CHAPTER 192

RAILROADS; REGULATIONS AND LIABILITIES

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Cross−reference: See also RR, Wis. adm. code.

192.001 Definitions. In this chapter:

(1m) "Department" means the department of transportation.

(2) "Office" means the office of the commissioner of railroads.

History: 1977 c. 29; 1981 c. 347; 1983 a. 189; 1993 a. 16, 123.

192.005 Scope of chapter. Each provision of this chapter applies only to the extent that it is not contrary to or inconsistent with federal law or the constitution of the United States.

History: 2005 a. 179.

192.15 Engine equipment. (1) This section shall apply to all engines or locomotives used in operating a railroad.

(2) For purposes of this section:

(a) "Cab" means the crew compartment of the engine.

(b) "Control unit" means the unit which controls the movement of multiple units.

(c) "Engine" means a locomotive or a unit propelled by any form of energy, or a combination of such units operated from a single control, used in train or yard service.

(d) "Initial terminal" means the terminal within the state from which an engine is dispatched and at which maintenance supplies are available or at which regular maintenance forces are available to repair defective equipment.

(e) "Railroad" means a railroad operated as a common carrier in this state.

(3) Cabs shall be sufficiently insulated to reduce noise in the cab in accordance with federal regulations.

(4) Cabs shall be provided with at least 2 doors for exiting in 2 different directions. Exterior platforms shall be equipped with appropriate hand or guard rails. All ladders and steps shall be equipped with grab irons for the safety of persons getting on and off.

(5) Wherever glass and glazing materials are used on exterior engine doors or windows they shall be in compliance with federal regulations.

(6) Cab doors and windows shall be weatherstripped to prevent drafts and noxious odors from entering the cab. Cabs shall be heated to maintain a minimum temperature of 50° Fahrenheit and shall be insulated to retain heat. Heaters shall be in proper working order whenever the engine is in use.

(7) Cabs shall be supplied with a drinking cup dispenser with a supply of cups. At least one gallon of sanitary water from a water cooler or sealed containers of water from a refrigerated cooler shall be in the cab at the time of departure from the initial terminal.

(8) Each cab used in train service more than 25 miles from an initial terminal shall be equipped with a suitable retention toilet facility. If locomotives are operated in multiple units only the control unit needs to comply with the toilet facility requirement. All toilet facilities shall be sanitary and operational when placed in service at the initial terminal.

(9) Each cab shall be in a clean and sanitary condition when placed in service.

(10) A cab used in train service shall be equipped with a speedometer functioning accurately within 3 miles per hour. If locomotives are operated in multiple units only the control unit needs to comply with the speedometer requirement.

(11) Engines shall be equipped with whistles or horns mounted to face the direction in which the engine is moving and placed to emit a warning sound at a sound level which accords with established practices to warn employees and the public of the engine's approach.

(12) All cabs shall be equipped with at least one portable foam, dry chemical or carbon dioxide type fire extinguisher with a minimum capacity of 1−1/4 gallon or 5 pounds. The extinguisher shall be placed in a readily accessible location and shall be effectively maintained.

(13) If a failure of required equipment or standards of maintenance, as set forth under this section, occurs after an engine has commenced a trip or tour of duty in service, it shall be corrected at the first point at which maintenance supplies are available, or, in case of repairs, prior to the next assignment.

(14) If in any particular case any exemption from any requirement of this section is deemed necessary by a carrier, the office shall consider the application of the carrier for exemption and may grant the exemption when accompanied by a full statement of the conditions existing and the reasons for the exemption. Any exemption so granted shall be limited to the particular case specified and shall be limited to a stated period of time.

(15) Compliance with this section shall be accomplished within 5 years of November 17, 1977. The requirements stated in this section shall be deemed complied with by equipment or standards or maintenance equal or superior to those prescribed in this section.

History: 1977 c. 155; 1981 c. 347 s. 80 (1); 1993 a. 16, 123.

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 the passenger in the baggage car or some other safe and secure place on such train until its arrival at some usual stopping place, when the passenger 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.

History: 1993 a. 482.

