117TH CONGRESS
1ST SESSION

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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

Mr. Blumenthal (for himself, Ms. Cantwell, and Mr. Markey) introduced the following bill; which was read twice and referred to the Committee on ____________________

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.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,
SECTION 1. SHORT TITLE.

This Act may be cited as the “Essential Transportation Employee Safety Act of 2021”.

SEC. 2. DEFINITION OF SECRETARY.

In this Act, the term “Secretary” means the Secretary of Transportation.

SEC. 3. PRIORITY TESTING FOR ESSENTIAL TRANSPORTATION EMPLOYEES.

(a) IN GENERAL.—The Secretary shall—

(1) adopt, for use by the Department of Transportation in carrying out response efforts relating to, and operations during, the Coronavirus Disease 2019 (COVID–19) pandemic, the categorization of certain transportation workers as “essential critical infrastructure workers” in accordance with the advisory list published by the Cybersecurity and Infrastructure Security Agency on May 19, 2020, entitled “Guidance on the Essential Critical Infrastructure Workforce: Ensuring Community and National Resilience in COVID-19 Response” (or a subsequent version of that advisory list); and

(2) coordinate with the Director of the Centers for Disease Control and Prevention and the Administrator of the Federal Emergency Management Agency to support the efforts of State and local governments to provide for priority testing of transpor-
ation workers categorized as essential critical infra-
structure workers under paragraph (1) with respect
to the Coronavirus Disease 2019 (COVID–19).

SEC. 4. REQUIREMENTS FOR OWNERS AND OPERATORS OF
EQUIPMENT OR FACILITIES USED BY PAS-
SENGER OR FREIGHT TRANSPORTATION EMP-
PLOYERS.

(a) DEFINITIONS.—In this section:

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

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

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

(2) AT-RISK EMPLOYEE.—The term “at-risk
employee” means an employee (including a Federal
employee) or contractor of a passenger or freight
transportation employer—
(A) whose job responsibilities involve interaction with—

(i) passengers;

(ii) the public; or

(iii) coworkers who interact with the public;

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

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

(3) PASSENGER OR FREIGHT TRANSPORTATION EMPLOYER.—The term “passenger or freight transportation employer” includes—

(A) the owner, charterer, managing operator, master, or other individual in charge of a passenger vessel (as defined in section 2101 of title 46, United States Code);

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

(C) a provider of intercity rail passenger transportation (as defined in section 24102 of title 49, United States Code);
(D) a rail carrier (as defined in section 10102 of title 49, United States Code);

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

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

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

(H) a provider of motorcoach services (as defined in section 32702 of the Motorcoach Enhanced Safety Act of 2012 (49 U.S.C. 31136 note; Public Law 112–141));

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

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

(K) an owner or operator of a vessel operating in commercial service (as defined in section 2101 of title 46, United States Code);
(L)(i) a marine terminal operator (as defined in section 40102 of title 46, United States Code);

(ii) an employer (as defined in section 2 of the Longshore and Harbor Workers’ Compensation Act (33 U.S.C. 902)); and

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

(M) the Transportation Security Administration, exclusively with respect to Transportation Security Officers.

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

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

(A) to clean, disinfect, and sanitize, in accordance with the appropriate guidance, the equipment and facilities, including, as applicable—

(i) buses and transit vehicles;
(ii) commercial motor vehicles;

(iii) passenger and freight locomotives;

(iv) freight and passenger rail cars;

(v) vessels;

(vi) airports;

(vii) vehicles used for the transportation of workers to job sites where interaction with the public will occur;

(viii) aircraft, including the cockpit and the cabin; and

(ix) other equipment and facilities;

(B) to ensure that facilities, including enclosed facilities, owned, operated, and used by passenger or freight transportation employers, including facilities used for employee training or the performance of indoor or outdoor maintenance, repair, or overhaul work, are disinfected and sanitized frequently in accordance with the appropriate guidance;

(C) to provide to at-risk employees—

(i) masks or protective face coverings;

(ii) gloves;

(iii) hand sanitizer;
(iv) sanitizing wipes with sufficient alcohol content; and

(v) training on the proper use of personal protective equipment and sanitizing equipment;

(D) to ensure that employees whose job responsibilities include the cleaning, disinfecting, or sanitizing described in subparagraphs (A) and (B) are provided—

(i) masks or protective face coverings;

(ii) gloves;

