# Laws relating to the protection of state lands from trespass : together with rules and regulations. 1878

Wisconsin
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# LAWS

RELATING TO THE

# PROTECTION OF STATE LANDS

## FROM TRESPASS,

TOGETHER WITH

# RULES AND REGULATIONS.



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# LAWS

FOR THE

# PROTECTION OF STATE LANDS.

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*Chapter* 314, *Laws of* 1876.

**AN ACT relating to trespassing on state lands, and for the repeal of chapter twenty-one (21), of the general laws of 1871, entitled "An act to consolidate and amend the laws relating to trespassing on state lands."**

*The People of the State of Wisconsin, represented in Senate and Assembly, do enact as follows:*

SECTION 1. The governor of the state of Wisconsin is hereby authorized and empowered to appoint six (6) agents for the purpose of protecting the school, university, swamp and overflowed lands belonging to the state, or any lands in which the state may have an interest, legal or equitable, from any injury, from any person or persons trespassing thereon, by digging or removing any mineral therefrom, or by cutting or removing, or in any manner injuring any lumber, timber, trees, wood or bark, being, standing or growing on such premises; *provided, however*, that this act shall apply only to lands which are or have been subject to entry and purchase at the office of the commissioners of school and university lands.

SECTION 2. It is hereby made the duty of the governor, and he is hereby authorized and empowered to prescribe, by written rules and regulations, the duties and the compensation of such agents; and the governor is hereby authorized to audit the accounts for the compensation and the expenses of said agents, which shall be paid out of the state treasury, from the general fund. And there is hereby annually appropriated out of the state treasury, the sum

of six thousand dollars, for the purpose of defraying such expenses.

SECTION 3. The governor and the commissioners of school and university lands shall not have power to authorize any such agent or agents to settle or compromise with any person or persons trespassing or injuring any premises described in the first section of this act.

SECTION 4. The governor shall have power to authorize and empower any such agent to seize, or cause to be seized, any timber, lumber, logs, shingles, shingle-bolts, staves, shocks, headings, wood, bark, or other material cut upon or removed, or taken from any of the land described in section one (1) of this act, without process; and to sell the same at public auction to the highest bidder; *provided*, that no such sale shall be made until the agent making such seizure shall report the same to the commissioners of school and university lands, nor until the time and place of such sale shall have been advertised in a newspaper printed in the county where such sale is to be had, if any there be, at least once in each week for three successive weeks; and if there is no newspaper printed in said county, then by written or printed notice of such time and place posted up in the five most public places in said county, at least twenty (20) days before such sale; and the commissioners of school and university lands may cause a bid to be made on behalf of the state at such sale to an amount not less than one half the actual value of the property for sale. No part of the money realized at any such sale shall be applied on the certificates issued by the commissioners of school and university lands then outstanding, if any. Property purchased on behalf of the state at such sale shall be sold by the commissioners of school and university lands for such price, and at such time or times as they may deem for the best interests of the state.

SECTION 5. Any person or persons found trespassing upon any such lands belonging to the state, shall have the right to purchase said premises of the state, by paying the amount in lawful money of the United States, at the minimum price at which such lands shall be appraised, if the same is subject to private entry, at the office of the commissioners of school and university lands, and

also by paying in addition thereto the sum of a hundred per centum of the amount paid for said land, and all expenses of seizure and taking charge of material seized until the settlement is completed. If the person or persons owning the certificate or certificates of purchase for such land shall be found trespassing thereon, he or they shall have the right to obtain a patent for such land by paying the amount due the state on such certificate or certificates, with all legal charges thereon, and the sum of one hundred (100) per centum on the amount due the state for such land, and all expenses of seizure and taking charge of material seized until the settlement is completed. In either case, the commissioners of school and university lands are hereby required to release to the person or persons so paying for the land any lumber, timber, logs, shingles, shingle-bolts or any other articles seized under the provisions of this act; and he is hereby required to discontinue any and all suits commenced to recover any damages for such cutting, taking or carrying away, without cost to the state; *provided*, that the state treasurer shall in no case receive pay for such land from any other person or persons than those holding the certificate or certificates, or from their authorized agents, in cases where the land has been previously sold by the state; *and provided further*, that in all cases when the sale of property is made under the provisions of this act, or the one to which this is amendatory, the person or persons owning the certificate or certificates, and not being the trespasser, shall have the right to bid at such sale the amount due to the state for such land, and the expenses of seizure and sale, the amount of which shall be stated at the sale by the person authorized to sell; and when such bid is made, it shall be the duty of the person making such sale to strike off the property to such bidder or bidders; *provided*, that if there shall be at the sale any dispute between bidders as to the ownership of the certificate or certificates of sale issued by the state, the person conducting and making such sale shall sell the property so seized to the highest bidder, he first bidding, as provided in this act, in which case the amount so received, or the proceeds of the sale when received, shall be paid into the state treasury, and remain there until the commissioners of school and univerity lands shall determine the

