

117TH CONGRESS
1ST SESSION

S. 303

To require the Secretary of Transportation to support the efforts of State and local governments to provide for priority testing of certain transportation workers with respect to the Coronavirus Disease 2019 (COVID–19) and require the owners and operators of equipment and facilities used by passenger or freight transportation employers to clean, disinfect, and sanitize that equipment and provide personal protective equipment to certain employees, and for other purposes.

IN THE SENATE OF THE UNITED STATES

FEBRUARY 8, 2021

Mr. BLUMENTHAL (for himself, Ms. CANTWELL, and Mr. MARKEY) introduced the following bill; which was read twice and referred to the Committee on Commerce, Science, and Transportation

A BILL

To require the Secretary of Transportation to support the efforts of State and local governments to provide for priority testing of certain transportation workers with respect to the Coronavirus Disease 2019 (COVID–19) and require the owners and operators of equipment and facilities used by passenger or freight transportation employers to clean, disinfect, and sanitize that equipment and provide personal protective equipment to certain employees, and for other purposes.

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

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Essential Transpor-
3 tation Employee Safety Act of 2021”.

4 **SEC. 2. DEFINITION OF SECRETARY.**

5 In this Act, the term “Secretary” means the Sec-
6 retary of Transportation.

7 **SEC. 3. PRIORITY TESTING FOR ESSENTIAL TRANSPOR-**
8 **TATION EMPLOYEES.**

9 (a) IN GENERAL.—The Secretary shall—

10 (1) adopt, for use by the Department of Trans-
11 portation in carrying out response efforts relating to,
12 and operations during, the Coronavirus Disease
13 2019 (COVID–19) pandemic, the categorization of
14 certain transportation workers as “essential critical
15 infrastructure workers” in accordance with the advi-
16 sory list published by the Cybersecurity and Infra-
17 structure Security Agency on May 19, 2020, entitled
18 “Guidance on the Essential Critical Infrastructure
19 Workforce: Ensuring Community and National Re-
20 siliency in COVID–19 Response” (or a subsequent
21 version of that advisory list); and

22 (2) coordinate with the Director of the Centers
23 for Disease Control and Prevention and the Admin-
24 istrator of the Federal Emergency Management
25 Agency to support the efforts of State and local gov-
26 ernments to provide for priority testing of transpor-

1 tation workers categorized as essential critical infra-
2 structure workers under paragraph (1) with respect
3 to the Coronavirus Disease 2019 (COVID–19).

4 **SEC. 4. REQUIREMENTS FOR OWNERS AND OPERATORS OF**
5 **EQUIPMENT OR FACILITIES USED BY PAS-**
6 **SENGER OR FREIGHT TRANSPORTATION EM-**
7 **PLOYERS.**

8 (a) DEFINITIONS.—In this section:

9 (1) APPROPRIATE GUIDANCE.—The term “ap-
10 appropriate guidance” means, as applicable—

11 (A) guidance issued by the Centers for
12 Disease Control and Prevention relating to the
13 Coronavirus Disease 2019 (COVID–19); or

14 (B) the most recent revision of the safety
15 alert for operators issued by the Federal Avia-
16 tion Administration on May 11, 2020, and
17 numbered SAFO 20009 (relating to COVID–
18 19: updated interim occupational health and
19 safety guidance for air carriers and crews) (or
20 a similar or successor safety alert for opera-
21 tors).

22 (2) AT-RISK EMPLOYEE.—The term “at-risk
23 employee” means an employee (including a Federal
24 employee) or contractor of a passenger or freight
25 transportation employer—

1 (A) whose job responsibilities involve inter-
2 action with—

3 (i) passengers;

4 (ii) the public; or

5 (iii) coworkers who interact with the
6 public;

7 (B) who handles items which are handled
8 or will be handled by the public; or

9 (C) who works in locations where social
10 distancing and other preventative measures
11 with respect to the Coronavirus Disease 2019
12 (COVID–19) are not possible.

13 (3) PASSENGER OR FREIGHT TRANSPORTATION
14 EMPLOYER.—The term “passenger or freight trans-
15 portation employer” includes—

16 (A) the owner, charterer, managing oper-
17 ator, master, or other individual in charge of a
18 passenger vessel (as defined in section 2101 of
19 title 46, United States Code);

20 (B) an air carrier (as defined in section
21 40102 of title 49, United States Code);

22 (C) a provider of intercity rail passenger
23 transportation (as defined in section 24102 of
24 title 49, United States Code);

1 (D) a rail carrier (as defined in section
2 10102 of title 49, United States Code);

3 (E) a commuter authority (as defined in
4 section 24102 of title 49, United States Code);

5 (F) a regional transportation authority (as
6 defined in section 24102 of title 49, United
7 States Code);

8 (G) a provider of public transportation (as
9 defined in section 5302 of title 49, United
10 States Code);

11 (H) a provider of motorcoach services (as
12 defined in section 32702 of the Motorcoach En-
13 hanced Safety Act of 2012 (49 U.S.C. 31136
14 note; Public Law 112–141));

