

CHAPTER 26.

PROTECTION OF THE PUBLIC LANDS.

26.01	Definition.	26.12	Forest protection districts, organization, emergency fire wardens, county co-operation, setting fire.
26.02	Seizure and sale of materials.	26.13	Town fire wardens; duties, expenses.
26.03	Trespass.	26.14	Forest fires, law enforcement, police power of wardens, compensation, penalties, civil liability.
26.04	Sales of seized property.	26.15	Responsibility of wardens and citizens.
26.05	Possession of seized material.	26.18	District attorneys to prosecute.
26.06	Prosecutions; rewards to witnesses and district attorneys.	26.19	Destruction of forest protection equipment or notices.
26.07	Money, how disposed of.	26.20	Fire protection devices.
26.08	Leases and licenses.	26.205	Tractors, spark arresters.
26.09	Civil liability for forest trespass.	26.21	Civil liability for forest fires.
26.10	Reports by the conservation commission to the commissioners of the public lands.	26.22	Sales, etc.
26.11	Forest fires; commission jurisdiction; procedure.		

Cross Reference: See definitions in 24.01.

26.01 Definition. The word "commission" when used in this chapter without other word or words of description or qualification means the state conservation commission of Wisconsin.

26.02 Seizure and sale of materials. The state conservation commission of Wisconsin is empowered to seize or cause to be seized, without process, any lumber, timber, bark, minerals or other materials or property which, without authority of law, has been cut upon, or dug, removed or taken from any of the public lands belonging to this state, and, after appraising such property it shall sell the same at public auction to the highest bidder, under rules and regulations prescribed by the commission. On such sale it may bid in and purchase for the state for not less than half its appraised value the property to be sold. All property so purchased shall be sold by the commission for such price as it may deem best for the interest of the state; and no part of the money realized at any such sale shall be applied on any outstanding certificate of sale.

26.03 Trespass. (1) **BY STRANGER ON LANDS SUBJECT TO PRIVATE ENTRY.** Any person found trespassing on any such public lands subject to private entry may purchase the same by paying twice the minimum price therefor, together with all expenses of the seizure and taking charge of the material seized until such purchase is completed. Until such purchase and payment have been made the trespasser shall be disabled to acquire any of the public lands.

(2) **BY CERTIFICATE HOLDERS ON LANDS NOT PATENTED.** If such lands have been sold and the owner of the certificate of sale shall have committed such trespass, he, his heirs or assigns, shall receive a patent for such land, only upon his paying twice the amount then due the state on such certificate together with all legal charges and all the expenses of seizure and care as aforesaid.

(3) **RELEASE OF PROPERTY SEIZED AND CAUSE OF ACTION.** When such payment shall have been made in either such case said commission shall release to such person all the materials seized which were cut, dug, removed or taken from the lands so paid for by him, and discontinue any suit commenced to recover damages for any injury done to such lands, without costs to the state. [1947 c. 549]

26.04 Sales of seized property. (1) At any sale of property seized as provided in section 26.02 the owner of the certificate of sale of the lands from or upon which such property was cut, dug, taken or removed, he not being the trespasser, may bid the amount due the state for such land and the expenses of seizure and sale, which amount shall be stated at the sale by the person authorized to sell before making such sale. When such bid is made by such owner the person making such sale shall strike off the property to him, and upon his paying the sum so bid to the state treasurer or other person authorized to receive the same and his surrender of the said certificate of sale, the commissioners of the public lands shall execute a patent for such land to such owner.

(2) If there shall be a dispute between bidders at the sale as to the ownership of the certificate for such lands, the property shall be sold to the contestant bidder for the highest sum bid in addition to the amount due the state, including expenses, as aforesaid, and the money shall be paid into the state treasury and remain there until the commissioners shall determine the ownership of such certificate; and for that purpose it may adopt such rules and take such evidence as it shall deem necessary to determine the fact; and upon such determination there shall be paid out of the state treasury to the rightful

person so ascertained the avails of such sale, after deducting the price of such land and the expenses aforesaid; and upon the surrender of the certificate of sale said commissioners of the public lands shall execute a patent for such land to such owner.