ownership of said certificate or certificates; and for that purpose they are hereby authorized to take such evidence as, in their judgment, shall be necessary to determine the fact. When such fact is determined, it shall be the duty of the state treasurer, and he is hereby directed to pay over to the rightful person or persons, on their order, the avails of such sale, after deducting the price of the land and the expenses herein provided for.

SECTION 6. Whenever any trespass shall be committed on any of the lands mentioned in this act, the trespasser or his assigns shall not be entitled to the possession of the timber or other material taken from said lands until all penalties and charges, as provided for in this act shall be paid; and the timber agent is authorized to seize and hold timber or any other material taken from said lands until payment shall be made, even though the lands were sold and patented previous to the seizure, but after such trespass.

SECTION 7. Any person who shall hereafter enter and receive a patent for any school, university, swamp or other state land, shall thereby also acquire the right to all timber, lumber, trees, wood, bark, stone, earth, mineral, or other material cut upon or removed from such land before the issue of such patent, unless the same shall have been cut or removed with the assent of the proper state authorities, or sold by the state; and he may seize, sue for, and recover such materials, as if the same had been cut or removed from such land after the issue of such patent. The person so obtaining a patent may also bring an action for any trespass upon or other injury to such lands, committed before such patent shall issue, against the person or persons committing such trespass or other injury, in the manner and with like effect, and he shall be entitled to like damages, as if such trespass or other injury had been committed after the patent had issued; *provided*, that any such purchaser of land previously reported to the commissioners of school and university lands as trespassed upon, shall pay, in addition to the price thereof, the penalty of one hundred per cent., and charges as fixed by section 5 of this act, and thereupon any material seized shall be released to him; *and provided further*, that no such purchaser and nothing in this act contained shall affect

the liability of any person to punishment for the offense of trespassing, or cutting materials upon or removing materials from such lands, or prevent or bar any prosecutions for such offense whether commenced before or after the sale of such lands, and that the heirs or assigns of such purchaser shall have the same rights conferred upon them as the original purchaser.

SECTION 8. Chapter 21 of the general laws of 1871, entitled "An act to consolidate and amend the laws relating to trespassing on state lands," is hereby repealed.

SECTION 9. All acts or parts of acts conflicting with the provisions of this act are hereby repealed, provided nothing in this act contained shall interfere with any seizures and settlements now made or pending.

SECTION 10. This act shall take effect and be in full force from and after its passage.

Approved March 11, 1876.

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*Chapter* 377, *Laws of* 1865.

**AN ACT to provide more effectually for the protection of State Lands.**

*The People of the State of Wisconsin, represented in Senate and Assembly, do enact as follows:*

SECTION 1. Any person who shall dig mineral upon or remove mineral from any lands belonging to the state, or in which the state may have any right, title or interest, legal or equitable, or who shall cut timber, lumber, trees, wood or bark upon any such lands, or who shall remove from any such land any of such timber or other material, or any buildings, fences, fixtures or other property standing upon or appertaining to such land, or shall destroy or injure the same except when authorized by law, shall be guilty of a misdemeanor, and upon conviction of such offense, shall be punished by imprisonment in the county jail of the proper county, not more than six months, and by fine not exceeding one thousand dollars.

