

Wicker Substitute

MDM19II09

S.L.C.

Robert J. Wicker

AMENDMENT NO. _____

Calendar No. _____

Purpose: In the nature of a substitute.

IN THE SENATE OF THE UNITED STATES—116th Cong., 1st Sess.

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 fol-
2 lowing:

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 Transpor-
6 tation 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 engi-
neers 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**
2 **AND ALCOHOL TESTING RECORDS.**

3 (a) SUPERVISORY TRAINING.—Not later than 1 year
4 after the date of the enactment of this Act, the National
5 Railroad Passenger Corporation (commonly known as
6 “Amtrak”) shall submit a report to the Committee on
7 Commerce, Science, and Transportation of the Senate and
8 the Committee on Transportation and Infrastructure of
9 the House of Representatives that describes the methods
10 used by Amtrak to ensure that supervisors of employees
11 in safety-sensitive positions receive the required training
12 on—

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

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

16 (b) ELECTRONIC DATABASE.—Not later than 18
17 months after the date of the enactment of this Act, Am-
18 trak shall establish—

19 (1) an electronic database of all safety-sensitive
20 positions to record data on employee drug and alco-
21 hol tests to replace collection of such data through
22 paper records; and

1 (2) effective procedures to track and monitor
2 drug and alcohol testing maintained in the electronic
3 database.

4 (c) **MEASURES.**—Not later than 18 months after the
5 date of the enactment of this Act, Amtrak shall submit
6 a report to the Committee on Commerce, Science, and
7 Transportation of the Senate and the Committee on
8 Transportation and Infrastructure of the House of Rep-
9 resentatives that describes the measures implemented to
10 improve safety related to employee prescription drug use.

11 **SEC. 3. ALCOHOL AND CONTROLLED SUBSTANCE REPORT-**
12 **ING OF AMTRAK LOCOMOTIVE ENGINEERS**
13 **AND CONDUCTORS.**

14 (a) **REVIEW.**—Not later than 1 year after the date
15 of the enactment of this Act, the Secretary of Transpor-
16 tation shall determine whether the regulations set forth
17 in parts 240 and 242 of title 49, Code of Federal Regula-
18 tions, promulgated pursuant to sections 20135 and 20163
19 of title 49, United States Code, in order to protect the
20 traveling public, should be revised to require locomotive
21 engineers and conductors or personnel seeking initial cer-
22 tification to become a locomotive engineer or a conductor
23 for Amtrak to report arrests due to drug or alcohol of-
24 fenses as soon as practicable, but before performing any

1 safety-sensitive service as a locomotive engineer or con-
2 ductor.

3 (b) RULEMAKING.—If the Secretary of Transpor-
4 tation determines that the regulations referred to in sub-
5 section (a) should be revised in accordance with such sub-
6 section, the Secretary shall—

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

12 (2) not later than 18 months after such deter-
13 mination publish a notice in the Federal Register of
14 a proposed revision to such regulations that—

15 (A) requires locomotive engineers and con-
16 ductors, or personnel seeking initial certification
17 to become a locomotive engineer or a conductor
18 for Amtrak, to report arrests due to drug or al-
19 cohol offenses as soon as practicable, but before
20 performing any safety-sensitive service as a lo-
21 comotive engineer or conductor;

22 (B) clearly defines the scope of offenses
23 that are considered reportable under subpara-
24 graph (A); and

1 (C) defines the time frame for which such
2 offenses are considered reportable prior to ini-
3 tial certification.

4 **SEC. 4. SAFETY-SENSITIVE PERSONNEL STUDY.**

5 Not later than 180 days after the date of the enact-
6 ment of this Act, the Secretary of Transportation shall
7 submit a report to Congress that—

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

13 (A) work outside of the United States; and

14 (B) have responsibilities related to main-
15 taining and controlling pipeline in the United
16 States; and

17 (2) indicates whether such operators have suffi-
18 cient drug and alcohol testing procedures in place to
19 ensure safe operations of pipeline facilities located
20 within the United States.

