

117TH CONGRESS  
1ST SESSION

**S.** \_\_\_\_\_

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.

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IN THE SENATE OF THE UNITED STATES

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

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**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       propriate 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.