SECTION 2. Any justice of the peace shall have concurrent ju-

risdiction in his own county with the circuit court, of any offense mentioned in the preceding section, where the value of trees, wood timber, minerals, earth, property or other material shall be alleged not to exceed the sum of one hundred dollars, and in such case the punishment shall be by fine, not exceeding one hundred dollars, nor less than ten dollars.

SECTION 3. The first section of this act shall be held to include lands mortgaged to the State and land sold by the state but not fully paid for, and also lands granted to the state by act of Congress, entitled "An act to enable the State of Arkansas and other states to reclaim the swamp lands within their limits," approved September 28th, 1850, whether or not such lands shall have been selected by the State or conveyed to the State.

SECTION 4. It shall be the duty of the district attorney of each county to give special attention to the diligent prosecution of the offenses specified in this act, especially upon complaint made to him by the commissioners of school and university lands, or any clerk or agent appointed by them. It shall be competent for the commissioners of school and university lands to order to be paid to the district attorney, for extra services required of him under this act, out of the fines collected from persons guilty of the offenses herein mentioned, a sum not exceeding ten per cent. thereof, and to witnesses or other persons furnishing information of such offenses, out of such fines an amount not exceeding twenty-five per cent.

SECTION 5. Section 1 of chapter 233, of the general laws of 1864, is hereby amended by striking out thereof the words, "not exceeding eight."

SECTION 6. Any person who shall knowingly resist, hinder or obstruct, or procure or counsel any one to resist, hinder or obstruct any clerk, appointed by the commissioners of school and university lands, in the discharge of the duties as clerk, under chapter 277 of the general laws of 1860, or chapter 233 of the general laws of 1864, or who shall willfully remove, disturb or interfere with, or cause to be removed, disturbed or interfered with, any timber or other materials seized by such clerks under the provisions of said acts, after notice of such seizure, before such mate-

rials shall be released pursuant to order of the said commissioners, shall be guilty of a misdemeanor, and shall, upon conviction of such offense, be punished by imprisonment in the county jail of the proper county, not more than one year, and by fine not less than one hundred dollars nor more than one thousand dollars.

SECTION 7. Upon any hearing or trial in any suit, indictment or other legal proceeding, the certificate of the secretary of state, under the seal of the state, that any specified piece or tract of land belongs to the state, or is mortgaged to the state, or that the state has any interest, legal or equitable, in such piece or tract of land, or that authority has been given by the commissioners of school and university lands to any clerk appointed by them, naming him, to seize timber or other materials specified in this act, shall be *prima facie* evidence of the fact or facts stated in such certificate.

SECTION 8. This act shall take effect and be in force from and after its passage.

Approved April 8, 1865.

# RULES AND REGULATIONS

RELATIVE TO THE

DUTIES AND COMPENSATION OF THE AGENTS APPOINTED TO PROTECT STATE LANDS, AS PRESCRIBED BY THE GOVERNOR, MARCH 28, 1878.

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I.

Agents will be appointed for indefinite terms, and will be employed for such time and at such compensation as may be, from time to time, determined. Accounts for salary and actual necessary expenses in the discharge of duty, when duly certified to, will be audited and paid monthly or quarterly, as agents may desire.

II.

The paramount duty of every agent of the state appointed for the purposes of protecting the lands belonging to the state from injury, is to prevent *trespassing*.

III.

If despite reasonable care trespasses are committed, agents will be expected to detect and report the same, and they and each of them are hereby authorized, empowered and directed to seize, or cause to be seized, any timber or other material, mentioned in the law, unlawfully cut or removed from state lands. Immediate report will be made to the commissioners of school and university lands, specifying in detail the materials seized, the quantity and description of each as near as may be, the locality of the seizure, the lands from which such materials were cut or removed, describing by forty acre tracts, when practicable, the name of the reputed

owner of such lands, if any, the names of the trespassers, so far as known, the actual cash value of the materials seized, considering the location, season of the year, and other circumstances, fixing a rate at which the state could sell, if it should become the owner of the materials. Notice of the forwarding of such report will, in all cases, be sent to the governor.

IV.

