AMENDMENT NO._______ Calendar No._____

Purpose: In the nature of a substitute.


S. 2979

To improve drug testing for transportation-related activities.

Referred to the Committee on __________ and ordered to be printed

Ordered to lie on the table and to be printed

AMENDMENT IN THE NATURE OF A SUBSTITUTE intended to be proposed by Mr. WICKER

Viz:

1 Strike all after the enacting clause and insert the following:

2

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 Transportation 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 engineers 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
AND ALCOHOL TESTING RECORDS.

(a) Supervisory Training.—Not later than 1 year after the date of the enactment of this Act, the National Railroad Passenger Corporation (commonly known as "Amtrak") shall submit a report to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives that describes the methods used by Amtrak to ensure that supervisors of employees in safety-sensitive positions receive the required training on—

(1) how to detect drug and alcohol use; and

(2) the rights and responsibilities of employees throughout the drug and alcohol testing process.

(b) Electronic Database.—Not later than 18 months after the date of the enactment of this Act, Amtrak shall establish—

(1) an electronic database of all safety-sensitive positions to record data on employee drug and alcohol tests to replace collection of such data through paper records; and
(2) effective procedures to track and monitor drug and alcohol testing maintained in the electronic database.

(c) MEASURES.—Not later than 18 months after the date of the enactment of this Act, Amtrak shall submit a report to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives that describes the measures implemented to improve safety related to employee prescription drug use.

SEC. 3. ALCOHOL AND CONTROLLED SUBSTANCE REPORTING OF AMTRAK LOCOMOTIVE ENGINEERS AND CONDUCTORS.

(a) REVIEW.—Not later than 1 year after the date of the enactment of this Act, the Secretary of Transportation shall determine whether the regulations set forth in parts 240 and 242 of title 49, Code of Federal Regulations, promulgated pursuant to sections 20135 and 20163 of title 49, United States Code, in order to protect the traveling public, should be revised to require locomotive engineers and conductors or personnel seeking initial certification to become a locomotive engineer or a conductor for Amtrak to report arrests due to drug or alcohol offenses as soon as practicable, but before performing any
safety-sensitive service as a locomotive engineer or conductor.

(b) RULEMAKING.—If the Secretary of Transportation determines that the regulations referred to in subsection (a) should be revised in accordance with such subsection, the Secretary shall—

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

(2) not later than 18 months after such determination publish a notice in the Federal Register of a proposed revision to such regulations that—

(A) requires locomotive engineers and conductors, or personnel seeking initial certification to become a locomotive engineer or a conductor for Amtrak, to report arrests due to drug or alcohol offenses as soon as practicable, but before performing any safety-sensitive service as a locomotive engineer or conductor;

(B) clearly defines the scope of offenses that are considered reportable under subparagraph (A); and
(C) defines the time frame for which such offenses are considered reportable prior to initial certification.

SEC. 4. SAFETY-SENSITIVE PERSONNEL STUDY.

Not later than 180 days after the date of the enactment of this Act, the Secretary of Transportation shall submit a report to Congress that—

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

(A) work outside of the United States; and

(B) have responsibilities related to maintaining and controlling pipeline in the United States; and

(2) indicates whether such operators have sufficient drug and alcohol testing procedures in place to ensure safe operations of pipeline facilities located within the United States.

SEC. 5. INTERSTATE DRUG AND ALCOHOL OVERSIGHT.

(a) In General.—Not later than 18 months after the date of the enactment of this Act, the Secretary of Transportation shall amend the auditing program for the drug and alcohol regulations in part 199 of title 49, Code
of Federal Regulations, in order to improve the efficiency
and processes of such regulations as applied to operators
and pipeline contractors working for multiple pipeline op-
erators in multiple States. In making such amendments,
the Secretary shall minimize duplicative audits of the
same operators, and thereby contractors working for those
companies, by the Pipeline and Hazardous Materials Saf-
ety Administration and multiple State agencies.

(b) LIMITATION.—Nothing in this Act may be con-
structed to require modification of the inspection or enfor-
forcement authority of any Federal agency or State.

SEC. 6. IMPAIRED DRIVING STUDY.

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

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

(1) describes the activities undertaken pursuant
to subsection (a);
(2) provides an update on the progress of the study conducted pursuant to subsection (a); and

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

SEC. 7. ROADSIDE ORAL FLUID DRUG SCREENING.