192.25 Railroad train crews. (1) In this section:

(a) "Certified railroad locomotive engineer" means a person certified under 49 CFR 240 as a train service engineer, locomotive servicing engineer or student engineer.

(b) "Qualified railroad trainman" means a person who has successfully completed a railroad carrier's training program and passed an examination on railroad operation rules.

(2) No person operating or controlling any railroad, as defined in s. 85.01 (5), may allow the operation of any railroad train or locomotive in this state unless the railroad train or locomotive has a crew of at least 2 individuals. One of the individuals shall be a certified railroad locomotive engineer. The other individual shall be either a certified railroad locomotive engineer or a qualified railroad trainman. A certified railroad locomotive engineer shall operate the control locomotive at all times that the railroad train or locomotive is in motion. The other crew member may dismount the railroad train or locomotive when necessary to perform switching activities and other duties in the course of his or her job.

(3) (a) The office, by rule, may grant an exception to sub. (2) if the office determines that the exception will not endanger the life or property of any person.

(b) Subsection (2) does not apply to the extent that it is contrary to or inconsistent with a regulation or order of the federal railroad administration.

(4) Any person who violates sub. (2) may be required to forfeit not less than $25 nor more than $100 for a first offense, not less than $100 nor more than $500 for a 2nd offense committed within 3 years, and not less than $500 nor more than $1,000 for a 3rd offense committed within 3 years.

History: 1997 a. 42.

This section is preempted by federal law except to the extent that sub. (2) prohibits over−the−road train operation unless there is a train crew of at least 2. However over−the−road operations may also be exempted by specific agreement between the Federal Railway Administration and an individual railroad. Burlington Northern and Santa Fe Railway Co. v. Doyle, 186 F.3d 790 (1999).

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 are adjacent, except in counties having a population of at least 150,000, the corporations shall, within 60 days after a written request of the office 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 those corporations, unless otherwise ordered by the office.

(2) Any railroad corporation neglecting or refusing to comply with the provisions of this section shall forfeit not less than $25 nor more than $100 for each offense. Each day that the violation continues shall constitute a separate offense.

History: 1981 c. 347 s. 80 (1); 1993 a. 16, 123; 1997 a. 254.

192.29 Train bells and crossing signs at street and highway crossings. (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 330 feet of the crossing and until the crossing is 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; BELL. No railroad train or locomotive shall run over any public traveled grade highway crossing outside of the limits of municipalities unless the engine bell shall be rung continuously from 1,320 feet before the crossing until the crossing is reached. But the office may order that the ringing of the bell as required by this subsection shall be omitted at any crossing.

(5) RAILROAD CROSSING AND YIELD SIGNS. (a) Wherever its track crosses a public highway or street, every railroad corporation shall maintain on each side of the track a highway−rail−grade crossing sign, commonly known as a crossbuck sign, that conforms with the manual of uniform traffic control devices adopted by the department under s. 84.02 (4) (e).

(b) No later than July 1, 2007, at every railroad crossing at which a railroad corporation is required to maintain a sign described in par. (a) and that is not controlled by a gate, automatic signal, or official stop sign, the railroad corporation shall install and maintain, below the sign described in par. (a), a yield sign that conforms with the manual of uniform traffic control devices adopted by the department under s. 84.02 (4) (e).

(6) CONTACT INFORMATION AT PRIVATE CROSSINGS. A railroad company shall make a notice containing a telephone number at which a person may contact the company available to private landowners at each private traveled grade crossing at the request of the private landowner. The notice shall be large enough to be visible from the crossing.

History: 1977 c. 29 ss. 1654 (8) (b), (9) (e), 1656 (43); 1977 c. 116; 1981 c. 347 s. 80 (1); 1993 a. 16, 123; 1997 a. 254; 2005 a. 95, 179; 2013 a. 219.

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 railroad company that shall violate this section shall be liable to a fine of not more than $500 or any officer of such company responsible for the violation shall be liable to imprisonment of not more than 15 days.

History: 2005 a. 179.

192.295 Willful neglect of railroad employees. Any officer, agent, conductor, engineer or employee of any railroad company operating within this state who willfully 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, as required by s. 192.29 (3) and (4), shall forfeit $100.