26.05 Possession of seized material. Any property seized by the commission under the provisions of section 26.02 may be held by it until the payments required of the trespasser by section 26.03 shall be made, even though the land affected was patented previous to the seizure but after the trespass; and every trespasser and his assigns shall be disentitled to the possession of any materials taken from any of the public lands until all penalties and charges imposed upon him by law are paid. Nothing in this chapter contained, nor the payment of any penalty herein provided, shall affect the liability of any person, whether prosecuted before or after the issuance of such patent, to punishment for any such trespass.

26.06 Prosecutions; rewards to witnesses and district attorneys. All sheriffs and town officers are especially charged to immediately communicate to the district attorney any and all information received by them respecting the commission of any trespass or waste upon the public lands and to enter complaint against the offender before some justice of the peace. Every district attorney, immediately upon receiving information of any such trespass upon lands in his county, shall prosecute the proper criminal action against such offender and advise said commission thereof, and shall, when required, prosecute a civil action for damages for any such trespass or to recover the possession of any materials taken from any such land. [1931 c. 429 s. 2]

26.07 Money, how disposed of. All money received from the sale of logs, lumber, shingles, timber, minerals or other articles seized under the provisions of this chapter, or recovered in legal proceedings for damages done the public lands, shall be paid into the treasury to the credit of the respective funds to which the lands belong on which such trespasses were committed, and all other money collected as expenses, fees, penalties and damages for trespass on such lands shall be paid into the general fund.

26.08 Leases and licenses. (1) Said commission may, from time to time, lease for terms not exceeding fifteen years, parts or parcels of state park lands or state forest lands; and such leases shall contain proper covenants to guard against trespass and waste. The rents arising therefrom shall be paid into the state treasury to the credit of the proper fund. Licenses also may be granted to prospect for ore or mineral upon any of said lands; but proper security shall be taken that the licensees will fully inform the commission of every discovery of ore or mineral and will restore the surface to its former condition and value if no discovery of valuable deposits be made. The commission shall retain a copy of each such lease or license and file the original in the office of the commissioners of the public lands.

(2) The commission shall furnish to the commissioners of the public lands such maps, plats, surveys, valuations, information and other services as said commissioners may request respecting any of the public lands, for use by them in granting leases or licenses or in making sales under the provisions of section 24.39.

(3) No lease shall hereafter be issued or any existing lease extended or renewed by the commission on any unsurveyed and unattached islands in inland lakes north of the township line between townships thirty-three and thirty-four north, and granted to the state by an act of congress, approved August 22, 1912, entitled "An act granting unsurveyed and unattached islands to the state of Wisconsin for forestry purposes," except that the commission may extend or renew any such leases in existence June 25, 1925, to public charitable, religious, educational or other associations not organized for profit, and except that the commission may extend or renew any such leases in existence June 25, 1925, on islands upon which improvements have been made. [1931 c. 451]

26.09 Civil liability for forest trespass. The state, the county or the private owners upon whose lands any wilful trespass has been committed, may recover in a civil action double the amount of damages suffered. This section shall not apply to the cutting of wood or timber from uncultivated woodland for the repair of a public highway or bridge upon or adjacent to the land.

Note: Wilful trespass is an essential element of the plaintiff's claim to double damages for trespass. *Boneck v. Herman*, 247 W 592, 20 NW (2d) 664.

26.10 Reports by the conservation commission to the commissioners of the public lands. The state conservation commission shall report monthly to the commissioners of the public lands all trespasses committed, all materials seized, all sales made and all moneys received under any of the preceding sections of this chapter.

26.11 Forest fires; commission jurisdiction; procedure. (1) The conservation commission of Wisconsin is vested with power, authority and jurisdiction in all matters relat-

ing to the prevention, detection and suppression of forest fires outside the limits of incorporated villages and cities in the state, and to do all things necessary in the exercise of such power, authority and jurisdiction.

