

116TH CONGRESS  
1ST SESSION

# S. 2979

To improve drug testing for transportation-related activities.

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IN THE SENATE OF THE UNITED STATES

DECEMBER 4, 2019

Mr. WICKER introduced the following bill; which was read twice and referred  
to the Committee on Commerce, Science, and Transportation

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## A BILL

To improve drug testing for transportation-related activities.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

4 (a) SHORT TITLE.—This Act may be cited as the  
5 “Preventing Opioid and Drug Impairment in Transpor-  
6 tation Act”.

7 (b) TABLE OF CONTENTS.—The table of contents for  
8 this Act is as follows:

- Sec. 1. Short title; table of contents.
- Sec. 2. Amtrak employee controlled substances and alcohol testing records.
- Sec. 3. Alcohol and controlled substance reporting of Amtrak locomotive engi-  
neers and conductors.
- Sec. 4. Safety-sensitive personnel study.
- Sec. 5. Interstate drug and alcohol oversight.
- Sec. 6. Impaired driving study.
- Sec. 7. Roadside oral fluid drug screening.

Sec. 8. GAO report on Department of Transportation drug testing panel.

Sec. 9. Transportation workplace drug and alcohol testing program; status reports on addition of fentanyl.

Sec. 10. Status reports on scientific and technical guidelines for hair testing of transportation employees.

**1 SEC. 2. AMTRAK EMPLOYEE CONTROLLED SUBSTANCES**  
**2 AND ALCOHOL TESTING RECORDS.**

3 (a) SUPERVISORY TRAINING.—Not later than 1 year  
 4 after the date of the enactment of this Act, the National  
 5 Railroad Passenger Corporation (commonly known as  
 6 “Amtrak”) shall submit a report to the Committee on  
 7 Commerce, Science, and Transportation of the Senate and  
 8 the Committee on Transportation and Infrastructure of  
 9 the House of Representatives that describes the methods  
 10 used by Amtrak to ensure that supervisors of employees  
 11 in safety-sensitive positions receive the required training  
 12 on how to detect drug and alcohol use.

13 (b) ELECTRONIC DATABASE.—Not later than 18  
 14 months after the date of the enactment of this Act, Am-  
 15 trak shall establish—

16 (1) an electronic database of all safety-sensitive  
 17 positions to record data on employee drug and alco-  
 18 hol tests to replace collection of such data through  
 19 paper records; and

20 (2) effective procedures to track and monitor  
 21 drug and alcohol testing maintained in the electronic  
 22 database.

1       (c) MEASURES.—Not later than 18 months after the  
 2 date of the enactment of this Act, Amtrak shall submit  
 3 a report to the Committee on Commerce, Science, and  
 4 Transportation of the Senate and the Committee on  
 5 Transportation and Infrastructure of the House of Rep-  
 6 resentatives that describes the measures implemented to  
 7 improve compliance with proper self-reporting of employee  
 8 prescription drug use.

9   **SEC. 3. ALCOHOL AND CONTROLLED SUBSTANCE REPORT-**  
 10                   **ING OF AMTRAK LOCOMOTIVE ENGINEERS**  
 11                   **AND CONDUCTORS.**

12       (a) REVIEW.—Not later than 1 year after the date  
 13 of the enactment of this Act, the Secretary of Transpor-  
 14 tation shall determine whether the regulations set forth  
 15 in parts 240 and 242 of title 49, Code of Federal Regula-  
 16 tions, promulgated pursuant to sections 20135 and 20163  
 17 of title 49, United States Code, in order to protect the  
 18 traveling public, should be revised to require locomotive  
 19 engineers and conductors or personnel seeking initial cer-  
 20 tification to become a locomotive engineer or a conductor  
 21 for Amtrak to report arrests due to drug or alcohol of-  
 22 fenses immediately or as soon as practicable.

23       (b) RULEMAKING.—If the Secretary of Transpor-  
 24 tation determines that the regulations referred to in sub-

1 section (a) should be revised in accordance with such sub-  
2 section, the Secretary shall—

3 (1) notify the Committee on Commerce,  
4 Science, and Transportation of the Senate and the  
5 Committee on Transportation and Infrastructure of  
6 the House of Representatives of such determination;  
7 and

8 (2) not later than 18 months after such deter-  
9 mination, publish a notice in the Federal Register of  
10 a proposed revision to such regulations to require lo-  
11 comotive engineers and conductors, or personnel  
12 seeking initial certification to become a locomotive  
13 engineer or a conductor for Amtrak, to report ar-  
14 rests due to drug or alcohol offenses immediately or  
15 as soon as practicable.

16 **SEC. 4. SAFETY-SENSITIVE PERSONNEL STUDY.**

17 Not later than 180 days after the date of the enact-  
18 ment of this Act, the Secretary of Transportation shall  
19 submit a report to Congress that—

20 (1) describes the ability of pipeline companies  
21 that operate from Canada or Mexico into the United  
22 States to conduct the same drug and alcohol tests  
23 that are required of personnel in the United States  
24 on safety-sensitive personnel who—

25 (A) work outside of the United States; and

1 (B) have responsibilities related to main-  
2 taining and controlling pipeline in the United  
3 States; and

4 (2) indicates whether such operators have suffi-  
5 cient drug and alcohol testing procedures in place to  
6 ensure safe operations of pipeline facilities located  
7 within the United States.