History: 1983 a. 501; 2005 a. 179.

192.31 Telltales over railroads. (1) (a) Telltales shall not be required except to the extent required under federal law and except as provided in par. (b).

(b) If the office finds that the absence of a telltale would create an unreasonable risk of harm to the public or a railroad employee on a railroad not under the jurisdiction of the federal railroad administration, the office may enter an order requiring the installation of a telltale. A telltale shall be ordered by the office according to the hearing procedure provided under sub. (4).

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

(3) After December 31, 1993, no overhead structure shall be constructed or reconstructed, not including ordinary repairs necessary for maintenance, which shall have a vertical clearance of less than 23 feet above the top of rail, except as provided in sub. (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 sub. (3), the office 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 held upon notice to all interested parties except that, if no objection is filed with the office within 20 days of the notice, the office may require the installation of a telltale

without hearing. The findings and order requiring the installation of a telltale shall be in writing and contain complete provisions 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 office a verified statement showing the location of every such bridge or other structure over any of its tracks at a height of less than 23 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 employee 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 the employee continues in the employ of such corporation after the existence of such unguarded structure has been brought to the employee's knowledge.

History: 1981 c. 347 s. 80 (1); 1983 a. 192; 1993 a. 16, 123, 482; 2005 a. 179.

192.32 Trespassing on railroad. (1) No person, other than a licensee, authorized newspaper reporter or person connected with or employed upon the railroad, may walk, loiter or be upon or along the track of any railroad. The provisions of this subsection shall not be construed to do any of the following:

(a) To interfere with the lawful use of a public highway by any person.

(b) To prevent any person from driving across any railroad from one part of that person's land to another part thereof.

(d) To interfere with the use of the right−of−way or track by any person 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 the railroad.

(e) To interfere with the entry of any employee during or on account of labor disputes by employees.

(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.

History: 1993 a. 482, 490; 1997 a. 254; 2001 a. 38; 2005 a. 179.

192.321 Getting on and off cars. Any person 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 forfeit not less than $100 nor more than $200, provided that this section shall not apply to the employees of any railroad company.

History: 2005 a. 179.

192.324 Railroad bridges to be safe for employees. Whenever a complaint is lodged with the office 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 employees and the safety of such employees requires the alteration so as to provide for such walks and railings of such bridge, the office shall give notice to the party in interest, other than the complainant, of the filing of the complaint and furnish such party with a copy thereof, and order a hearing thereon, in the manner provided for hearings in s. 195.31. The office may proceed in a similar manner in the absence of a complaint when, in the opinion of the office, the safety of railroad employees requires the alteration of a railroad bridge. After the hearing, the office shall determine what alteration, if any, of such bridge, shall be made. The expense of such alteration shall be borne by the railroad company.

History: 1977 c. 29 s. 1654 (9) (e); 1981 c. 347 s. 80 (1); 1993 a. 16, 123.

192.327 Motor vehicles of railroads used to transport its employees. (1) As used in this section, unless the context requires otherwise:

(b) "Motor vehicle" means any vehicle which is self−propelled.

(c) "Owner" means any person having the lawful use or control of a motor vehicle as holder of the legal title of the motor vehicle or under contract or lease or otherwise.

(d) "Place of employment" means that location where one or more workers are actually performing the labor incident to their employment.

(e) "Worker" means an individual employed for any period in any work for which the individual is compensated, whether full or part time.

(2) Every motor vehicle provided by a railroad company and used to transport one or more workers to and from their places of employment or during the course of their employment shall be operated by a driver who satisfies the minimum standards for drivers established by the department.

(3) The office shall make and enforce reasonable rules relating to motor vehicles used to transport workers to and from their places of employment or during the course of their employment.

(4) Before formulating such rules, the office shall conduct hearings under ch. 227 and invite the participation of interested groups. These groups may make suggestions relating to the minimum standards to be embodied in the rules. The office may consider the suggestions prior to the issuance of any rules.

(5) The office may amend the rules at any time upon its own motion after due notice to interested parties.

