

1411 RAILROADS: DUTY TO MAINTAIN OPEN VIEW AT CROSSINGS

A statute provides that every railroad shall keep its right of way clear of brush or trees for a distance of not less than 330 feet in each direction from the center of its intersection at grade with a public highway and for such further distance as is necessary to provide an adequate view of approaching trains from the highway.

A failure to comply with this statute (unless excused by the Office of the Commissioner of Railroads) is negligence.

COMMENT

The instruction was originally published in 1967 and revised in 2005. The comment was updated in 1980 and 2005.

Wis. Stat. § 195.29(6); Wilmet v. Chicago & N.W. Ry., 233 Wis. 335, 345-46, 289 N.W. 815 (1939).

The purpose of Wis. Stat. § 195.29(6) is to provide highway traffic with a better view of approaching trains. It places a duty on railroads, municipalities, and persons or corporations owning or occupying lands to clear brush and trim trees to allow greater visibility. Violation of this duty, without excusal by the office of the Commissioner of Railroads, is subject to forfeiture. In Wells v. Chicago & N.W. Transp. Co., 91 Wis.2d 565, 568, 571, 283 N.W.2d (Ct. App. 1979), the court noted that Wis. Stat. § 195.29(6) constituted a "safety statute which would generally be considered to set the standard of conduct in negligence actions." In Wells, the court held that public policy reasons preclude subjecting a private landowner to civil liability to highway uses for violation of Wis. Stat. § 195.29(6). The court also restricted the sweep of the Wilmet decision stating that railroads and municipalities stand in an entirely different position from private landowners with regard to liability for accidents at railroad crossings.