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

(b) STUDY.—The Secretary of Transportation, in consultation with the heads of appropriate Federal agencies and local law enforcement officers and prosecutors, shall conduct a study regarding the accuracy of onsite oral fluid screening for tetrahydrocannabinol (referred to in this section as "THC") and opiate presence in order to reduce the potential impact on traffic safety due to drug and polysubstance-impaired drivers.

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

(1) the status of onsite oral fluid drug screening technology that is available at the time the study is conducted;

(2) the reliability and accuracy of the devices referred to in paragraph (1) to determine the presence and amount of THC and opiate, as confirmed by toxicology results;
(3) oral fluid research and pilot programs in the United States and in other countries to assess how the technology referred to in paragraph (1) is being utilized;

(4) State-based policies regarding implied consent and testing in impaired driving cases;

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

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

(d) REPORT.—

(1) IN GENERAL.—Not later than 4 years after the date of the enactment of this Act, the Secretary, in cooperation with appropriate Federal agencies, shall submit a report to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives that contains the results of the study conducted pursuant to subsection (b).

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

(A) the findings of the Secretary based on the study, including—
(i) an overview of the extent of the drug and polysubstance-impaired driving problem and a discussion of how new screening technologies can potentially assist in better capturing the magnitude and characteristics of the problem;

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

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

(iv) a determination about whether oral fluid screening technology is a viable option to assist law enforcement officers in confirming the presence of a drug responsible for observed impairment of a driver;

(v) a determination about whether onsite oral fluid screening technology can be effectively incorporated into existing driving under the influence investigation protocols; and

(vi) an overview of future research needs; and
(B) the recommendations of the Secretary based on the study, as appropriate, including—

(i) effective and efficient methods for training law enforcement personnel, including drug recognition experts, to detect whether a motor vehicle operator is under the influence through the use of onsite oral fluid technology in combination with existing driving under the influence investigation protocols;

(ii) if feasible, model guidelines for 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.
1 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 Infrastructure of the House of Representatives that summarizes the results of such review.

   (b) CONTENTS.—The report required under subsection (a)(2) shall include—

   (1) a description of the process used by the Department of Health and Human Services for adding and removing categories of drugs to and from the Federal workplace drug testing requirements;

   (2) an evaluation of the dependence of the Department of Transportation on the Department of Health and Human Services’ determination whether to add new categories of drugs to the testing panel;
(3) an assessment of whether the process used by the Department of Health and Human Services for adding and removing categories of drugs to and from the Federal workplace drug testing requirements sufficiently addresses the needs of the transportation industry for drug and alcohol testing to prevent drug and alcohol-related incidents; and

(4) an evaluation of whether additional guidance or measures are needed to ensure that training provided to Medical Review Officers pursuant to part 40 of title 49, Code of Federal Regulations, reflects any changes to relevant statutes and regulations affecting the duties and responsibilities of Medical Review Officers.

SEC. 9. TRANSPORTATION WORKPLACE DRUG AND ALCOHOL TESTING PROGRAM; STATUS REPORTS ON ADDITION OF FENTANYL.

Not later than 30 days after the date of enactment of this Act, the Secretary of Health and Human Services shall submit a report to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives that describes the status of the determination regarding whether to add fentanyl to the drug testing panel in accordance with section 8105 of the

SEC. 10. STATUS REPORTS ON SCIENTIFIC AND TECHNICAL GUIDELINES FOR HAIR TESTING OF TRANSPORTATION EMPLOYEES.

(a) Office of Management and Budget.—Not later than 30 days after the date of the enactment of this Act, the Director of the Office of Management and Budget shall submit a report to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives that—

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

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

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

(b) Department of Health and Human Services.—Not later than 60 days after the date of the enactment of this Act, the Secretary of Health and Human Services shall submit a report to the Committee on Commerce, Science, and Transportation of the Senate and the
Committee on Transportation and Infrastructure of the House of Representatives that—

(1) describes the causes for the delay in submitting the scientific and technical guidelines for hair testing to the Office of Management and Budget after the date of the enactment of the Fighting Opioid Abuse in Transportation Act (subtitle I of title VIII of Public Law 115–271);

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

(3) summarizes considerations related to eliminating positive test results caused solely by the drug use of others and not caused by the drug use of the individual being tested; and

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

(c) SAVINGS PROVISION.—Nothing in this section may be construed to amend or alter the objectives or requirements set forth in section 8106 of the Fighting Opioid Abuse in Transportation Act (49 U.S.C. 31306 note).