Agents will in no case compromise with the owner or trespasser, refrain from seizing, nor agree to refrain, nor release a seizure legally made, without an express order from the governor. The law provides the only modes by which the materials can be released, and it will be closely followed. No partiality, unfairness, favor or injustice will be tolerated, but an equal and faithful execution of the law will be required of every agent.

V.

Agents will, in all proper cases, receive an order to sell the materials reported by them, unless an order for their release is made. Where there is an urgent necessity for an early sale, the agent may give notice according to the terms of the law, without waiting for such order of sale, but must not make the sale until the order is received.

VI.

Notices of sale will be in the name of the seizing agent, and may be in the following form:

PUBLIC SALE.

By authority of the Governor of Wisconsin, the undersigned, an agent appointed for the purpose of protecting lands belonging to the state, has seized, according to law, and will sell at public auction on the —— day of ——, at ———, the following described personal property cut on or removed from state lands, to-wit: (Describe the property as accurately as may be, stating its locality and amount.)

—— ——, Agent.

The notice must be published correctly three full weeks, once in each week, in a newspaper printed in the *county where such sale is to be had*, if any there be; and if there is no newspaper printed in said county, then written or printed copies of the notice must be posted up in the five most public places in said county at least twenty days before such sale. The agent giving the notice will make the sale in person.

The sale should be in presence of the materials to be sold, unless very inconvenient. If this be impracticable, the notice must specify with particularity the property and its locality, so that persons wishing to bid, may ascertain before the sale exactly what is to be sold.

VII.

When necessary, the sale may be adjourned, in which case notice must be given at the time of the adjournment, and also by publication or posting in the same manner as the original notice was given.

No sale will be complete, and no delivery of the property struck off will be made to the purchaser until the amount is actually paid to the agent, who will *forthwith* report the facts of the sale, and remit the proceeds to the state treasurer. When property shall be bid in for the state, the agent will hold the same for the state, and take the steps, if any, necessary for its protection; he will also seek opportunities to sell it again, at private sale, as soon as may be, and report them to the commissioners. He is not authorized to make such sale without a special order from them.

VIII.

Materials cut or removed from state lands, before the latter has been fully paid for, are subject to seizure as belonging to the state, even though the lands may be paid for before the seizure. When the seizure is properly made, agents will not release without an order to that effect, notwithstanding the lands may be paid for and patented after the cutting or removal of the materials, whether before or after seizure. The materials cut or removed continue to belong to the state, unless released on account of payment fo the penalty.

IX.

Agents cannot appoint deputies. They may, when necessary, employ persons to seize or to guard materials, but the acts are their own and must be performed in their names and on their responsibility.

X.

In cases where the lands may have been entered, but not fully paid for, and a trespass is committed thereon *without the agency of the owner of the certificate*, the latter has a right to bid at the sale the amount due on the land, and the expenses of seizure and sale upon paying which he will be entitled to have the property delivered to him, upon the order of the commissioners without the payment of a penalty. The expenses will be computed and stated at the sale by the agent in such case, and will include his own compensation and all other expenses in seizing, guarding and selling such property, so that there shall be no cost to the state. The agent will in such and all other cases of sale, make full report of his doings, the amount paid, and by whom, the amount of such expenses, and all other material facts. If there be any dispute between bidders as to ownership, the sale will be made to the highest bidder as if no claim of ownership had been made. If only one claimant appear (who should be required to produce the certificate of sale), and yet the agent be not entirely satisfied as to his ownership, or for other reasons is in doubt what course he should pursue, he may adjourn the sale long enough to lay the case before the commissioners, sending them the originals or exact copies of all papers of the claimant, certificates, assignments and other documents, showing title, and will wait for their instructions.

XI.

Agents will, in every case, report to the district attorney of the proper connty all necessary facts to enable such attorney to prosecute trespassers, as provided in chapter 377, laws of 1865, and if

any district attorney shall refuse or neglect, diligently and faithfully, to prosecute any case, the agent will report that fact to the governor.

WILLIAM E. SMITH,
*Governor.*

EXECUTIVE OFFICE,
Madison, Wis., March 28, 1878.