

SENATE BILL NO. 2188

Introduced by

Senators Fischer, Cook, Robinson

Representatives Haas, R. Kelsch, Wolf

1 A BILL for an Act to create and enact four new sections to chapter 49-10.1 of the North Dakota
2 Century Code, relating to railroad safety and risk assessments.

3 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

4 **SECTION 1.** Four new sections to chapter 49-10.1 of the North Dakota Century Code
5 are created and enacted as follows:

6 **Risk assessment to commission.**

- 7 1. By July 1, 2008, an operator of rail facilities shall provide a risk assessment to the
8 commission, the division of homeland security, and the department of emergency
9 services for each rail facility in the state which is under the operator's ownership,
10 operation, or control. The risk assessment must describe for each rail facility:
11 a. The location and functions of the rail facility;
12 b. All types of cargo that are moved through, or stored at, the rail facility;
13 c. Any hazardous cargo that is moved through, or stored at, the rail facility;
14 d. The frequency that any hazardous cargo is moved through, or stored at, the
15 rail facility;
16 e. A description of the current capabilities of the rail operator to prevent acts of
17 sabotage, terrorism, or other crimes on the rail facility;
18 f. All training programs that the rail operator requires for its employees at the rail
19 facility;
20 g. The emergency response procedures of the rail operator to deal with the acts
21 of sabotage, terrorism, or other crimes at the rail facility; and
22 h. The procedures of the rail operator to communicate with local and state law
23 enforcement personnel, emergency personnel, transportation officials, and

- 1 other first responders in the event of the acts of sabotage, terrorism, or other
2 crimes at the rail facility.
- 3 2. The risk assessment is exempt from the provisions of section 44-04-18 and
4 section 6 of article XI of the Constitution of North Dakota but the department of
5 emergency services may provide the risk assessment to other law enforcement or
6 emergency personnel.
- 7 3. By January 1, 2009, a rail operator shall develop and implement an infrastructure
8 protection program to protect rail infrastructure in the state, including single points
9 of failure, from acts of sabotage, terrorism, or other crimes. The infrastructure
10 protection program must provide training to all employees of the rail operator
11 performing work at a rail facility on how to recognize, prevent, and respond to acts
12 of sabotage, terrorism, or other crimes.
- 13 4. The employees of a contractor or subcontractor of a rail operator and any other
14 individual performing work at a rail facility that is not an employee of the rail
15 operator must receive training equivalent to that received by employees of the rail
16 operator within a reasonable period of time. The commission, in consultation with
17 the division of homeland security, may adopt reasonable rules or orders to
18 implement this requirement.
- 19 5. The employees of a contractor or subcontractor of a rail operator and any other
20 person performing work at a rail facility which is not an employee of the rail
21 operator must undergo an equivalent evaluation of their background, skills, and
22 fitness as the rail operator implements for the operator's employees under an
23 infrastructure protection plan. The commission, in consultation with the division of
24 homeland security, may adopt reasonable rules to implement this requirement.
- 25 6. Each rail operator in the state shall provide to the commission, the division of
26 homeland security, and the department of emergency services a copy of its
27 infrastructure protection program. The program information is confidential.
- 28 7. The rail operator shall update the infrastructure protection program at least once
29 per year and submit the updated plan to the commission, the division of homeland
30 security, and the department of emergency services.

- 1 8. The commission, in consultation with the department of emergency services, shall
2 review the infrastructure protection program submitted by a rail operator, may
3 conduct inspections to facilitate the review, and may order a rail operator to
4 improve, modify, or change the operator's program to comply with the
5 requirements of this section.
- 6 9. The commission may fine a rail operator for failure to comply with the requirements
7 of this section or an order of the commission under this section.

8 **Hazardous cargo rules.**

- 9 1. For all facilities that handle hazardous cargo, a rail operator shall:
- 10 a. Secure all facilities that handle or store hazardous materials by providing
11 adequate security personnel.
- 12 b. Store hazardous materials only in secure facilities designed for storage, which
13 may not include mainline, branch, industrial, or passing tracks not so
14 designated or retrofitted.
- 15 c. Shall ensure that the cabs of occupied locomotives are secured from
16 hijacking, sabotage, or terrorism.
- 17 2. A rail operator shall provide communications capability that:
- 18 a. Can alert local and state law enforcement personnel, emergency personnel,
19 transportation officials, and other first responders on a timely basis in the
20 event of sabotage, terrorism, and other crimes; and
- 21 b. Can provide bridge tenders on movable bridges the ability to alert local and
22 state law enforcement personnel, emergency personnel, transportation
23 officials, and other first responders on a timely basis in the event of sabotage,
24 terrorism, or other crimes.

25 **Accident report.** A railroad corporation shall provide immediate notification to the
26 department of emergency services of an accidental release of or a derailment involving a
27 hazardous material.

28 **Whistleblower protection.** A rail operator or any other employer may not act to punish
29 an employee who reports a violation of this chapter. An employee against whom punitive action
30 is taken may seek civil damages from any employer that acts to punish an employee who
31 reports a violation of this chapter, in addition to any other remedies.