

Calendar No. 634

116TH CONGRESS }
2d Session }

SENATE

{ REPORT
116-328 }

PREVENTING OPIOID AND DRUG
IMPAIRMENT IN TRANSPORTATION ACT

R E P O R T

OF THE

COMMITTEE ON COMMERCE, SCIENCE, AND
TRANSPORTATION

ON

S. 2979



DECEMBER 15, 2020.—Ordered to be printed

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SENATE COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

ONE HUNDRED SIXTEENTH CONGRESS

SECOND SESSION

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PREVENTING OPIOID AND DRUG IMPAIRMENT IN TRANSPORTATION ACT

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Mr. WICKER, from the Committee on Commerce, Science, and
Transportation, submitted the following

R E P O R T

[To accompany S. 2979]

[Including and cost estimate of the Congressional Budget Office]

The Committee on Commerce, Science, and Transportation, to which was referred the bill (S. 2979) to improve drug testing for transportation-related activities, having considered the same, reports favorably thereon with an amendment (in the nature of a substitute) and recommends that the bill (as amended) do pass.

PURPOSE OF THE BILL

The purpose of S. 2979 is to further improve drug and alcohol testing requirements for employees in safety-sensitive transportation positions and initiate research that would assist with preventing drug-impaired driving on our Nation's roads.

BACKGROUND AND NEEDS

In recent years, Congress has undertaken efforts to prevent opioid and other drug abuse and overdose through efforts such as the SUPPORT for Patients and Communities Act.¹ S. 2979 would further those efforts by better tracking drug use of employees in safety-sensitive transportation positions, creating improvements in drug and alcohol testing processes to better utilize U.S. Department of Transportation (DOT) resources, and initiating research to assist in better identifying and preventing drug-impaired driving.

Drug and alcohol testing is critical for the safety of our Nation's roadways. DOT oversees the administration and improvement of drug and alcohol testing for employees in safety-sensitive transpor-

¹ Public Law 115-271.

tation positions and works to reduce impaired driving for individuals on our Nation's highways. DOT's Office of Drug and Alcohol Policy and Compliance (ODAPC) and its modal administrations currently require drug and alcohol testing for more than 12 million transportation workers in the aviation, trucking, railroad, mass transit, pipeline, maritime, and other transportation industries.² In addition, the National Highway Traffic Safety Administration (NHTSA) is responsible for reducing deaths and injuries from motor vehicle crashes and works with States and law enforcement to reduce impaired driving, both for alcohol and drugs, through grant programs, driver behavior standards, and education campaigns.

Drug-impaired driving has been of increasing concern in recent years, particularly given the surge in opioid abuse and changes in State drug laws. Drug-impaired driving negatively impacts drivers' coordination, judgement, and reaction times.³ In 2016 alone, there were more than 42,000 opioid overdose deaths,⁴ and drivers are increasingly testing positive for marijuana.⁵ Recent post-crash test data show significant increases in the number of operators or drivers impaired by opioids and involved in crashes.⁶ In addition, DOT lab-reported drug testing data for safety-sensitive transportation workers from 2011 to 2015 showed increases in positive drug tests for opiates and amphetamines.⁷

For transportation employees in safety-sensitive positions, DOT follows the Department of Health and Human Services (HHS) Mandatory Guidelines for Federal Workplace Drug Testing Programs (HHS Mandatory Guidelines) to determine the drug testing panel for which drug testing is required.⁸ DOT, however, has some discretion in how it regulates the modal administration drug testing programs. ODAPC is responsible for advising DOT on such issues and publishing drug and alcohol testing regulations for the transportation industry.