15 (I) a motor carrier that owns or operates
16 more than 100 motor vehicles (as those terms
17 are defined in section 390.5 of title 49, Code of
18 Federal Regulations (or successor regulations));

19 (J) a sponsor, owner, or operator of a pub-
20 lic-use airport (as defined in section 47102 of
21 title 49, United States Code);

22 (K) an owner or operator of a vessel oper-
23 ating in commercial service (as defined in sec-
24 tion 2101 of title 46, United States Code);

1 (L)(i) a marine terminal operator (as de-
2 fined in section 40102 of title 46, United States
3 Code);

4 (ii) an employer (as defined in section 2 of
5 the Longshore and Harbor Workers' Compensa-
6 tion Act (33 U.S.C. 902)); and

7 (iii) the relevant authority or operator of a
8 port or harbor; and

9 (M) the Transportation Security Adminis-
10 tration, exclusively with respect to Transpor-
11 tation Security Officers.

12 (b) REQUIREMENTS.—For the purposes of respond-
13 ing to, or for purposes relating to operations during, the
14 national emergency declared by the President under the
15 National Emergencies Act (50 U.S.C. 1601 et seq.) with
16 respect to the Coronavirus Disease 2019 (COVID–19), the
17 Secretary shall require—

18 (1) the owners and operators of equipment or
19 facilities used by passenger or freight transportation
20 employers, as applicable—

21 (A) to clean, disinfect, and sanitize, in ac-
22 cordance with the appropriate guidance, the
23 equipment and facilities, including, as applica-
24 ble—

25 (i) buses and transit vehicles;

- 1 (ii) commercial motor vehicles;
- 2 (iii) passenger and freight loco-
- 3 motives;
- 4 (iv) freight and passenger rail cars;
- 5 (v) vessels;
- 6 (vi) airports;
- 7 (vii) vehicles used for the transpor-
- 8 tation of workers to job sites where inter-
- 9 action with the public will occur;
- 10 (viii) aircraft, including the cockpit
- 11 and the cabin; and
- 12 (ix) other equipment and facilities;
- 13 (B) to ensure that facilities, including en-
- 14 closed facilities, owned, operated, and used by
- 15 passenger or freight transportation employers,
- 16 including facilities used for employee training or
- 17 the performance of indoor or outdoor mainte-
- 18 nance, repair, or overhaul work, are disinfected
- 19 and sanitized frequently in accordance with the
- 20 appropriate guidance;
- 21 (C) to provide to at-risk employees—
- 22 (i) masks or protective face coverings;
- 23 (ii) gloves;
- 24 (iii) hand sanitizer;

1 (iv) sanitizing wipes with sufficient al-
2 cohol content; and

3 (v) training on the proper use of per-
4 sonal protective equipment and sanitizing
5 equipment;

6 (D) to ensure that employees whose job re-
7 sponsibilities include the cleaning, disinfecting,
8 or sanitizing described in subparagraphs (A)
9 and (B) are provided—

10 (i) masks or protective face coverings;

11 (ii) gloves;

12 (iii) hand sanitizer; and

13 (iv) sanitizing wipes with sufficient al-
14 cohol content;

15 (E) to establish guidelines, or adhere to
16 any existing applicable guidelines, including any
17 guidelines provided in the guidance described in
18 subsection (a)(1)(B), for notifying an employee
19 of the owner or operator of a confirmed diag-
20 nosis of the Coronavirus Disease 2019
21 (COVID–19) with respect to any other em-
22 ployee of the owner or operator with whom the
23 notified employee had physical contact or a
24 physical interaction during the 48-hour period

1 preceding the time at which the diagnosed em-
2 ployee developed symptoms;

3 (F) to require, subject to the requirement
4 to make reasonable modifications to policies,
5 practices, or procedures under the Americans
6 with Disabilities Act of 1990 (42 U.S.C. 12101
7 et seq.), the wearing of masks or protective face
8 coverings by—

9 (i) passengers traveling on transpor-
10 tation provided by a passenger or freight
11 transportation employer; and

12 (ii) employees of passenger or freight
13 transportation employers when those em-
14 ployees are—

15 (I) interacting with passengers,
16 the public, or coworkers who interact
17 with the public; or

18 (II) working in locations where
19 social distancing and other preventa-
20 tive measures with respect to the
21 Coronavirus Disease 2019 (COVID-
22 19) are not possible;

23 (G) to require, subject to the reasonable
24 accommodations requirement of the Americans
25 with Disabilities Act of 1990 (42 U.S.C. 12101

1 et seq.), each flight crew member to wear a
2 mask or protective face covering while on board
3 an aircraft and outside the flight deck; and

4 (H) to ensure that each contractor of the
5 owner or operator provides masks or protective
6 face coverings, gloves, hand sanitizer, and sani-
7 tizing wipes with sufficient alcohol content to
8 those employees of the contractor whose job re-
9 sponsibilities include the cleaning, disinfecting,
10 or sanitizing described in subparagraph (A) or
11 (B); and

12 (2) an air carrier to submit to the Adminis-
13 trator of the Federal Aviation Administration a pro-
14 posal to permit pilots to wear masks or protective
15 face coverings in the flight deck, including a safety
16 risk assessment with respect to that proposal.