(2) The term "forest fire" as used in this chapter means uncontrolled, wild, or running fires occurring on forest, marsh, field, cutover or other lands.

(3) The commission shall direct and give suitable instructions to and obtain reports as directed from, the entire fire warden force of the state whether in officially established forest protection districts or elsewhere, and it may move about or concentrate the fire warden force as occasion demands.

(4) The commission may enter into arrangements or agreements and co-operate with town boards, county boards or committees thereof, with individuals, concerns, corporations or associations, for the purpose of improving the protection against forest fires.

(5) The commission may, upon request from the fire chief of a city or village, or the chief executive thereof, supply assistance within the limits of their resources in suppressing a forest fire within the confines of said municipality. [1937 c. 432]

Note: 26.11 (1) contemplates that equipment for fire fighting is to be acquired by contract whenever possible and is to be commandeered only when absolutely necessary in emergency. Equipment to fight forest fires may be rented under authority of 26.11 (1) and (4). 26.14 (3) covers repair bills for damage to rented equipment. Insurance on such rented equipment may be carried with state insurance fund. State is not liable for negligent acts of its officers or agents in operating commandeered equipment. 31 Atty. Gen. 181.

26.12 Forest protection districts, organization, emergency fire wardens, county co-operation, setting fire. (1) Whenever it shall appear to the commission from investigation, hearing or otherwise that areas in the state are in need of special protection from forest fires, the commission shall be authorized to designate and establish a forest protection district on such areas. The limits of each such forest protection district shall be defined, and public notice of its establishment shall be published in the local press of the region affected for three successive times, and given such other publicity as the commission deems necessary.

(2) The commission shall organize each forest protection district so as to most effectively prevent, detect and suppress forest fires, and to that end may employ experienced wardens or forest rangers to have charge of its efforts in each such district; may subdivide each district into patrol areas; may establish lookout towers, construct ranger stations, telephone lines, purchase tools for fire fighting as well as other necessary supplies or equipment, and carry on all other activities considered necessary to effectively protect the district from such fires, including the promulgation of rules and regulations for the payment of fire fighters, the preparation of notices and forms for publication and the disposition and use of all fire-fighting equipment or property. All property or equipment purchased by the state shall be owned by the state, but counties or towns may purchase and own equipment for fire suppression, and the same shall be used for the improvement of the forest fire-fighting organization.

(3) The commission may deputize additional fire wardens who shall be called emergency fire wardens, and who shall serve during the fire season or for such temporary periods as may be determined upon by the commission. Such appointments shall be made in co-operation with the county board in the county concerned or with a committee thereof. A list of such appointments shall be submitted by the commission each year on or before February fifteenth to such county board or authorized committee thereof for approval by such board or committee. Should no written approval of such list of emergency fire wardens be received by the commission before March fifteenth of the year in which submitted such list as submitted shall be deputized by the commission as the official list for the year. Any vacancies occurring during the year shall be filled by the commission as occasion demands. The provisions of chapter 16 of the statutes shall not apply to appointments under this subsection and subsection (1) of section 26.13.

(4) Each county included wholly or partially in a forest protection district may appoint a committee to co-operate with the commission and to consider all matters relating to fire prevention, detection and suppression in such county, including the payment of fire fighters, the purchase of fire-fighting equipment and all matters or details relating to or arising from the prevention, detection and suppression of such fires.

(5) No person shall set any fire except for warming the person or cooking food within the limits of any forest protection district at any time of the year except when the ground is snow-covered, unless written permission has been received beforehand from a duly appointed fire warden. The commission shall prepare the necessary blanks for this purpose, shall prescribe rules for the issuance of such permits, shall appoint, if necessary, in addition to the regular or emergency fire wardens, others who shall be authorized to issue such permits, and shall have jurisdiction over all other details concerned with or growing out of the closed season on the setting of fire.