On January 23, 2017, HHS revised its HHS Mandatory Guidelines to include synthetic opioids—specifically oxycodone, oxymorphone, hydrocodone, and hydromorphone—on the panel of

²U.S. Department of Transportation, Office of Drug and Alcohol Policy and Compliance, "Employees: What Are the Drug & Alcohol Testing Rules and Where Do I Find Them?," updated Jul. 1, 2020 (<https://www.transportation.gov/odapc/employee#drugalcohol>) (accessed Sep. 14, 2020). Note that the 12 million transportation workers includes employees subject to regulations of the U.S. Coast Guard, which is part of the U.S. Department of Homeland Security.

³U.S. Department of Transportation, National Highway Traffic Safety Administration, "Drug-Impaired Driving" (<https://www.nhtsa.gov/risky-driving/drug-impaired-driving#32451>) (accessed Sep. 14, 2020).

⁴National Institutes of Health, National Institute on Drug Abuse, "Nearly Half of Opioid-related Overdose Deaths Involve Fentanyl," May 1, 2018 (<https://www.drugabuse.gov/news-events/news-releases/2018/05/nearly-half-opioid-related-overdose-deaths-involve-fentanyl>) (accessed Sep. 14, 2020).

⁵Jim Hedlund, Governors Highway Safety Association, *Drug-Impaired Driving: Marijuana and Opioids Raise Critical Issues for States*, p. 12, May 2018 (<https://www.ghsa.org/resources/DUID18>) (accessed Sep. 14, 2020); U.S. Department of Transportation, National Highway Traffic Safety Administration, "Drug-Impaired Driving" (<https://www.nhtsa.gov/risky-driving/drug-impaired-driving#32451>) (accessed Sep. 14, 2020).

⁶Jim Hedlund, Governors' Highway Safety Association, *Drug-Impaired Driving: Marijuana and Opioids Raise Critical Issues for States*, May 2018 (<https://www.ghsa.org/resources/DUID18>) (accessed Sep. 14, 2020).

⁷U.S. Department of Transportation, Office of the Secretary of Transportation, Office of Drug and Alcohol Policy and Compliance, "DOT Program Update: Federal Drug Testing Advisory Board," May 20, 2016, slide 16 (<https://www.samhsa.gov/sites/default/files/meeting/documents/kelly-dot-dtab-may-2016.pdf>) (accessed Sep. 14, 2020).

⁸Omnibus Transportation Employee Testing Act of 1991 (Pub. L. 102-143).

controlled substances for which Federal agencies can test.⁹ Following revision of the HHS Mandatory Guidelines, on November 13, 2017, DOT published a final rule adding these synthetic opioids to its drug testing panel used for transportation workers subject to DOT drug and alcohol testing regulations.¹⁰ Notably, fentanyl, a synthetic opioid responsible for approximately 19,000 deaths in 2016—46 percent of all opioid overdose deaths that year—was not included on the panel.¹¹ Section 8105 of the SUPPORT for Patients and Communities Act¹² required HHS within 180 days of enactment to determine whether a revision of the HHS Mandatory Guidelines to expand the opiate category on the list of authorized substance testing to include fentanyl, based on the reliability and cost-effectiveness on available testing.

As a general matter, urine, oral fluid, and hair testing are available methods of testing for concentrations of controlled substances. However, under the HHS Mandatory Guidelines, urine testing currently is the only form of drug testing that may be used to test transportation employees subject to DOT drug and alcohol testing regulations.

The Fixing America’s Surface Transportation (FAST) Act of 2015¹³ required HHS to issue, within 1 year after enactment, guidelines for hair testing as a method of detecting use of a controlled substance.¹⁴ Section 8106 of the SUPPORT for Patients and Communities Act¹⁵ required HHS within 60 days of enactment to provide Congress with the current status and expected timeline of testing guidelines. These guidelines had not yet been released upon introduction of S. 2979.

