 1949 for handling baggage, mail, express and freight to and from cars on other than main tracks, where an unobstructed working space at ground level is maintained on the opposite side of track from such platform, may be maintained with face or edge 5 feet 8 inches from center line of such track, but after July 1, 1949, no such platform shall be constructed which provides a clearance of less than 6 feet 4 inches between the face or edge thereof and the center line of any such track. No such platform shall be constructed which is more than 5 feet above top of rail level.

(4) Upon finding that any such structure will not imperil life or limb, and that the public interest requires or permits such structure to be constructed or reconstructed otherwise than as permitted by the foregoing provisions of this section, the commission may exempt such structure from such provision. Such findings shall be made only upon written application, setting forth fully the grounds therefor and shall be made only after public hearing, and the findings and order granting exemption shall be in writing and shall contain complete provisions and requirements as to the horizontal clearance to be maintained in such construction or reconstruction. Such structure shall be constructed or reconstructed only in compliance with such order.

(5) Except as hereinbefore provided in this section and subject to the power of the commission to make exceptions hereto in a manner similar to the power given it in subsection (4) no railroad or shipper shall after May 28, 1943, place or construct, within 8 feet 6 inches of the center line of any railroad track, any retaining walls, fences, signs, stand pipes, conveyors, or any other like obstruction, except railroad bridges, switch stands, mail cranes, coal, ice and water stations, intertrack fences and signals and other necessary interlocking mechanisms, or permit, within 8 feet 6 inches of the center line of any railroad track, the accumulation of any rubbish, waste or material of any sort, except material used for repair or construction work by such railroad company. The intent of this subsection is to afford proper clearance between railroad cars and obstructions and to promote the safety of railroad employes in switching cars.

(6) Every railroad or shipper to which this section applies, who violates any provision of this section or who fails, neglects or refuses to obey any lawful order made by the commission under the provisions of this section, shall be punished by a fine not exceeding \$100 or by imprisonment in the county jail for not exceeding 60 days, or by both.

192.54 General penalty for chapter 192. If any railroad corporation, its officers, agents or servants violate or fail to comply with any provision of this chapter such corporation shall, for every violation or failure (unless some other penalty is specifically provided) forfeit not less than ten nor more than one thousand dollars, and be liable to the person injured for all damages sustained thereby.

192.55 Special penalties for chapter 192. (1) For each wilful violation of section 192.03 in failing to report or in making a false report, the offender shall forfeit twenty-five dollars.

(2) Every railroad corporation which shall violate section 192.12 shall forfeit \$25 for each offense.

(3) Any person violating section 192.20 shall be fined not more than one hundred dollars.

(4) Any officer or employe of any railroad corporation which operates more than twenty-five miles of road who shall send or cause to be sent outside of yard limits any train whose crew consists of less than the number required by section 192.25 shall be fined fifty dollars for each offense.

(5) Any corporation or person operating a railroad that shall fail to erect the telltales required by section 192.31 for the space of sixty days after notice from the commission requiring such erection shall forfeit not less than fifty dollars nor more than one hundred dollars, and each twenty days' delay thereafter in erecting such telltales shall be a separate offense.

(6) Any person violating section 192.32 shall be punished by a fine of not less than one dollar nor more than fifty dollars, or by imprisonment not exceeding thirty days, or by both such fine and imprisonment.

192.56 Abandoning of railroad stations. (1) It shall be unlawful for any railroad company owning or operating, or which may hereafter own or operate, any railroad in whole or in part in this state, to abandon any station in any town or village on its line of railroad, within this state, or to remove the depot therefrom, or to withdraw agency serv-

ice therefrom, without first obtaining from the public service commission an order authorizing such action.

(2) At a station where agency service is provided the application to said commission for such authorizing order shall set forth the facts showing the necessity for such action by the railroad company, and if the commission finds that the application is sufficient presumptively to justify the order prayed for, it shall enter an order fixing the time and place of hearing on said application, which time shall not be less than 20 days after the posting provided for in sub. (3).

(3) Notice of the time and place of said hearing and of the purpose thereof shall be given, by the commission, by posting said notice in five conspicuous places in said town or village.

(4) Any public body, or citizen, or group of citizens affected may appear at said hearing and prior to or at said hearing, file objections to the granting of the order prayed for.

(5) The said hearing shall be held as other hearings before said commission are held as far as applicable. Said commission may dismiss said application or may grant it in whole or in part and under such conditions as it may deem equitable.

(6) At a station where no agency service is provided, the application to the commission for such authorizing order shall set forth the facts showing the necessity for such action by the railroad company. Notice of proposed removal or abandonment shall be given by the commission by posting notice in 5 conspicuous places in the town or village concerned; and if within 20 days after the posting of notice no objections in writing are filed with the commission by persons directly affected, an order authorizing the abandonment of the station may be issued by the commission. If such objections to the granting of the order are filed with the commission, the commission shall proceed to hold a hearing in the matter as provided in subs. (4) and (5).

History: 1953 c. 60.

192.71 Lands may be sold. [*Not printed; 1929 c. 504 s. 128; see 1927 Stats.*]

192.72 Lands may be mortgaged. [*Not printed; 1929 c. 504 s. 128; see 1927 Stats.*]