(6) (a) *Definitions.* For the purpose of carrying out the provisions of this subsection: "Slash" means any tree tops, limbs, bark, abandoned forest products, windfalls or other debris left on the land after timber or other forest products have been cut. "Snags", "stubs" or "rampikes" mean any dead tree still standing, with or without limbs, or any tree whose top has been broken off.

(b) *Disposal.* Any person, firm or corporation engaged in cutting timber or other forest products shall dispose of all slash up to four inches in diameter resulting from such cutting operations within one hundred feet of the center line of any public highway, common carrier railroad, main branch or main line logging road or railroad, or within one hundred feet of the boundary line of an adjacent owner where, in the opinion of the commission, the land bears valuable forest growth. Areas of unbroken slash in excess of three hundred and twenty acres shall be broken up by disposing of the slash for a distance of one hundred feet on each side of any logging road, logging spur, portage trail or any other convenient line. All slash shall be disposed of within five hundred feet of any schoolhouse, town hall, church, summer cottage, resort or the buildings of any small community or any settler. All dead rampikes, snags or stubs more than six feet high shall be felled within all such strips heretofore mentioned, and for an additional five hundred feet beyond except in standing timber. All slash disposal shall be by burning under permit, as required under subsection (5) of section 26.12, but the conservation commission may authorize disposal by removal or by lopping and scattering. The disposal of slash and the felling of rampikes, snags or stubs shall be done concurrently with the cutting operation or within a reasonable period to be determined by the conservation commission, but not to exceed one year.

(c) *Penalty.* On failure of the timber owner or cutting operator to dispose of slash and rampikes, snags or stubs as herein required, the commission may do the work and the landowner, timber owner, cutting operator, all three jointly, severally, or individually shall be liable to the state for the cost of such work, including supervision and transportation of its personnel and any court costs which may arise. All expense incurred by the conservation commission shall be certified to the cutting operator, timber owner and landowner, by registered mail at their last known address and shall be paid within thirty days.

(d) *Illegal felling.* All slash, which during the process of cutting timber or taking out other forest products, falls into or is deposited in any lake or stream or on the land of an adjoining owner, shall be immediately removed therefrom by the timber owner or cutting operator conducting the operations when in the opinion of the commission such removal is in the public interest. If such slash is not removed within thirty days, the commission may do the work and the landowner, timber owner or cutting operator responsible for such slash shall be liable to the state jointly, severally or individually for the cost of such work, including supervision and transportation of its personnel and any court costs which may arise, but such liability shall not in any case exceed ten dollars for each acre of slash removed by the commission.

(e) *Sales.* All timber sales contracts or timber cutting contracts shall include provision for meeting the requirements of paragraphs (b) and (d) of this subsection.

(f) *Limitation.* The foregoing provisions shall not apply to cases arising from trespass unless and until reasonable notice is given by the conservation commission.

(7) All slash resulting from clearing or brushing on any public highway or on the right of way of any public utility within the limits of any forest protection district shall be piled and burned under permit as provided in subsection (5) of section 26.12. Whenever such work is done under contract the burning of the resulting slash shall be made a part of the contract. All such slash shall be burned concurrently with the clearing or brushing operation or within a reasonable period to be determined by the conservation commission, but not to exceed one year. On failure to burn such slash the conservation commission may do the work and the municipality or the public utility shall be liable to the state for the cost of such work. [1931 c. 128; 1939 c. 280]

26.125 [Repealed by 1927 c. 29 s. 1]

26.13 Town fire wardens; duties, expenses. (1) The chairman of the town board of each town outside the limits of a forest protection district shall, by virtue of his office and the oath thereof, be town fire warden for such town. He shall assist and co-operate with the commission in all matters relating to the prevention, detection and suppression of forest fires. If a town is unusually large or if special or peculiar conditions in connection with such fires exist, the commission may, upon recommendation of the town chairman, annually, appoint such emergency fire wardens as are necessary, whose duties and authority shall be the same as heretofore provided for emergency fire wardens serving in forest protection districts.