21 **SEC. 5. INTERSTATE DRUG AND ALCOHOL OVERSIGHT.**

22 (a) **IN GENERAL.**—Not later than 18 months after
23 the date of the enactment of this Act, the Secretary of
24 Transportation shall amend the auditing program for the
25 drug and alcohol regulations in part 199 of title 49, Code

1 of Federal Regulations, in order to improve the efficiency
2 and processes of such regulations as applied to operators
3 and pipeline contractors working for multiple pipeline op-
4 erators in multiple States. In making such amendments,
5 the Secretary shall minimize duplicative audits of the
6 same operators, and thereby contractors working for those
7 companies, by the Pipeline and Hazardous Materials Safe-
8 ty Administration and multiple State agencies.

9 (b) LIMITATION.—Nothing in this Act may be con-
10 strued to require modification of the inspection or enforce-
11 ment authority of any Federal agency or State.

12 **SEC. 6. IMPAIRED DRIVING STUDY.**

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

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

24 (1) describes the activities undertaken pursuant
25 to subsection (a);

- 1 (2) provides an update on the progress of the
2 study conducted pursuant to subsection (a); and
3 (3) includes the results of the study if the study
4 has been completed.

5 **SEC. 7. ROADSIDE ORAL FLUID DRUG SCREENING.**

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

9 (b) **STUDY.**—The Secretary of Transportation, in
10 consultation with the heads of appropriate Federal agen-
11 cies and local law enforcement officers and prosecutors,
12 shall conduct a study regarding the accuracy of onsite oral
13 fluid screening for tetrahydrocannabinol (referred to in
14 this section as “THC”) and opiate presence in order to
15 reduce the potential impact on traffic safety due to drug
16 and polysubstance-impaired drivers.

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

19 (1) the status of onsite oral fluid drug screen-
20 ing technology that is available at the time the study
21 is conducted;

22 (2) the reliability and accuracy of the devices
23 referred to in paragraph (1) to determine the pres-
24 ence and amount of THC and opiate, as confirmed
25 by toxicology results;

1 (3) oral fluid research and pilot programs in
2 the United States and in other countries to assess
3 how the technology referred to in paragraph (1) is
4 being utilized;

5 (4) State-based policies regarding implied con-
6 sent and testing in impaired driving cases;

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

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

11 (d) REPORT.—

12 (1) IN GENERAL.—Not later than 4 years after
13 the date of the enactment of this Act, the Secretary,
14 in cooperation with appropriate Federal agencies,
15 shall submit a report to the Committee on Com-
16 merce, Science, and Transportation of the Senate
17 and the Committee on Transportation and Infra-
18 structure of the House of Representatives that con-
19 tains the results of the study conducted pursuant to
20 subsection (b).

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

23 (A) the findings of the Secretary based on
24 the study, including—

1 (i) an overview of the extent of the
2 drug and polysubstance-impaired driving
3 problem and a discussion of how new
4 screening technologies can potentially as-
5 sist in better capturing the magnitude and
6 characteristics of the problem;

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

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

13 (iv) a determination about whether
14 oral fluid screening technology is a viable
15 option to assist law enforcement officers in
16 confirming the presence of a drug respon-
17 sible for observed impairment of a driver;

18 (v) a determination about whether on-
19 site oral fluid screening technology can be
20 effectively incorporated into existing driv-
21 ing under the influence investigation proto-
22 cols; and

23 (vi) an overview of future research
24 needs; and

1 (B) the recommendations of the Secretary
2 based on the study, as appropriate, including—

3 (i) effective and efficient methods for
4 training law enforcement personnel, includ-
5 ing drug recognition experts, to detect
6 whether a motor vehicle operator is under
7 the influence through the use of onsite oral
8 fluid technology in combination with exist-
9 ing driving under the influence investiga-
10 tion protocols;

11 (ii) if feasible, model guidelines for
12 the technology referred to in clause (i);

13 (iii) methodologies for evaluating oral
14 fluid use to facilitate increased data collec-
15 tion and analysis and to determine optimal
16 strategies for deploying the technology re-
17 ferred to in clause (i) as part of a pilot
18 program and standard operating procedure
19 in driving under the influence investiga-
20 tions; and

21 (iv) future steps, including a timeline
22 for implementing such steps, that the
23 NHTSA will take to advance research in
24 onsite drug screening technology.