(6) The office may, in enforcing the rules, inspect any motor vehicle used to transport workers to and from their places of employment or during the course of their employment. Upon request of the office, the department shall direct its traffic officers to assist the office in those inspections.

(7) Whenever the office finds that a motor vehicle used to transport workers to and from their places of employment or during the course of their employment violates any provision of the rules, the office shall make, enter and serve upon the owner of the motor vehicle such order as may be necessary to protect the safety of workers transported in the motor vehicle.

(8) Any railroad company willfully failing to comply with an order issued under sub. (7), may be fined not to exceed $500.

History: 1977 c. 29 ss. 1299, 1654 (7) (a), (e), (9) (e); 1981 c. 347 s. 80 (1); 1993 a. 16, 123, 482.

Cross−reference: See also ss. RR 2.17, 2.18, 2.19, and 2.20, Wis. adm. code.

192.33 Fences, cattle guards, crossings. (1) Subject to s. 190.09, every corporation operating any railroad shall erect and maintain on both sides of its railroad, 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 railroad where sidetracks or switch tracks are used in cities of the 1st class.

(2) All fences and cattle guards required under sub. (1) shall be made within one month from the time of commencing to operate the railroad right−of−way, so far as operated. Until the required fences and cattle guards are made, the railroad corporation owning or operating the right−of−way shall be liable for all damages done to domestic animals, or persons on the right−of−way, occasioned in any manner, in whole or in part, by the want of the required fences or cattle guards. After the required fences and cattle guards are constructed the railroad conformations 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 ch. 90; but nothing in this section 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 pro-

tection 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 office specifying the particular crossings.

History: 1981 c. 347 s. 80 (1); 1993 a. 16, 123, 490; 1997 a. 254; 2005 a. 179.

A trespasser was not a member of the class protected by this section. Anderson v. Green Bay & Western Railroad, 99 Wis. 2d 514, 299 N.W.2d 615 (Ct. App. 1980).

"Farm crossings" are not limited to farms, but are all crossings used by occupants of land rather than highway crossings and entail limited private use for which safeguards are unnecessary. Sixmile Creek Associates Inc. v. Chicago & North Western Transportation Co. 178 Wis. 2d 237, 504 N.W.2d 348 (Ct. App. 1993).

There is no obligation to maintain a fence on a railroad right−of−way when it is being used as a recreational trail and not to operate a railroad. May v. Tri−County Trails Commission, 220 Wis. 2d 729, 583 N.W.2d 878 (Ct. App. 1998), 97−0588.

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 the line has failed to construct or keep in good repair fences along its right−of−way opposite to the complainant's land as required under s. 192.33, the office shall proceed on the complaint in the manner provided in s. 195.04. If it shall appear that the complaint is well founded, the office may order and direct the railroad company to repair the complained of fences so that the fences will be sufficient or to construct legal fences.

History: 1981 c. 347 s. 80 (1); 1993 a. 16, 123; 1997 a. 254.

192.35 Interference with fences; trespassers on track. **(1)** Any person who does any of the following shall forfeit not less than $10 nor more than $50 and, in addition, be liable to the party injured for all damages resulting from the act or omission:

(a) Willfully takes down, opens or removes any railroad fence, cattle guard or crossing, in whole or in part.

(b) Allows a railroad fence, cattle guard or crossing to be taken down, opened or removed.

(c) Having lawfully taken down bars or opened gates in a railroad fence for the purpose of passing through the fence, does not immediately replace the bars or close the gate.

(2) Any person who without the consent of the party owning or having control of the road rides, leads or drives any horse or other animal upon a fenced railroad right−of−way, or who rides, leads or drives any horse or team lengthwise of an unfenced railroad track, other than at the farm crossings or upon depot grounds or where the track is laid along or across a public highway shall, for each occurrence, forfeit not more than $10, to the party owning or having control of the railroad right−of−way, and shall also pay all damages that shall be sustained by the aggrieved party.

History: 1997 a. 254.

192.36 Fences, occupant of land may build or repair. **(1)** Whenever a railroad corporation fails to build or repair any fence, which the law requires it to erect, the owner or occupant of the land adjoining may, between April 1 and October 1, give notice in writing to the railroad corporation to build the fence within 60 days, or repair the fence within 30 days, after service of the notice.