(2) All expenses arising from the prevention or suppression of forest fires by the town chairman acting in his capacity as town fire warden and by those called upon by him to

assist in such work, shall be borne by the town in which such expense was incurred, and the town board may levy and assess a tax for defraying such expense. In addition the town board may levy a tax for the purchase of equipment for the suppression of forest fires. Such taxes shall be collected in the same manner as other taxes, and such taxes when so collected shall be paid into the town treasury from which such expense is paid.

(3) Whenever the town board of any town located outside of a forest protection district deems it imprudent to set fires upon any land within the town, they shall post or cause to be posted in five or more public places in each township in such town, notices, which shall be prepared by the commission, forbidding the setting of fires therein, and after the posting of such notices no person shall set any fire upon any land in said town except for warming the person or cooking food, until written permission has been received from one of the fire wardens of said town.

Note: Complaint alleging offense under (5) is insufficient unless it alleges exceptions in statute which are part of same section and are constituent elements of crime. 21 Atty. Gen. 876. In absence of statutory authority counties may not assist towns in paying board and transportation of fire fighters. Counties cannot require towns to furnish compensation insurance for county employes. 25 Atty. Gen. 532.

26.14 Forest fires, law enforcement, police power of wardens, compensation, penalties, civil liability. (1) State forest rangers, town chairmen, emergency fire wardens, conservation wardens and other duly appointed deputies shall take prompt measures against the spread and illegal setting of forest fires. They shall have the power of sheriffs to arrest, without warrant, for violations of the provisions of any section of the statutes relating to such fires. They may execute and serve all warrants and processes issued by any justice of the peace or police magistrate, or by any court having jurisdiction in the same manner as any constable may serve and execute such processes, and to arrest any person detected in the actual violation, or whom such officer has reasonable cause to believe guilty of a violation of any of the provisions of this chapter, and to take such person before any court in the county where the offense was committed and make proper complaint. They shall have authority to call upon any able-bodied citizen to assist in fighting such fires in such manner as they may direct.

(2) All such forest rangers, town chairmen, emergency fire wardens, conservation wardens and other duly appointed deputies may in the performance of their official duty go on the lands of any person or corporation to fight forest fires, and in so doing may set back fires, dig trenches, cut fire lines or carry on all other customary activities in the fighting of forest fires, without incurring a liability to anyone.

(3) Emergency fire wardens, and all persons employed by them or by any other duly appointed fire warden for the purpose of suppressing forest fires, shall receive such pay as the commission may determine, but not to exceed 50 cents per hour for the time actually employed. Equipment operators and other specialists shall be paid the prevailing wage rate for comparable skills in each locality but not to exceed 60 cents per hour. And in addition thereto the commission may allow the cost of meals, transportation and disbursements for emergency equipment. One-half of such expense shall be paid by the state and one-half by the county where such service was performed.

(4) Emergency fire wardens or those assisting them in the fighting of forest fires shall prepare itemized accounts of their services and the services of those employed by them, as well as other expenses incurred, on blanks to be furnished by the commission and in a manner prescribed by the commission, and make oaths or affirmation that said account is just and correct, which account shall be forwarded and approved for payment by the commission. As soon as any such account has been paid by the state treasurer the commission shall send to the proper county treasurer a bill for the county's share of such expenses and a copy of the bill shall be filed with the secretary of state. The county shall have sixty days within which to pay such bill, but if not paid within that time the county shall be liable for interest at the rate of six per cent per annum. If payment is not made within sixty days the secretary of state shall include such amount as a part of the next levy against the county for state taxes, but no county shall be required to pay more than five thousand dollars in any one year. Any unpaid levy under this section shall remain a charge against the county and the secretary of state shall include such unpaid sums in the state tax levy of the respective counties in subsequent years.

(5) Any person who shall set a fire or assist in the setting of a fire, including a back fire, on any lands in this state not his own or under his control, shall totally extinguish such fire before leaving it, and upon failure so to do shall upon conviction, be fined not less than \$10 and not to exceed \$100, or imprisoned not exceeding 2 months, or both.