8 **SEC. 5. INTERSTATE DRUG AND ALCOHOL OVERSIGHT.**

9 (a) IN GENERAL.—Not later than 18 months after  
10 the date of the enactment of this Act, the Secretary of  
11 Transportation shall amend the auditing program for the  
12 drug and alcohol regulations in part 199 of title 49, Code  
13 of Federal Regulations, in order to improve the efficiency  
14 and processes of such regulations as applied to operators  
15 and pipeline contractors working for multiple pipeline op-  
16 erators in multiple States. In making such amendments,  
17 the Secretary shall minimize duplicative audits of the  
18 same operators, and thereby contractors working for those  
19 companies, by the Pipeline and Hazardous Materials Safe-  
20 ty Administration and multiple State agencies.

21 (b) LIMITATION.—Nothing in this Act may be con-  
22 strued to require modification of the inspection or enforce-  
23 ment authority of any Federal agency or State.

1 **SEC. 6. IMPAIRED DRIVING STUDY.**

2 (a) STUDY.—The Administrator of the National  
3 Highway Traffic Safety Administration (referred to in this  
4 Act as the “NHTSA”) shall conduct a study regarding  
5 the ways in which the NHTSA can reduce and better de-  
6 tect impaired driving, including marijuana- and opioid-im-  
7 paired driving.

8 (b) REPORTS.—Not later than 2 years after the date  
9 of the enactment of this Act, and biennially thereafter for  
10 the following 4 years, the Secretary of Transportation, in  
11 cooperation with other Federal agencies, as appropriate,  
12 shall submit a report to Congress that—

13 (1) describes the activities undertaken pursuant  
14 to subsection (a);

15 (2) provides an update on the progress of the  
16 study conducted pursuant to subsection (a); and

17 (3) includes the results of the study if the study  
18 has been completed.

19 **SEC. 7. ROADSIDE ORAL FLUID DRUG SCREENING.**

20 (a) DEFINED TERM.—In this section, the term “on-  
21 site” refers to oral fluid drug screening devices that are  
22 used at roadside or at the station.

23 (b) STUDY.—The Secretary of Transportation, in  
24 consultation with the heads of appropriate Federal agen-  
25 cies and local law enforcement officers and prosecutors,  
26 shall conduct a study regarding the accuracy of onsite oral

1 fluid screening for tetrahydrocannabinol (referred to in  
2 this section as “THC”) and opiate presence in order to  
3 reduce the potential impact on traffic safety due to drug  
4 and polysubstance-impaired drivers.

5 (c) ISSUES TO BE EXAMINED.—In conducting the  
6 study under subsection (b), the Secretary shall examine—

7 (1) the status of onsite oral fluid drug screen-  
8 ing technology that is available at the time the study  
9 is conducted;

10 (2) the reliability and accuracy of the devices  
11 referred to in paragraph (1) to determine the pres-  
12 ence and amount of THC and opiate, as confirmed  
13 by toxicology results;

14 (3) oral fluid research and pilot programs in  
15 the United States and in other countries to assess  
16 how the technology referred to in paragraph (1) is  
17 being utilized;

18 (4) State-based policies regarding implied con-  
19 sent and testing in impaired driving cases;

20 (5) practical considerations for the deployment  
21 of this technology in the field; and

22 (6) any legal and policy issues that may arise  
23 from the deployment of this technology.

24 (d) REPORT.—

1           (1) IN GENERAL.—Not later than 4 years after  
2           the date of the enactment of this Act, the Secretary,  
3           in cooperation with appropriate Federal agencies,  
4           shall submit a report to the Committee on Com-  
5           merce, Science, and Transportation of the Senate  
6           and the Committee on Transportation and Infra-  
7           structure of the House of Representatives that con-  
8           tains the results of the study conducted pursuant to  
9           subsection (b).

10           (2) CONTENTS.—The report required under  
11           paragraph (1) shall include—

12                   (A) the findings of the Secretary based on  
13           the study, including—

14                           (i) an overview of the extent of the  
15                           drug and polysubstance-impaired driving  
16                           problem and a discussion of how new  
17                           screening technologies can potentially as-  
18                           sist in better capturing the magnitude and  
19                           characteristics of the problem;

20                           (ii) an assessment of the accuracy and  
21                           reliability of onsite oral fluid screening  
22                           technology;

23                           (iii) a description and assessment of  
24                           current State laws relating to the use of  
25                           oral fluid screening technology;



1 (iv) a determination about whether  
2 oral fluid screening technology is a viable  
3 option to assist law enforcement officers in  
4 confirming the presence of a drug respon-  
5 sible for observed impairment of a driver;