(2) The notice under sub. (1) shall describe the land on which the fence is required to be built or repaired. Service of the notice may be made by delivering the notice to any station agent of the railroad corporation.

(3) In case the railroad corporation fails to build or repair the fence within the required time, the owner or occupant of the adjoining land may build or repair the fence and recover from the railroad corporation the cost of building or repairing with interest at the rate of 1 percent per month from the time that the fence shall have been built or repaired.

History: 1997 a. 254; 2009 a. 177.

192.37 Fences, farm crossings; railroads to provide. **(1)** Whenever any corporation operates a railroad through enclosed lands and fails to construct the fences, farm crossings or cattle guards required by law, proper for the use of the enclosed lands, the owner or occupant of the lands may give notice to the railroad corporation of its failure to construct the necessary fences, farm crossings and cattle guards on the owner's or occupant's enclosed lands.

(2) The notice under sub. (1) shall meet all of the following requirements:

(a) It shall be in writing, signed by the owner or occupant of the enclosed lands.

(b) It shall contain a description of the owner's or occupant's enclosed lands.

(c) It shall be served in the manner provided for the service of summons in the circuit court.

(3) If a railroad corporation, after being notified under this section, neglects for 3 months to construct the necessary fences, farm crossings and cattle guards on the lands described in the notice, it shall be liable to pay to the owner or occupant of the described lands $10 for each day after the expiration of the 3 months until the necessary fences, farm crossings and cattle guards are constructed. No time between November 1 and April 1 shall be included in the calculation of the 3−month period under this subsection.

History: 1993 a. 482; 1997 a. 254.

192.38 Contracts not affected. 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.

192.43 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 employees 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 the owner's property, and that the fire originated in the manner hereinbefore stated.

History: 1993 a. 482.

192.47 Railroad police; oath; powers. Any railway company may, at its own expense, appoint and employ railroad police officers at the stations or other places on the line of its road within this state as it deems 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 police officer shall take an oath to support the constitution of the United States and claiming to be a citizen of the United States and shall file it with the office. Each police officer shall, when on duty, wear a shield furnished by the company bearing the words "Railroad Police" and the name of the company. These police officers may arrest, with or without warrant, any person who in their presence commits upon the premises of the 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 these offenders in or about the premises or appurtenances. In case of the arrest, by a railroad police officer, of any person without warrant the officer shall immediately take the offender before a judge having jurisdiction and make complaint against the offender. Every

railway company shall be responsible for the acts of its police officers.

History: 1981 c. 347; 1985 a. 135; 1993 a. 16, 123.

192.52 Terminals and shops, removal. (1) (a) The term "shops" shall mean and embrace plants and locations where railroads engage in the general work of repairing, painting, overhauling or constructing locomotives, cars, coaches and other rolling stock and appurtenances thereto.

(b) 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 railroad operating in this state.

(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 office for such removal, after due notice and public hearing, and in all other respects as provided for hearings in ch. 195. The office shall render its decision within 30 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 office after due hearing had on the matter, in compliance with ch. 195.

(5) Before any railroad company operating in this state shall make any removal or transfer of shops or terminals or abandons the same, it shall file notice of intention so to do with the office, and the office 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 employees of such railroad company. No such removal or transfer shall be made during such investigation, or thereafter, if the office finds such removal, transfer or abandonment is not in the public interest or is unreasonable or unfair as to the employees of such railroad.

History: 1971 c. 164 s. 88; 1977 c. 29 s. 1654 (9) (e); 1981 c. 347 s. 80 (1); 1983 a. 189; 1993 a. 16, 123; 2005 a. 179.

192.53 Railroad track clearance. (1) Except as otherwise provided in this section, no building or loading platform shall be constructed nor shall any addition to or reconstruction of an existing building or loading platform, excluding ordinary repairs necessary for maintenance, be made that shall have a horizontal clearance of less than 8 feet 6 inches between it and the center line of any railroad track. The same clearance shall be maintained between the center line of the railroad 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) A platform that is not higher than 4 inches above the top of the rail shall be not less than 4 feet 6 inches from the center line of the adjacent track.