(6) Any person who shall set a fire or assist in the setting of a fire, including a back fire, upon his own land and who shall allow such fire to escape and become a forest fire

shall upon conviction be fined not less than \$10 and not to exceed \$100, or imprisoned not exceeding 2 months, or both.

(7a) It shall be unlawful for any person to set or assist in setting a fire upon marsh or other land in the state for the purpose of driving out game birds or animals. The possession of fire arms upon any marsh while it is on fire shall be prima facie evidence of such violation. Any person who violates the provisions of this section shall be punished by fine of not less than twenty-five dollars nor more than two hundred dollars or by imprisonment in the county jail not exceeding three months or by both such fine and imprisonment.

(7b) Any person who shall wilfully and maliciously set fire on any land shall be deemed guilty of a felony and upon conviction thereof shall be punished by a fine of not more than one thousand dollars or by imprisonment in the state prison for not less than one year nor more than two years.

(8) (a) Nothing in this chapter shall be construed as affecting the right to damages. The liability of persons for damages is not limited to the destruction of merchantable timber but may also include the value of young or immature forest growth.

(b) Any person, firm or corporation who shall set fire on any land and allow such fire to escape and become a forest fire, shall be liable for all expenses incurred in the suppression of such fire by the state or town in which such fire occurred. The commission or the town clerk shall respectively certify to such person the claim of the state or town in writing, and list thereon the items of expense incurred in the suppression of such fire. Such claim shall be paid within 60 days and if not paid within such time, the state or town may begin an action thereon at any time within 2 years. [1933 c. 203; 1935 c. 102; 1937 c. 56; 1943 c. 330; 1947 c. 152]

Note: "Any county which was charged under section 26.14 with a sum in excess of ten thousand dollars for fire suppression costs incurred in the calendar year 1933 shall be granted a deduction from the payment of state tax due in March, 1935, in the amount of such excess. After the effective date of this act the conservation commission shall forthwith certify to the secretary of state a list of such counties and the respective amounts of such excess. The total amount of such excess is appropriated from the gen-

eral fund to the conservation fund." (Section 2, chapter 102, Laws 1935)

When men are called on and compelled to work in putting out fires at the request of a state forest ranger, the conservation commission must allow them some compensation, and, if the commission refuses to pay, the state is liable to compensate the men for the reasonable value of their work up to the maximum limit of the statute. *Rosenbluth v. State*, 222 W 623, 269 NW 292.

See note to 26.11, citing 31 Atty. Gen. 181.

26.15 Responsibility of wardens and citizens. Any fire warden who shall refuse to carry out the provisions of this chapter, or any able-bodied citizen who shall refuse to render assistance as provided by this chapter, or any citizen who shall violate any of the other provisions of this chapter for which a penalty is not otherwise provided shall be guilty of a misdemeanor, shall be punished by a fine of not less than ten or more than fifty dollars, or by imprisonment in the county jail for not less than ten days or more than thirty days, or by both such fine and imprisonment.

26.16, 26.17 [Repealed by 1927 c. 29 s. 1]

26.18 District attorneys to prosecute. Whenever an arrest shall have been made for any violation of any provision of this chapter, or whenever any information of such violation shall have been lodged with him, it shall be the duty of the district attorney of the county in which the criminal act was committed to prosecute the offender or offenders. If any district attorney shall fail to comply with the provisions of this section, he shall be guilty of a misdemeanor and upon conviction shall be fined not less than one hundred dollars nor more than one thousand dollars, or be imprisoned not less than thirty days nor more than one year, or both in the discretion of the court. The penalties of this section shall apply to any magistrate, with proper authority, who refuses or neglects without cause to issue a warrant for the arrest and prosecution of any person or persons when complaint, under oath, of violation of any terms of this chapter, has been lodged with him.