Finally, with increased opioid abuse and the legalization of recreational marijuana use in some States, concerns related to drug-impaired driving on our Nation’s roads have been increasingly prevalent. In addition, roadside technology to detect drug presence and impairment is still under development. Despite the fact that it is illegal to drive impaired, whether by alcohol or drugs, NHTSA’s 2013–2014 National Roadside Survey found that the number of drivers testing positive for marijuana increased between 2007 and 2014.¹⁶ The survey further found that 20 percent of nighttime weekend drivers tested positive for drugs.¹⁷ Additionally,

⁹U.S. Department of Health and Human Services, Substance Abuse and Mental Health Services Administration, “Mandatory Guidelines for Federal Workplace Drug Testing Programs,” 82 Fed. Reg. 7920 (Jan. 23, 2017) (<https://www.govinfo.gov/content/pkg/FR-2017-01-23/pdf/2017-00979.pdf>) (accessed Sep. 14, 2020).

¹⁰U.S. Department of Transportation, Office of the Secretary, “Procedures for Transportation Workplace Drug and Alcohol Testing Programs: Addition of Certain Schedule II Drugs to the Department of Transportation’s Drug-Testing Panel and Certain Minor Amendments,” 82 Fed. Reg. 52229 (Nov. 13, 2017) (<https://www.govinfo.gov/content/pkg/FR-2017-11-13/pdf/2017-24397.pdf>) (accessed Sep. 14, 2020).

¹¹National Institutes of Health, National Institute on Drug Abuse, “Nearly Half of Opioid-related Overdose Deaths Involve Fentanyl,” May 1, 2018 (<https://www.drugabuse.gov/news-events/news-releases/2018/05/nearly-half-opioid-related-overdose-deaths-involve-fentanyl>) (accessed Sep. 14, 2020).

¹²Public Law 115–271.

¹³Public Law 114–94.

¹⁴FAST Act, section 5402 (codified at 49 U.S.C. §31306 note).

¹⁵Public Law 115–271.

¹⁶U.S. Department of Transportation, National Highway Traffic Safety Administration, “Drug-Impaired Driving” (<https://www.nhtsa.gov/risky-driving/drug-impaired-driving#32451>) (accessed Sep. 14, 2020).

¹⁷Amy Berning et al., U.S. Department of Transportation, National Highway Traffic Safety Administration, *Traffic Safety Facts: Results of the 2013–2014 National Roadside Survey of Alco-*

in 2016, NHTSA conducted a comprehensive case-control study to estimate the crash risk of alcohol-positive, drug-positive, and drug- and alcohol-positive drivers. The study confirmed previous research indicating that alcohol is a greater contributor to crash risk than drugs, but hypothesized that the consumption of drugs, alone or with alcohol, may be associated with crash severity.¹⁸ In 2018, NHTSA announced the If You Feel Different, You Drive Different education campaign to inform drivers of the dangers of drug-impaired driving.

SUMMARY OF PROVISIONS

S. 2979 would do the following:

- Make improvements in drug and alcohol testing for employees in safety-sensitive transportation positions, such as Amtrak locomotive engineers and conductors, pipeline operators, and commercial motor vehicle drivers.
- Initiate important research to combat drug-impaired driving on our Nation's roads.

LEGISLATIVE HISTORY

S. 2979 was introduced on December 4, 2019, by Senator Wicker and was referred to the Committee on Commerce, Science, and Transportation of the Senate. On December 11, 2019, the Committee met in open Executive Session and, by voice vote, ordered S. 2979 reported favorably with an amendment (in the nature of a substitute).

During the 115th Congress, S. 2848, the Fighting Opioid Abuse in Transportation Act, was reported favorably with an amendment (in the nature of a substitute) by Senator Thune on behalf of the Committee on Commerce, Science, and Transportation of the Senate. That bill was enacted into law in subtitle I of the SUPPORT for Patients and Communities Act.¹⁹

ESTIMATED COSTS

In accordance with paragraph 11(a) of rule XXVI of the Standing Rules of the Senate and section 403 of the Congressional Budget Act of 1974, the Committee provides the following cost estimate, prepared by the Congressional Budget Office:

hol and Drug Use by Drivers, DOT HS 812 118, Feb. 2015 (https://www.nhtsa.gov/sites/nhtsa.dot.gov/files/812118-roadside_survey_2014.pdf) (accessed Sep. 14, 2020).