(b) A platform that is more than 4 inches but not higher than 8 inches above the top of the rail shall be not less than 5 feet one inch from the center line of the adjacent track.

(c) A platform that is more than 8 inches but not higher than one foot 9 inches above the top of the rail shall be not less than 6 feet from the center line of the adjacent track.

(d) A platform that is higher than one foot 9 inches above the top of the rail of a main track shall be not less than 8 feet from the center line of the main track.

(3) (a) Notwithstanding par. (b), high platforms 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 the track from the platform, which have a face or edge at least 5 feet 8 inches from the center line of such track, which were in existence on July 1, 1949, may be maintained.

(b) No platform of the type described in par. (a) may 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 or which is more than 5 feet above top of rail level.

(4) (a) Upon finding that any structure that is subject to the provisions of this section will not imperil life or limb, and that the public interest requires or permits the structure to be constructed or reconstructed otherwise than as permitted by the provisions of this section, the office may exempt the structure from the provisions of this section.

(b) The office shall make the findings described in par. (a) only upon written application to it to exempt the construction or reconstruction of a structure from the requirements of this section, setting forth fully the grounds therefor, and only after public hearing held upon notice to all interested parties except that, if no objection is filed with the office within 20 days of the notice, the office may authorize the exemption without hearing. The office's findings and order granting the exemption shall be in writing and shall contain complete provisions and requirements as to the horizontal clearance to be maintained in the construction or reconstruction. The structure shall be constructed or reconstructed only in compliance with the office's order.

(5) (a) Except as otherwise provided in this section and subject to the power of the office to make exceptions to this section in a manner similar to the power given it in sub. (4), no railroad or shipper may do any of the following:

1. 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

2. 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 the railroad company.

(b) The intent of this subsection is to afford proper clearance between railroad cars and obstructions and to promote the safety of railroad employees in switching cars.

(6) Any 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 office under this section, shall forfeit not less than $100 nor more than $200.

History: 1981 c. 347 s. 80 (1); 1993 a. 16, 123; 1997 a. 254; 2005 a. 179.

Cross−reference: See also ss. RR 2.14, 2.15, and 2.16, Wis. adm. code.

192.54 General penalty for this chapter. If any railroad corporation, its officers, agents or servants violate or fail to comply with any provision of this chapter the corporation shall, for every violation or failure, unless some other penalty is specifically provided, forfeit not less than $10 nor more than $1,000, and be liable to the person injured for all damages sustained thereby.

History: 1981 c. 390; 1995 a. 225.

192.55 Special penalties for this chapter. (5) Any corporation or person operating a railroad that shall fail to erect the telltales required by s. 192.31 for the space of 60 days after notice from the office requiring such erection shall forfeit not less than $50 nor more than $100, and each 20 days' delay thereafter in erecting such telltales shall be a separate offense.

(6) Any person violating s. 192.32 shall forfeit not less than $100 nor more than $200.

(7) Any railroad which violates s. 192.15 shall forfeit to the state $100 for each violation and each day that the violation continues shall be deemed a separate offense.

History: 1971 c. 306; 1973 c. 154; 1977 c. 155; 1981 c. 347 s. 80 (1); 1983 a. 501; 1993 a. 16, 123; 2005 a. 179.

192.56 Abandoning of railroad stations. (1) It is unlawful for any railroad company owning or operating any railroad in whole or in part in this state, to abandon any station in any town, village or city on its line of railroad, within this state, or to remove the depot therefrom, or to withdraw agency service therefrom, without first obtaining from the office an order authorizing such action.

(2) At a station where agency service is provided the application to the office for such authorizing order shall set forth the facts showing the necessity for such action by the railroad company, and if the office 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 the 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 the hearing and of the purpose thereof shall be given, by the office, by posting the notice in 5 conspicuous places in the 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 hearing shall be held as other hearings before the office are held as far as applicable. The office may dismiss the 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 office 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 office 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 office by persons directly affected, an order authorizing the abandonment of the station may be issued by the office. If such objections to the granting of the order are filed with the office, the office shall proceed to hold a hearing in the matter as provided in subs. (4) and (5).