26.19 Destruction of forest protection equipment or notices. Any person who shall destroy, deface, remove or molest or destroy any forest protection equipment or property or disfigure any forest fire sign, poster or warning notice, shall be guilty of a misdemeanor and punishable, upon conviction, by a fine of not less than twenty-five dollars nor more than one hundred dollars, or by imprisonment in the county jail for a period of not less than ten days nor more than three months, or by both such fine and imprisonment.

26.20 Fire protection devices. (1) **SPARK ARRESTERS ON LOGGING ROAD LOCOMOTIVES.** Between March first and November first it shall be unlawful for any logging locomotive, donkey, traction, or portable engine, and all other engines, boilers, and locomotives, except railway locomotives, operated in, through, or near forest, brush, or grass land, which do not burn oil as fuel, to be operated without a screen or wire netting

on top of the smokestack and so constructed as to give the most practicable protection against the escape of sparks and cinders from the smokestacks thereof, and each such engine shall be provided with the most practicable devices to prevent the escape of fire from ash pans and fire boxes. The term "logging locomotive" as used in this section shall be construed to mean any locomotive operated on a railroad branch, line, or division, the chief or main business of which is the transportation of logs, lumber, or other forest products.

(2) SPARK ARRESTERS ON LOCOMOTIVES. All locomotives operated on any railroad other than a logging railroad shall be equipped with the most practicable spark arresters so constructed as to give the greatest possible protection against the escape of sparks and cinders from the smokestacks thereof, and each such engine shall be provided with the most practicable device to prevent the escape of live coals from ash pans and fire boxes, and said devices between March first and November first shall at all times be maintained in good repair. It shall be the duty of the superintendent of motive power or equivalent officer of each such railroad to designate an employe of such railroad at each division point and roundhouse who shall examine each locomotive each time it leaves the division point or roundhouse between March first and November first, and such employe shall be held responsible for the proper carrying out of the provisions of this subsection, but without relieving the company from its responsibility hereunder.

(3) LOCOMOTIVE INSPECTOR; POWERS. Any locomotive inspector designated by the commission shall have the power to reject from service immediately any locomotive, donkey, traction, or portable engine which, in the opinion of the said inspector, is deficient in adequate design, construction, or maintenance of the fire protective devices designated in subsections (1) and (2) of this section, and any such locomotive, donkey, traction, or portable engine so rejected from service shall not be returned to service until such defects have been remedied to the satisfaction of said locomotive inspector. In case of disagreement between said inspector and the owner of the locomotive, donkey, traction, or portable engine so rejected from service as to the efficiency or proper maintenance of said protective devices, then the owner of said locomotive, donkey, traction, or portable engine may appeal to the public service commission of Wisconsin for a decision of said matter, but pending such decision the said locomotive, donkey, traction, or portable engine shall not be returned to service.

(4) CLEARING RIGHT OF WAY. Every corporation maintaining and operating a railway shall, at least once in each year, cut and burn or remove from its right of way all grass and weeds and burn or remove therefrom all brush, logs, refuse material, and debris within a reasonable time, and whenever fires are set for such purpose, shall take proper care to prevent the escape thereof from the right of way.

(5) COMBUSTIBLE DEPOSITS ON TRACK. No such corporation shall permit its employes to deposit fire, live coals, or ashes upon their tracks outside of the yard limits, except they be immediately extinguished.

(6) REPORTS AND MEASURES FOR PREVENTION OF FIRES. Engineers, conductors, or trainmen who discover that fences or other material along the right of way or on lands adjacent to the railroad are burning or in danger from fire, shall report the same to the agent or person in charge at their next stopping place at which there shall be a telegraph station. Corporations maintaining and operating railways shall give particular instructions to their section employes for the prevention and prompt extinguishment of fires, cause notices, which shall be furnished by the state commission, to be posted at their stations, and when a fire occurs along the line of their road, or on lands adjacent thereto, for which fire they are responsible, they shall concentrate such help and adopt such measures as shall most effectually arrest its progress.