1 **SEC. 8. GAO REPORT ON DEPARTMENT OF TRANSPOR-**
2 **TATION DRUG TESTING PANEL.**

3 (a) IN GENERAL.—Not later than 2 years after the
4 date of the enactment of this Act, the Comptroller General
5 of the United States shall—

6 (1) review the Department of Transportation's
7 process for setting guidelines and drug testing re-
8 quirements for transportation employees subject to
9 the Department's drug and alcohol testing policies;
10 and

11 (2) submit a report to the Committee on Com-
12 merce, Science, and Transportation of the Senate
13 and the Committee on Transportation and Infra-
14 structure of the House of Representatives that sum-
15 marizes the results of such review.

16 (b) CONTENTS.—The report required under sub-
17 section (a)(2) shall include—

18 (1) a description of the process used by the De-
19 partment of Health and Human Services for adding
20 and removing categories of drugs to and from the
21 Federal workplace drug testing requirements;

22 (2) an evaluation of the dependence of the De-
23 partment of Transportation on the Department of
24 Health and Human Services' determination whether
25 to add new categories of drugs to the testing panel;

1 (3) an assessment of whether the process used
2 by the Department of Health and Human Services
3 for adding and removing categories of drugs to and
4 from the Federal workplace drug testing require-
5 ments sufficiently addresses the needs of the trans-
6 portation industry for drug and alcohol testing to
7 prevent drug and alcohol-related incidents; and

8 (4) an evaluation of whether additional guid-
9 ance or measures are needed to ensure that training
10 provided to Medical Review Officers pursuant to
11 part 40 of title 49, Code of Federal Regulations, re-
12 flects any changes to relevant statutes and regula-
13 tions affecting the duties and responsibilities of
14 Medical Review Officers.

15 **SEC. 9. TRANSPORTATION WORKPLACE DRUG AND ALCO-**
16 **HOL TESTING PROGRAM; STATUS REPORTS**
17 **ON ADDITION OF FENTANYL.**

18 Not later than 30 days after the date of enactment
19 of this Act, the Secretary of Health and Human Services
20 shall submit a report to the Committee on Commerce,
21 Science, and Transportation of the Senate and the Com-
22 mittee on Transportation and Infrastructure of the House
23 of Representatives that describes the status of the deter-
24 mination regarding whether to add fentanyl to the drug
25 testing panel in accordance with section 8105 of the

1 Fighting Opioid Abuse in Transportation Act (5 U.S.C.
2 7301 note).

3 **SEC. 10. STATUS REPORTS ON SCIENTIFIC AND TECHNICAL**
4 **GUIDELINES FOR HAIR TESTING OF TRANS-**
5 **PORTATION EMPLOYEES.**

6 (a) OFFICE OF MANAGEMENT AND BUDGET.—Not
7 later than 30 days after the date of the enactment of this
8 Act, the Director of the Office of Management and Budget
9 shall submit a report to the Committee on Commerce,
10 Science, and Transportation of the Senate and the Com-
11 mittee on Transportation and Infrastructure of the House
12 of Representatives that—

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

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

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

21 (b) DEPARTMENT OF HEALTH AND HUMAN SERV-
22 ICES.—Not later than 60 days after the date of the enact-
23 ment of this Act, the Secretary of Health and Human
24 Services shall submit a report to the Committee on Com-
25 merce, Science, and Transportation of the Senate and the

1 Committee on Transportation and Infrastructure of the
2 House of Representatives that—

3 (1) describes the causes for the delay in submit-
4 ting the scientific and technical guidelines for hair
5 testing to the Office of Management and Budget
6 after the date of the enactment of the Fighting
7 Opioid Abuse in Transportation Act (subtitle I of
8 title VIII of Public Law 115–271);

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

11 (3) summarizes considerations related to elimi-
12 nating positive test results caused solely by the drug
13 use of others and not caused by the drug use of the
14 individual being tested; and

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

17 (c) SAVINGS PROVISION.—Nothing in this section
18 may be construed to amend or alter the objectives or re-
19 quirements set forth in section 8106 of the Fighting
20 Opioid Abuse in Transportation Act (49 U.S.C. 31306
21 note).