

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-1844/1dn
ARG:kjf:jf

January 31, 2003

ATTN: John O'Brien

In *Burlington Northern and Santa Fe Railway Co. v. Doyle*, 186 F.3d 790 (7th Cir. 1999), the Seventh Circuit Court of Appeals held that s. 192.25, stats., is, in part, unenforceable because the Federal Railroad Administration (FRA), under authority of the Federal Rail Safety Act, promulgated regulations covering some of the same subject matter as s. 192.25, stats. The court held that s. 192.25, stats., is preempted by federal law to the extent the statute defines railroad employee qualifications, requires a locomotive engineer to be at the controls of a locomotive whenever the locomotive moves, and requires a two-person crew for railroad hostling and helper movements (operations occurring within the railroad yard). The court also held that s. 192.25, stats., is not presently preempted to the extent it requires a two-person crew for over-the-road operations (hauling train cars between terminals). However, the FRA may preempt the state requirement of a two-person crew for over-the-road train operations by entering into an agreement with a railroad allowing use of a one-person crew. The FRA has also considered allowing one-person crews for over-the-road operations, and if the FRA proceeds to allow one-person crews, the FRA's implementation of this decision would further preempt s. 192.25, stats.

The attached bill treats some, but not all, of the grounds for preemption discussed in *Burlington Northern and Santa Fe Railway Co. v. Doyle*. If the attached bill is enacted, the amended s. 192.25 may continue to be preempted in part by federal law.

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