¹⁸John H. Lacey et al., U.S. Department of Transportation, National Highway Traffic Safety Administration, *Drug and Alcohol Crash Risk: A Case-Control Study*, DOT HS 812 335, Dec. 2016, pp. 5–6 (https://www.nhtsa.gov/sites/nhtsa.dot.gov/files/documents/812335_drugalcoholcrashrisk.pdf) (accessed Sep. 14, 2020).

¹⁹Public Law 115–271.

S. 2979, Preventing Opioid and Drug Impairment in Transportation Act			
As ordered reported by the Senate Committee on Commerce, Science, and Transportation on December 11, 2019			
By Fiscal Year, Millions of Dollars	2020	2020-2025	2020-2030
Direct Spending (Outlays)	0	0	0
Revenues	0	0	0
Increase or Decrease (-) in the Deficit	0	0	0
Spending Subject to Appropriation (Outlays)	*	2	not estimated
Statutory pay-as-you-go procedures apply?	No	Mandate Effects	
Increases on-budget deficits in any of the four consecutive 10-year periods beginning in 2031?	No	Contains intergovernmental mandate?	No
		Contains private-sector mandate?	Yes, Under Threshold
* = between zero and \$500,000.			

S. 2979 would require the Department of Transportation, the Department of Health and Human Services, and the Government Accountability Office to undertake several studies related to drug use and the prevention of such drug use by operators of different modes of transportation. Those agencies would be required to report to the Congress on the relevant findings at varying times following enactment.

CBO assumes that the bill will be enacted in fiscal year 2020. Under that assumption, the agencies could incur some costs in 2020, but CBO expects that most of the costs would be incurred in 2021 and later. Any spending would be subject to the availability of appropriated funds. Using information on the costs of similar studies and reports, CBO estimates that implementing S. 2979 would cost \$2 million over the 2020–2025 period.

S. 2979 would impose a private-sector mandate as defined in the Unfunded Mandates Reform Act (UMRA) on the National Railroad Passenger Corporation (commonly known as Amtrak). The bill would require the company to establish an electronic database containing drug and alcohol test records for employees in safety-sensitive positions and establish procedures for tracking and monitoring drug and alcohol testing information maintained in the database. The bill would require Amtrak to complete those actions within 18 months of enactment and to submit two reports on related safety issues to the Congress.

Because Amtrak already maintains the required information in paper form and the effort to comply with the reporting requirements would be small, CBO estimates the aggregate costs of the private-sector mandates would fall well below the annual threshold established in UMRA for private-sector mandates (\$168 million in 2020, adjusted annually for inflation).

The bill also would require the Department of Transportation to consider whether existing regulations that apply to licensing locomotive engineers and conductors should include requirements to report drug- and alcohol-related arrests. If the department determines that the regulations should be modified, the bill would impose a private-sector mandate on locomotive engineers, conductors,

and persons seeking certification to operate locomotives by requiring these individuals to report those offenses to Amtrak. Whether the department will issue a determination that the regulations should be modified is uncertain; however, fewer than 20,000 Amtrak employees would be affected by the new reporting requirement. Therefore, CBO estimates the cost to comply with the mandate would be small.

S. 2979 contains no intergovernmental mandates as defined in the UMRA.

The CBO staff contacts for this estimate are Robert Reese (for federal costs) and Brandon Lever (for mandates). The estimate was reviewed by H. Samuel Papenfuss, Deputy Director of Budget Analysis.