History: 1973 c. 157, 333; 1977 c. 29 s. 1654 (9) (e); 1977 c. 203; 1981 c. 347 s. 80 (1); 1993 a. 16, 123.

192.73 Sale of abandoned rail property after release by state. (1) DEFINITIONS. In this section:

(a) "Abandoned rail property" means rail property that is determined to be abandoned as provided in s. 85.09 (3).

(b) "Condemnation commission" means the office of the commissioner of condemnation under s. 32.08 for the county in which abandoned rail property is located.

(c) "Lessee" means a person occupying abandoned rail property under a lease.

(d) "Owner" means a person that owns abandoned rail property but "owner" does not include any of the following:

1. A railroad operating as a common carrier in this state on May 11, 1990.

2. A railroad corporation that owns a controlling interest on May 11, 1990, in a railroad operating as a common carrier in this state.

3. A railroad corporation that is under common control on May 11, 1990, with a railroad operating as a common carrier in this state.

(e) "Rail property" has the meaning given in s. 85.01 (3).

(2) RIGHT OF LESSEE TO ACQUIRE. (a) If the department determines not to acquire abandoned rail property under s. 85.09 (4) and issues a release of its first right to acquire the property under s. 85.09 (2), an owner may not sell or offer to sell abandoned rail property to a person other than the lessee of the abandoned rail property unless the owner first offers to sell that property to the lessee under this subsection.

(b) The owner shall send by certified mail a written offer to sell abandoned rail property at a fair market price to the lessee of that property. The lessee relinquishes the right to acquire abandoned rail property under this section if it does not respond to the offer by certified mail within 60 days after receipt of the offer to sell.

(c) If the owner and the lessee do not agree on a purchase price within 60 days after the lessee's response, the lessee or the owner may request that the condemnation commission determine the fair market value for the abandoned rail property. The condemnation commission shall determine the fair market value for the abandoned rail property on the basis of 3 independent appraisals. The owner and the lessee shall each select one appraiser and shall pay the cost of that appraisal. The condemnation commission shall select one appraiser and shall divide the cost of the appraisal equally between the owner and the lessee. The condemnation commission shall inform the owner and lessee by certified mail of its determination of the fair market value for the abandoned rail property.

(d) Within 30 days after receipt of the determination, the lessee shall notify the owner if the lessee agrees to purchase the abandoned rail property at its fair market value. If the lessee agrees to purchase, the owner shall sell the abandoned rail property to the lessee at its fair market value.

History: 1989 a. 336.

192.80 Full crew employee rights. No employee of a railroad operating in this state on May 20, 1972, shall be discharged, laid off, furloughed, removed from train or engine service, reduced in monthly earnings, transferred without the employee's approval or reduced in rank or classification, because of the repeal of s. 192.25, 1969 stats., s. 192.26, 1969 stats., s. 192.55 (4), 1969 stats., and s. 195.03 (21), 1969 stats., by chapter 306, laws of 1971. A transferred employee shall be reimbursed by the employee's employer for the employee's moving expenses, including loss on sale of home. The rights granted to the employees under this section shall be binding on the railroads and shall be part of and shall have the same force and effect as the collective bargaining agreements between the employee organizations and the railroads. Any employee who recovers from a railroad upon litigation brought to enforce the employee's rights under this section shall be reimbursed by the employee's employer for all reasonable attorney fees necessarily incurred thereby.

History: 1971 c. 306; 1987 a. 403 s. 256; 1993 a. 482, 490.

This section does not conflict with any federal law. In re Chicago, Milwaukee, St. Paul & Pacific Railroad Co. 852 F.2d 960 (1988).

When a dispute between a railroad and union involved the interpretation of contract terms as to which both of the contending interpretations were reasonable the dispute should be settled by the compulsory arbitration procedures of the railway labor act and not by the federal court. United Transportation Union v. Burlington Northern Inc. 382 F. Supp. 896 (1974).

Because the railway labor act did not preempt this section, the federal court had no jurisdiction. Fricke v. Chicago, Milwaukee, St. Paul and Pacific Railroad Co. 563 F. Supp. 311 (1983).