

**As Introduced**

**127th General Assembly  
Regular Session  
2007-2008**

**S. B. No. 340**

**Senator Cafaro**

**Cosponsors: Senators Miller, R., Bocchieri**

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**A B I L L**

To amend section 3750.20 and to enact sections 1  
3750.23 and 4999.09 of the Revised Code to require 2  
rail owners and operators to secure rail 3  
facilities and equipment from the threat of 4  
terrorism through the development of a 5  
vulnerability assessment, an infrastructure 6  
protection program, and proper communication with 7  
public authorities, and to prohibit a railroad 8  
from operating a locomotive, other than on a 9  
passenger train, over the road between two 10  
terminals unless a certified train service 11  
engineer is present in the crew compartment. 12

**BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF OHIO:**

**Section 1.** That section 3750.20 be amended and sections 13  
3750.23 and 4999.09 of the Revised Code be enacted to read as 14  
follows: 15

**Sec. 3750.20.** (A) The attorney general, the prosecuting 16  
attorney of the county, or the city director of law of the city 17  
where a violation has occurred or is occurring, upon the written 18  
request of the executive committee of the emergency response 19

commission, the local emergency planning committee, or the fire 20  
department having jurisdiction where the violation has occurred or 21  
is occurring, or upon the written request of any public authority 22  
as defined in section 3750.23 of the Revised Code for a violation 23  
of division (G) of that section, shall prosecute to termination or 24  
bring an action for injunction against any person who has violated 25  
or is violating any section of this chapter or rules adopted or 26  
orders issued under it. The court of common pleas in which an 27  
action for injunction is filed has the jurisdiction to and shall 28  
grant preliminary and permanent injunctive relief upon a showing 29  
that the person against whom the action is brought has violated or 30  
is violating any section of this chapter or a rule adopted or 31  
order issued under it. The court shall give precedence to such an 32  
action over all other cases. 33

Upon the certified written request of any person, the 34  
director of environmental protection shall conduct such 35  
investigations and make such inquiries as are necessary to secure 36  
compliance with this chapter and the rules adopted or orders 37  
issued under it. The director or the commission may, upon request 38  
or upon their own initiative, investigate or make inquiries into 39  
any alleged violation of this chapter or rules adopted or orders 40  
issued under it. 41

(B)(1) Whoever violates section 3750.06 of the Revised Code 42  
or an order issued under section 3750.18 of the Revised Code to 43  
enforce that section shall pay a civil penalty of not more than 44  
~~twenty-five~~ five thousand dollars for each day of violation. 45

(2) Whoever violates division (B) of section 3750.17 of the 46  
Revised Code shall pay a civil penalty of not more than 47  
~~twenty-five~~ five thousand dollars for each violation. 48

(3) Whoever violates section 3750.05, 3750.07, or 3750.08 of 49  
the Revised Code, divisions (C)(1) to (3) of section 3750.09 of 50  
the Revised Code, division (C) of section 3750.10, a rule adopted 51

under division (B)(1)(d) or (e) of section 3750.02 of the Revised Code, an order issued under section 3750.18 of the Revised Code to secure compliance with any of those sections or rules, division (E)(5) of section 3750.03 of the Revised Code, division (E) of section 3750.11 of the Revised Code, or division (C) of section 3750.17 of the Revised Code shall pay a civil penalty of not more than ~~ten~~ six thousand five hundred dollars for each day of violation.

(4) Whoever violates division (G) of section 3750.23 of the Revised Code shall pay a civil penalty of not more than ten thousand dollars for each day of violation.

(5) Whoever violates a provision of this chapter or a rule adopted under it for which no civil penalty is otherwise provided shall pay a civil penalty of not more than ~~ten~~ five thousand dollars for each day of violation. ~~The~~

The attorney general, the prosecuting attorney of the county, or the city director of law of the city where a violation of this chapter or of a rule adopted or order issued under it has occurred or is occurring, upon the written request of the executive committee of the commission, the committee of the emergency planning district, or of the fire department having jurisdiction where the offense has occurred or is occurring, or upon the written request of any public authority as defined in section 3750.23 of the Revised Code for a violation of division (G) of that section, shall bring an action under this division against any person who has committed or is committing any such violation. All civil penalties received under ~~divisions~~ division (B)(1) ~~to~~ (4), (2), (3), or (5) of this section pursuant to actions brought upon the written request of the executive committee of the emergency response commission shall be credited to the emergency planning and community right-to-know fund created in section 3750.14 of the Revised Code. All civil penalties received under

those divisions pursuant to actions brought upon the written 84  
request of a local emergency planning committee or fire department 85  
shall be credited to the special emergency planning fund created 86  
in section 3750.03 of the Revised Code of the district in which 87  
the violation occurred. One-half of the civil penalties received 88  
under division (B)(4) of this section shall be credited to the 89  
rail development fund created in section 4981.09 of the Revised 90  
Code to be used by the Ohio rail development commission for 91  
purposes authorized by that section. One-half of the civil 92  
penalties received under division (B)(4) of this section shall be 93  
credited to the public utilities fund created in section 4905.10 94  
of the Revised Code to be used by the public utilities commission 95  
for purposes related to its supervision and jurisdiction over 96  
railroad transportation, including its enforcement of section 97  
3750.23 of the Revised Code. 98