6 (v) a determination about whether on-  
7 site oral fluid screening technology can be  
8 effectively incorporated into existing driv-  
9 ing under the influence investigation proto-  
10 cols; and

11 (vi) an overview of future research  
12 needs; and

13 (B) the recommendations of the Secretary  
14 based on the study, as appropriate, including—

15 (i) effective and efficient methods for  
16 training law enforcement personnel, includ-  
17 ing drug recognition experts, to detect  
18 whether a motor vehicle operator is under  
19 the influence through the use of onsite oral  
20 fluid technology in combination with exist-  
21 ing driving under the influence investiga-  
22 tion protocols;

23 (ii) if feasible, model guidelines for  
24 the technology referred to in clause (i);

(iii) methodologies for evaluating oral fluid use to facilitate increased data collection and analysis and to determine optimal strategies for deploying the technology referred to in clause (i) as part of a pilot program and standard operating procedure in driving under the influence investigations; and

(iv) future steps, including a timeline for implementing such steps, that the NHTSA will take to advance research in onsite drug screening technology.

**SEC. 8. GAO REPORT ON DEPARTMENT OF TRANSPORTATION DRUG TESTING PANEL.**

(a) IN GENERAL.—Not later than 2 years after the date of the enactment of this Act, the Comptroller General of the United States shall—

(1) review the Department of Transportation’s process for setting guidelines and drug testing requirements for transportation employees subject to the Department’s drug and alcohol testing policies; and

(2) submit a report to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Transportation and Infra-

1 structure of the House of Representatives that sum-  
2 marizes the results of such review.

3 (b) CONTENTS.—The report required under sub-  
4 section (a)(2) shall include—

5 (1) a description of the process used by the De-  
6 partment of Health and Human Services for adding  
7 and removing categories of drugs to and from the  
8 Federal workplace drug testing requirements;

9 (2) an evaluation of the dependence of the De-  
10 partment of Transportation on the Department of  
11 Health and Human Services' determination whether  
12 to add new categories of drugs to the testing panel;  
13 and

14 (3) an assessment of whether the process used  
15 by the Department of Health and Human Services  
16 for adding and removing categories of drugs to and  
17 from the Federal workplace drug testing require-  
18 ments sufficiently addresses the needs of the trans-  
19 portation industry for drug and alcohol testing to  
20 prevent drug and alcohol-related incidents.

21 **SEC. 9. TRANSPORTATION WORKPLACE DRUG AND ALCO-**  
22 **HOL TESTING PROGRAM; STATUS REPORTS**  
23 **ON ADDITION OF FENTANYL.**

24 Not later than 30 days after the date of enactment  
25 of this Act, the Secretary of Health and Human Services

1 shall submit a report to the Committee on Commerce,  
 2 Science, and Transportation of the Senate and the Com-  
 3 mittee on Transportation and Infrastructure of the House  
 4 of Representatives that describes the status of the deter-  
 5 mination regarding whether to add fentanyl to the drug  
 6 testing panel in accordance with section 8105 of the  
 7 Fighting Opioid Abuse in Transportation Act (5 U.S.C.  
 8 7301 note).

9 **SEC. 10. STATUS REPORTS ON SCIENTIFIC AND TECHNICAL**  
 10 **GUIDELINES FOR HAIR TESTING OF TRANS-**  
 11 **PORTATION EMPLOYEES.**

12 (a) OFFICE OF MANAGEMENT AND BUDGET.—Not  
 13 later than 30 days after the date of the enactment of this  
 14 Act, the Director of the Office of Management and Budget  
 15 shall submit a report to the Committee on Commerce,  
 16 Science, and Transportation of the Senate and the Com-  
 17 mittee on Transportation and Infrastructure of the House  
 18 of Representatives that—

19 (1) describes the status of the scientific and  
 20 technical guidelines for hair testing required under  
 21 section 5402(b) of the Fixing America’s Surface  
 22 Transportation Act (49 U.S.C. 31306 note);

23 (2) explains why such guidelines have not been  
 24 issued; and

1           (3) estimates the date by which such guidelines  
2       will be issued.

3       (b) DEPARTMENT OF HEALTH AND HUMAN SERV-  
4 ICES.—Not later than 60 days after the date of the enact-  
5 ment of this Act, the Secretary of Health and Human  
6 Services shall submit a report to the Committee on Com-  
7 merce, Science, and Transportation of the Senate and the  
8 Committee on Transportation and Infrastructure of the  
9 House of Representatives that—

10           (1) describes the causes for the delay in submit-  
11       ting the scientific and technical guidelines for hair  
12       testing to the Office of Management and Budget  
13       after the date of the enactment of the Fighting  
14       Opioid Abuse in Transportation Act (subtitle I of  
15       title VIII of Public Law 115–271);

16           (2) explains why such guidelines have not been  
17       issued;

18           (3) summarizes considerations related to elimi-  
19       nating positive test results caused solely by the drug  
20       use of others and not caused by the drug use of the  
21       individual being tested; and

22           (4) estimates the date by which such guidelines  
23       will be completed.

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