(iii) hand sanitizer; and

(iv) sanitizing wipes with sufficient alcohol content;

(E) to establish guidelines, or adhere to any existing applicable guidelines, including any guidelines provided in the guidance described in subsection (a)(1)(B), for notifying an employee of the owner or operator of a confirmed diagnosis of the Coronavirus Disease 2019 (COVID–19) with respect to any other employee of the owner or operator with whom the notified employee had physical contact or a physical interaction during the 48-hour period
preceding the time at which the diagnosed em-
ployee developed symptoms;

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

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

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

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

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

(G) to require, subject to the reasonable
accommodations requirement of the Americans
with Disabilities Act of 1990 (42 U.S.C. 12101
et seq.), each flight crew member to wear a mask or protective face covering while on board an aircraft and outside the flight deck; and (H) to ensure that each contractor of the owner or operator provides masks or protective face coverings, gloves, hand sanitizer, and sanitizing wipes with sufficient alcohol content to those employees of the contractor whose job responsibilities include the cleaning, disinfecting, or sanitizing described in subparagraph (A) or (B); and (2) an air carrier to submit to the Administrator of the Federal Aviation Administration a proposal to permit pilots to wear masks or protective face coverings in the flight deck, including a safety risk assessment with respect to that proposal.

(c) Market Unavailability of Necessary Items.—

(1) Notice of Market Unavailability.—

(A) In general.—If an owner or operator described in paragraph (1) of subsection (b) is unable to acquire 1 or more items necessary to comply with the requirements prescribed under that paragraph due to market unavailability of the items, the owner or operator shall—
(i) not later than 7 days after the date on which the owner or operator is unable to acquire each applicable item, submit to the Secretary a written notice explaining the efforts made and obstacles faced by the owner or operator to acquire that item; and

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

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

(2) REASONABLE EFFORT DETERMINATION.—With respect to each notice submitted under paragraph (1), the Secretary shall determine whether the owner or operator submitting the notice has made reasonable efforts to acquire the item described in the notice.

(3) NOTICE OF COMPLIANCE.—Not later than 7 days after the date on which an owner or operator acquires an item described in a notice submitted by
that owner or operator under paragraph (1) in a quantity sufficient to comply with the requirements prescribed under subsection (b)(1), the owner or operator shall submit to the Secretary a written notice of compliance with those requirements.

(4) List of Owners and Operators Making Reasonable Efforts to Acquire Unavailable Items.—

(A) In General.—The Secretary shall publish on a public website of the Department of Transportation a list that, with respect to each notice submitted to the Secretary under paragraph (1) for which the Secretary has made a positive determination under paragraph (2)—

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

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

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

(B) Removal from List.—The Secretary shall remove each entry on the list described in subparagraph (A) on the earlier of—
(i) the date on which the applicable owner or operator submits to the Secretary a notice of compliance under paragraph (3) with respect to the item that is the subject of the entry; and

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

(d) Penalties.—

(1) In general.—Subject to paragraph (2), an owner or operator described in subsection (b)(1) that fails to perform the duties prescribed under that subsection is liable to the Federal Government for a civil penalty of $1,000 for each employee affected by each violation, to be distributed to those affected employees.

(2) Exemption.—An owner or operator identified on the list described in subsection (e)(4)(A) shall not be subject to the penalties described in paragraph (1) with respect to a failure to perform a duty prescribed under subsection (b)(1) during the time period in which the owner or operator is identified on that list if the failure is due to the market unavailability of the item for which the owner or operator is included on that list.
SEC. 5. PROTECTION OF CERTAIN FEDERAL AVIATION ADMINISTRATION EMPLOYEES.

(a) IN GENERAL.—For the duration of the national emergency declared by the President under the National Emergencies Act (50 U.S.C. 1601 et seq.) with respect to the Coronavirus Disease 2019 (COVID–19), in order to maintain the safe and efficient operation of the air traffic control system, the Administrator of the Federal Aviation Administration shall—

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

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

(3) provide any employee of the Federal Aviation Administration whose job responsibilities involve cleaning, disinfecting, and sanitizing a facility described in paragraph (2) with masks or protective face coverings and gloves, and ensure that each contractor of the Federal Aviation Administration provides any employee of the contractor with those materials.
(b) Source of Equipment.—The items described in subsection (a)(1) may be procured or provided under that subsection through any source available to the Administrator of the Federal Aviation Administration.