(C) Any action for injunction or civil penalties under 99  
division (A) or (B) of this section is a civil action governed by 100  
the Rules of Civil Procedure. 101

**Sec. 3750.23.** (A) As used in this section: 102

(1) "Community facilities" include schools, hospitals, 103  
nursing homes, and other similar sensitive or vulnerable public 104  
facilities. 105

(2) "Critical infrastructure" includes bridges, tunnels, 106  
signal systems, and other points of vulnerability on a rail system 107  
that handles hazardous cargo. 108

(3) "Hazardous cargo" means any hazardous chemical or 109  
hazardous material. 110

(4) "Hazardous material" has the meaning given to that term 111  
in 49 C.F.R. 171.8. The term also includes any substance or 112  
material that an owner or operator of a rail facility transports, 113

<u>stores, or handles as a hazardous material.</u>	114
<u>(5) "Public authority" means any of the following:</u>	115
<u>(a) The local emergency planning committee of the emergency</u>	116
<u>planning district in which the rail facility is located;</u>	117
<u>(b) The fire department with jurisdiction over the rail</u>	118
<u>facility;</u>	119
<u>(c) The sheriff of the county in which the rail facility is</u>	120
<u>located;</u>	121
<u>(d) The chief of police of any municipal corporation with</u>	122
<u>jurisdiction over the rail facility;</u>	123
<u>(e) Any state agency involved in the development of plans to</u>	124
<u>protect railroads or other businesses against terrorist attack,</u>	125
<u>including the department of public safety, the state highway</u>	126
<u>patrol, the office of homeland security, the emergency management</u>	127
<u>agency, the public utilities commission, and the department of</u>	128
<u>transportation.</u>	129
<u>(6) "Rail facilities" include tracks, terminals, stations,</u>	130
<u>structures, rolling stock, rights-of-way, bridges, tunnels, signal</u>	131
<u>systems, and any other rail property or equipment of the owner or</u>	132
<u>operator that is considered necessary for the operation of rail</u>	133
<u>services.</u>	134
<u>(B)(1) Not later than one hundred eighty days after the</u>	135
<u>effective date of this section, every owner or operator of a rail</u>	136
<u>facility in the state shall develop a vulnerability assessment of</u>	137
<u>each rail facility in the state; upon request, the office of</u>	138
<u>homeland security shall extend the deadline for developing a</u>	139
<u>vulnerability assessment by forty-five days. The vulnerability</u>	140
<u>assessment shall describe all of the following:</u>	141
<u>(a) All facilities and their functions;</u>	142
<u>(b) The types of cargo that move through such facilities,</u>	143

<u>including any hazardous cargo, the classes of hazardous cargo, and</u>	144
<u>the approximate annual amounts of such hazardous cargo;</u>	145
<u>(c) Any storage of hazardous cargo in rail facilities;</u>	146
<u>(d) The distances from rail facilities that transport or</u>	147
<u>store hazardous cargo to community facilities located within</u>	148
<u>fifteen miles of the rail facility;</u>	149
<u>(e) The practices or measures the rail owner or operator</u>	150
<u>employs to prevent acts of sabotage, terrorism, or other crimes on</u>	151
<u>rail facilities;</u>	152
<u>(f) All required employee security training programs;</u>	153
<u>(g) The emergency response procedures of the rail owner or</u>	154
<u>operator with regard to acts of sabotage, terrorism, or other</u>	155
<u>crimes;</u>	156
<u>(h) The procedures the rail owner or operator has established</u>	157
<u>to communicate with public authorities in the event of acts of</u>	158
<u>sabotage, terrorism, or other crimes.</u>	159
<u>(2) Every owner or operator of a rail facility shall update</u>	160
<u>its vulnerability assessment at least once every year and provide</u>	161
<u>a current copy of the assessment to each public authority, broken</u>	162
<u>down by the classes and annual amounts of hazardous cargo that</u>	163
<u>move through each rail facility.</u>	164
<u>(3) Any public authority that receives a vulnerability</u>	165
<u>assessment or other security-sensitive information pursuant to</u>	166
<u>this section may provide a copy of that assessment or information</u>	167
<u>to any other public authority but shall not share that</u>	168
<u>vulnerability assessment or security-sensitive information with</u>	169
<u>any other public or private office unless required to do so by</u>	170
<u>federal or state law. Any vulnerability assessment or other</u>	171
<u>security-sensitive information a public authority receives</u>	172
<u>pursuant to this section is not a public record under section</u>	173

149.43 of the Revised Code and that assessment or information is 174  
not subject to the mandatory disclosure requirements of section 175  
149.43 of the Revised Code. 176