REGULATORY IMPACT STATEMENT

In accordance with paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee provides the following evaluation of the regulatory impact of the legislation, as reported:

Number of Persons Covered

S. 2979, as reported, would direct the Secretary of Transportation to determine whether regulations set forth in parts 240 and 242 of title 49, Code of Federal Regulations (CFR), 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 and before performing any safety-sensitive service as a locomotive engineer or conductor. Currently, regulations under 49 CFR 240.111(h) require certified locomotive engineers or persons seeking initial certification to report certain motor vehicle incidents within 48 hours of being convicted for, or completed State action to cancel, revoke, suspend, or deny a motor vehicle driver's license for, such violations. The same is required for certified conductors or persons seeking initial certification under 49 CFR 242.111(i). Depending on the Secretary of Transportation's determination as to whether the regulations in parts 240 and 242 of 49 CFR should be revised for locomotive engineers and conductors, or persons seeking initial certification to become a locomotive engineer or conductor, for Amtrak, S. 2979 could increase the number of persons covered for reporting arrests due to drug or alcohol offenses who are either locomotive engineers or conductors, or seeking to become locomotive engineers or conductors, for Amtrak.

Economic Impact

S. 2979, as reported, is not expected to have an adverse impact on the Nation's economy.

Privacy

S. 2979, as reported, does not raise any issues relating to privacy. Section 2 of S. 2979 would require Amtrak to establish an electronic database of all safety-sensitive positions to record data on employee drug and alcohol tests, but such data already is collected through paper records. The Committee recognizes potential risks associated with the electronic storage of this data, but be-

lieves Amtrak can take steps to ensure the security of the database.

Paperwork

S. 2979, as reported, would increase certain paperwork requirements. Section 2 of the bill would require Amtrak to provide a report to Congress on methods used by Amtrak to ensure that supervisors of employees in safety-sensitive positions receive certain training and measures implemented to improve safety related to employee prescription drug use. This report would be a one-time submission with a limited scope.

Section 4 of the bill would require DOT to submit a report to Congress on the ability of pipeline companies that operate from Canada or Mexico into the United States to conduct drug and alcohol testing and whether operators have sufficient testing in place to ensure safe operations. Section 6 of the bill would require NHTSA to study the ways in which the agency can reduce and better detect impaired driving, and section 7 of the bill would require DOT to study the accuracy of onsite fluid screening for tetrahydrocannabinol (i.e., THC) and opiate presence. Section 11 of the bill would require DOT to report on the status of the Driver Alcohol Detection System for Safety Program, and section 12 would require DOT, in consultation with other Federal agencies, to report to Congress on setting national minimum guidelines for toxicological investigations in cases of motor vehicle crashes and drug-impaired driving cases. These DOT studies and reports are important to ensuring the safety of our Nation's pipelines and combating impaired driving on our Nation's roads.

Section 9 of the bill would require HHS to provide a status report on its determination of whether to add fentanyl to the drug testing panel, and section 10 would require the Office of Management and Budget (OMB) and HHS to provide status reports to Congress on hair testing guidelines as required by section 5402(b) of the FAST Act.²⁰ These two reporting requirements are expected to result in a small increase in paperwork for HHS and OMB.

CONGRESSIONALLY DIRECTED SPENDING

In compliance with paragraph 4(b) of rule XLIV of the Standing Rules of the Senate, the Committee provides that no provisions contained in the bill, as reported, meet the definition of congressionally directed spending items under the rule.

SECTION-BY-SECTION ANALYSIS

Section 1. Short title; table of contents.

This section would provide that the bill may be cited as the "Preventing Opioid and Drug Impairment in Transportation Act". This section also provides a table of contents for the bill.

Section 2. Amtrak employee controlled substances and alcohol testing records.

This section would direct Amtrak to report to Congress, not later than 1 year after the date of enactment, on methods used to ensure

²⁰ 49 U.S.C. 31306 note.

supervisors of employees in safety-sensitive positions receive the required training on how to detect drug and alcohol use, as well as measures implemented to improve compliance with self-reporting of employee prescription drug use. Amtrak would also be required to establish an electronic database for employee drug and alcohol tests records, as well as effective procedures to track and monitor such testing, within 18 months after the date of enactment. Finally, Amtrak would be required to report to Congress on the measures implemented to improve safety related to employee prescription drug use, within 18 months after the date of enactment.