17 (c) MARKET UNAVAILABILITY OF NECESSARY
18 ITEMS.—

19 (1) NOTICE OF MARKET UNAVAILABILITY.—

20 (A) IN GENERAL.—If an owner or operator
21 described in paragraph (1) of subsection (b) is
22 unable to acquire 1 or more items necessary to
23 comply with the requirements prescribed under
24 that paragraph due to market unavailability of
25 the items, the owner or operator shall—

1 (i) not later than 7 days after the
2 date on which the owner or operator is un-
3 able to acquire each applicable item, sub-
4 mit to the Secretary a written notice ex-
5 plaining the efforts made and obstacles
6 faced by the owner or operator to acquire
7 that item; and

8 (ii) continue making efforts to acquire
9 that item until the item is acquired.

10 (B) UPDATED NOTICE WITH RESPECT TO
11 THE SAME ITEM.—If an owner or operator is
12 unable to acquire an item described in a notice
13 submitted under subparagraph (A) by the date
14 described in paragraph (4)(B)(ii) with respect
15 to the notice, the owner or operator may submit
16 an updated notice with respect to that item.

17 (2) REASONABLE EFFORT DETERMINATION.—
18 With respect to each notice submitted under para-
19 graph (1), the Secretary shall determine whether the
20 owner or operator submitting the notice has made
21 reasonable efforts to acquire the item described in
22 the notice.

23 (3) NOTICE OF COMPLIANCE.—Not later than 7
24 days after the date on which an owner or operator
25 acquires an item described in a notice submitted by

1 that owner or operator under paragraph (1) in a
2 quantity sufficient to comply with the requirements
3 prescribed under subsection (b)(1), the owner or op-
4 erator shall submit to the Secretary a written notice
5 of compliance with those requirements.

6 (4) LIST OF OWNERS AND OPERATORS MAKING
7 REASONABLE EFFORTS TO ACQUIRE UNAVAILABLE
8 ITEMS.—

9 (A) IN GENERAL.—The Secretary shall
10 publish on a public website of the Department
11 of Transportation a list that, with respect to
12 each notice submitted to the Secretary under
13 paragraph (1) for which the Secretary has
14 made a positive determination under paragraph
15 (2)—

16 (i) identifies the owner or operator
17 that submitted the notice;

18 (ii) identifies the item that the owner
19 or operator was unable to acquire; and

20 (iii) describes the reasonable efforts
21 made by the owner or operator to acquire
22 that item.

23 (B) REMOVAL FROM LIST.—The Secretary
24 shall remove each entry on the list described in
25 subparagraph (A) on the earlier of—

1 (i) the date on which the applicable
2 owner or operator submits to the Secretary
3 a notice of compliance under paragraph (3)
4 with respect to the item that is the subject
5 of the entry; and

6 (ii) the date that is 90 days after the
7 date on which the entry was added to the
8 list.

9 (d) PENALTIES.—

10 (1) IN GENERAL.—Subject to paragraph (2), an
11 owner or operator described in subsection (b)(1) that
12 fails to perform the duties prescribed under that
13 subsection is liable to the Federal Government for a
14 civil penalty of \$1,000 for each employee affected by
15 each violation, to be distributed to those affected
16 employees.

17 (2) EXEMPTION.—An owner or operator identi-
18 fied on the list described in subsection (c)(4)(A)
19 shall not be subject to the penalties described in
20 paragraph (1) with respect to a failure to perform
21 a duty prescribed under subsection (b)(1) during the
22 time period in which the owner or operator is identi-
23 fied on that list if the failure is due to the market
24 unavailability of the item for which the owner or op-
25 erator is included on that list.

1 **SEC. 5. PROTECTION OF CERTAIN FEDERAL AVIATION AD-**
2 **MINISTRATION EMPLOYEES.**

3 (a) IN GENERAL.—For the duration of the national
4 emergency declared by the President under the National
5 Emergencies Act (50 U.S.C. 1601 et seq.) with respect
6 to the Coronavirus Disease 2019 (COVID–19), in order
7 to maintain the safe and efficient operation of the air traf-
8 fic control system, the Administrator of the Federal Avia-
9 tion Administration shall—

10 (1) provide any air traffic controller and airway
11 transportation systems specialist of the Federal
12 Aviation Administration with masks or protective
13 face coverings, gloves, and hand sanitizer and wipes
14 of sufficient alcohol content;

15 (2) ensure that each air traffic control facility
16 is cleaned, disinfected, and sanitized frequently in
17 accordance with Centers for Disease Control and
18 Prevention guidance; and

19 (3) provide any employee of the Federal Avia-
20 tion Administration whose job responsibilities involve
21 cleaning, disinfecting, and sanitizing a facility de-
22 scribed in paragraph (2) with masks or protective
23 face coverings and gloves, and ensure that each con-
24 tractor of the Federal Aviation Administration pro-
25 vides any employee of the contractor with those ma-
26 terials.

1 (b) SOURCE OF EQUIPMENT.—The items described
2 in subsection (a)(1) may be procured or provided under
3 that subsection through any source available to the Ad-
4 ministrator of the Federal Aviation Administration.

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