(C)(1) Not later than three hundred sixty days after the 177  
effective date of this section, every owner or operator of a rail 178  
facility in the state shall establish and implement a rail 179  
infrastructure protection program to protect rail facilities from 180  
acts of sabotage, terrorism, or other crimes and provide for the 181  
security of critical infrastructure; upon request, the office of 182  
homeland security shall extend the deadline for establishing and 183  
implementing a rail infrastructure protection program by 184  
forty-five days. Each rail owner or operator shall do all of the 185  
following: 186

(a) Notify each public authority of the location, size, 187  
function, and importance of its critical infrastructure; 188

(b) Protect critical infrastructure from acts of sabotage, 189  
terrorism, or other crimes by providing, at a minimum, 190  
twenty-four-hour-per-day surveillance, monitoring, and protection 191  
of the facilities; 192

(c) Train and equip rail personnel to prevent acts of 193  
sabotage, terrorism, or other crimes, and to respond in the event 194  
of such acts; 195

(d) Inspect any rail facility located within fifteen miles of 196  
a community facility and that handles hazardous cargo on a regular 197  
basis to determine the condition of the rail facility and the 198  
vulnerability of the rail facility to acts of sabotage, terrorism, 199  
or other crimes; 200

(e) Update its infrastructure protection program at least 201  
once every year and provide a current copy of the program to each 202  
public authority. 203

(2) The office of homeland security shall review the 204

infrastructure protection program of each rail owner or operator 205  
and may order the rail owner or operator to improve, modify, or 206  
change its program to comply with this section. 207

(D) For any rail facility that handles cargo within fifteen 208  
miles of a community facility, the owner or operator of the rail 209  
facility shall do all of the following: 210

(1) Provide adequate security personnel for a rail facility 211  
that handles or stores hazardous cargo; 212

(2) Store hazardous cargo only in secure facilities designed 213  
for such storage, which shall not include railroad rights-of-way; 214

(3) Require rail personnel to be present when locomotive 215  
equipment is running and lock unattended locomotive equipment; 216

(4) Make adequate, qualified personnel available to assist, 217  
replace, or relieve train operators who need assistance; 218

(5) Ensure that the cabs of occupied locomotives can be 219  
secured against outsiders who threaten hijack, sabotage, or 220  
terrorism; 221

(6) Limit the use of remote control locomotives to equipment 222  
not involving hazardous cargo; 223

(7) Secure remote control devices to prevent access to such 224  
devices by unauthorized personnel, including persons intent on 225  
acts of sabotage, terrorism, or other crimes; 226

(8) Ensure that all employees connected with rail facilities 227  
that transport hazardous cargo within fifteen miles of a community 228  
facility receive, at least once every twelve months, training 229  
related to security, shipment of hazardous cargo, and terrorism 230  
prevention. 231

(E) Each rail owner or operator in the state shall provide 232  
communications capability, other than a railroad radio, to do all 233  
of the following: 234



(1) Alert public authorities in the event of sabotage, 235  
terrorism, or other crimes; 236

(2) Allow bridge tenders on movable bridges to alert public 237  
authorities in the event of sabotage, terrorism, or other crimes; 238

(3) Notify rail workers of the local or national threat level 239  
for the rail industry. 240

(F)(1) This section applies to any rail owner or operator, 241  
any contractor or subcontractor working on facilities of the rail 242  
owner or operator, and any other individual or corporation 243  
performing work on rail facilities in the state. All employees of 244  
a railroad contractor or subcontractor, and any other individual 245  
or corporation performing work on rail facilities in the state, 246  
shall receive training adequate to make them as well-trained as 247  
employees of the rail owner or operator performing such work, and 248  
shall be required to undergo the same background, skills, and 249  
fitness-for-duty checks as employees of the rail owner or 250  
operator. 251

(2) No rail owner or operator shall take punitive action of 252  
any kind against an employee who reports violations of this 253  
section. An employee subject to such punitive action may seek 254  
damages in an amount not to exceed twenty-five thousand dollars 255  
from any employer who takes such action, in addition to other 256  
remedies, including back pay, reinstatement, and other damages. 257

(G) No rail owner or operator shall fail to comply with 258  
division (C)(1) or (D) of this section or an order issued under 259  
division (C)(2) of this section. 260

**Sec. 4999.09.** (A) No railroad operating in this state shall 261  
allow the over-the-road operation of a locomotive between two 262  
terminals unless the locomotive operator is a fully certified 263  
train service engineer, who at all times shall be present in the 264

crew compartment and shall operate the unit that controls the 265  
movement of multiple units. 266

(B) Division (A) of this section does not apply to any 267  
passenger train operating in this state. 268

(C) The public utilities commission shall enforce this 269  
section and may issue any order that may be proper to ensure 270  
compliance with this section. 271

(D) Whoever violates division (A) of this section shall be 272  
fined five thousand dollars for each offense. 273

**Section 2.** That existing section 3750.20 of the Revised Code 274  
is hereby repealed. 275