Section 3. Alcohol and controlled substance reporting of Amtrak locomotive engineers and conductors.

This section would direct DOT to make a determination, not later than 1 year after the date of enactment, as to whether existing regulations should be updated to require Amtrak locomotive engineers and conductors to report arrests due to drug or alcohol offenses as soon as practicable, and before any safety-sensitive service is performed. If the Secretary of Transportation determines that these regulations should be revised, the Secretary shall advise appropriate committees of jurisdiction of that determination and, not later than 18 months after the determination, publish a proposed rule revision in the Federal Register that would require engineers and conductors (including those seeking initial certification) to report drug and alcohol offense arrests as soon as possible, define the scope of the reportable drug or alcohol offenses, and set the timeframe for which offenses are considered reportable prior to initial certification.

Section 4. Safety-sensitive personnel study.

This section would require DOT to report to Congress, not later than 180 days after the date of enactment, on the ability of pipeline companies to require drug and alcohol testing of safety-sensitive personnel that are located outside of the United States but operate infrastructure within the United States, and indicate whether such operators have sufficient drug and alcohol testing procedures in place to ensure safe operations.

Section 5. Interstate drug and alcohol oversight.

This section would require DOT to amend its pipeline auditing program, not later than 18 months after the date of enactment, to improve the efficiency of certain drug and alcohol regulations as applied to pipeline contractors working in multiple States or for multiple pipeline operators.

Section 6. Impaired driving study.

This section would require NHTSA to report to Congress, not later than 2 years after the date of enactment, and biennially for the following 4 years, on the ways in which NHTSA can reduce and detect impaired driving, including marijuana- and opioid-impaired driving.

Section 7. Roadside oral fluid drug screening.

This section would require DOT to study the accuracy of onsite oral fluid screening as a method to detect THC and opiate presence

in drivers. Not later than 4 years after the date of enactment, the Secretary would be required to submit a report to Congress with the findings of the study and recommendations on the potential use of roadside oral fluid drug screening by law enforcement.

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

This section would direct the U.S. Government Accountability Office (GAO) to review, not later than 2 years after the date of enactment, interactions between HHS and DOT in adding and removing categories of drugs from the testing panel and assess whether such process addresses the needs of the transportation industry for drug and alcohol testing to prevent drug and alcohol-related incidents.

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

This section would amend the requirement established under section 8105 of subtitle I of the SUPPORT for Patients and Communities Act and require HHS to report to Congress, within 30 days after the date of enactment, on the status of determining whether to add fentanyl to the drug panel.

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

This section would require OMB, within 30 days after the date of enactment, and HHS, within 60 days after the date of enactment, to report to Congress on the status of the guidelines for hair testing to follow up on section 8106 of subtitle I of the SUPPORT for Patients and Communities Act. The Committee does not intend for this provision to change any of the requirements or considerations set forth in section 8106 of Public Law 115–271.

Section 11. Report on alcohol detection technology.

This section would require DOT to submit a report to Congress, not later than 90 days after the date of enactment, that details the current status and operational potential of the Driver Alcohol Detection System for Safety Program’s drunk-driving detection technology.

Section 12. Report on collection of drug-impaired driving data.

This section would require DOT, in consultation with appropriate Federal agencies, State highway safety offices, and other interested parties, to submit to Congress a report, not later than 3 years after the date of enactment, that identifies the barriers states face in submitting toxicology results of fatally injured drivers and provides recommendations to address those barriers and to establish minimum guidelines for toxicological investigations.

CHANGES IN EXISTING LAW

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, the Committee states that the bill as reported would make no change to existing law.