(7) FIRE PATROL. All such corporations, during a dangerously dry season, and when so directed by the commission, shall provide fire patrols for duty along their tracks. Whenever said commission shall deem it necessary it may order such corporations to provide for patrolmen to follow each train throughout such districts as may be necessary to prevent fires. When said commission has given a corporation such notice that in its opinion the conditions require such patrol after trains, the corporation shall immediately comply with such instructions throughout the districts designated; or on its failure to do so, said commission may employ patrolmen, and furnish them with the necessary equipment to patrol the rights of way of such corporations, and the expense of the same shall be charged to the corporation and the same may be recoverable in a civil action in the name of the state of Wisconsin, and in addition thereto, the said corporation shall be deemed guilty of a misdemeanor. It is also made the duty of such corporation, acting independently of such commission, to patrol its rights of way after the passage of each train when necessary to prevent the spread of fires and to use the highest degrees of diligence to prevent the setting and spread of fires, and it is also made the duty of its officers and

employees operating trains in this state, to use diligence in the extinguishment of fires set by locomotives or found existing upon their respective rights of way, and any negligence in this regard shall render such corporation or any officer or employe thereof guilty of a misdemeanor.

(8) **INSPECTION AND ENTRY.** The commission is authorized to inspect or cause to be inspected any locomotive, donkey, or threshing engine, railway locomotive, and all other engines, boilers, and locomotives operated in, through or near forest, brush, or grass land and to enter upon any property for such purpose, or where they may deem it necessary in order to see that all the provisions of this section are duly complied with.

(9) **PENALTY.** Any corporation, by its officers, agents, or employes, wilfully violating the provisions of this section, shall be liable to a penalty of not less than fifty dollars nor more than five hundred dollars for each and every such violation, to be collected in a civil action in the name of the state.

(10) **APPEAL TO PUBLIC SERVICE COMMISSION.** In case the commission and any corporation or individual operating any locomotive, donkey, or threshing engine, or any engine, boiler, or locomotive cannot agree as to the most practicable device or devices for preventing the escape of sparks, cinders, or fire from smokestacks, ash pans or fire boxes, then the same shall be determined by the public service commission of Wisconsin.

(11) **EXEMPTION.** The commission shall have the power to exempt from the provisions of subsections (1), (2), (3), and (4) of this section any railroad, when, in its judgment, conditions along the right of way are such that the reduced fire hazard renders such protective devices unnecessary.

Note: A statute requiring steam engines to be equipped with spark arresters is inapplicable in actions against a county. *Necedah M. Corp. v. Juneau County*, 206 W 316, 237 NW 277, 240 NW 405.

This section prescribes a standard of care which users of engines are required to observe as a matter of law. Hence an instruction that said statute required the county

to maintain a screen or wire netting on the smokestack of the engine was not prejudicial, notwithstanding the contention that another device in use was a reasonably sufficient spark arrester, because the jury found that the engine was not equipped with a reasonably sufficient spark arrester. *Necedah M. Corp. v. Juneau County*, 206 W 316, 237 NW 277, 240 NW 405.

26.205 Tractors, spark arresters. Tractors operating in a forest protection district or on other land where there is danger of setting fire, shall be equipped so that such tractors will not set fire on such lands and to reduce to a minimum the danger of setting fire. The commission or its locomotive inspector is authorized and directed to reject from service all tractors not properly equipped to prevent the setting of fires. The commission shall, after investigation, prescribe suitable fire preventive devices for tractors operating in marsh land or on other land where there is danger of fire being set by their operation.

26.21 Civil liability for forest fires. In addition to the penalties provided in section 26.20, the United States, the state, the county or private owners, whose property is injured or destroyed by such fires, may recover, in a civil action, double the amount of damages suffered, if the fires occurred through wilfulness, malice or negligence. Persons or corporations causing fires in violation of this chapter, shall be liable to the state in an action for debt, to the full amount of all damages done to the state lands and for all expenses incurred by the towns fighting such fires.

26.22 Sales, etc. The commission may sell any timber on the state park or state forest lands which has been damaged by fire or wind, on such terms and in such manner as it shall deem best for the interest of the state.