

**AMENDMENT**  
**OFFERED BY MR. FITZPATRICK OF**  
**PENNSYLVANIA**

At the end of title II of division D, add the following:

1 **SEC. \_\_\_\_\_ LIMITATION OF RAIL PASSENGER TRANSPOR-**  
2 **TATION LIABILITY.**

3 Strike section 28103 of title 49, United States Code,  
4 and insert the following:

5 **“§ 28103. Limitation of rail passenger transportation**  
6 **liability**

7 “(a) LIMITATIONS.—Notwithstanding any other stat-  
8 utory or common law or public policy, or the nature of  
9 the conduct giving rise to damages or liability, in a claim  
10 for personal injury to a passenger, death of a passenger,  
11 or damage to property of a passenger arising from or in  
12 connection with the provision of rail passenger transpor-  
13 tation, or from or in connection with any rail passenger  
14 transportation operations over or rail passenger transpor-  
15 tation use of right-of-way or facilities owned, leased, or  
16 maintained by any high-speed railroad authority or oper-  
17 ator, any commuter authority or operator, any rail carrier,  
18 or any State, punitive damages, to the extent permitted

1 by applicable State law, may be awarded in connection  
2 with any such claim only if the plaintiff establishes by  
3 clear and convincing evidence that the harm that is the  
4 subject of the action was the result of conduct carried out  
5 by the defendant with a conscious, flagrant indifference  
6 to the rights or safety of others. If, in any case wherein  
7 death was caused, the law of the place where the act or  
8 omission complained of occurred provides, or has been  
9 construed to provide, for damages only punitive in nature,  
10 this paragraph shall not apply.

11 “(b) ALLOCATION OF CLAIMS.—For purposes of this  
12 section, the following apply:

13 “(1) A provider of rail passenger transportation  
14 may enter into contracts that allocate financial re-  
15 sponsibility for claims.

16 “(2) Any agreement for allocation of responsi-  
17 bility for a claim entered into between Amtrak and  
18 a commuter authority providing rail passenger  
19 transportation on the Northeast Corridor shall allo-  
20 cate liability between the parties on a no fault basis.

21 “(3) A commuter authority may waive the pro-  
22 visions of subsection (b)(2).

23 “(4) Amtrak may not waive the provisions of  
24 subsection (b)(2) nor insist on a waiver by a com-  
25 muter authority.

1           “(5) If Amtrak fails to comply with subsection  
2           (b)(4), the commuter authority may petition the  
3           United States District Court in the district where  
4           the commuter authority provides service for an order  
5           directing the Secretary of Transportation to with-  
6           hold payments to Amtrak of any and all grant funds  
7           due or coming due to Amtrak until the commuter  
8           authority confirms to the Secretary and to such  
9           Court that Amtrak has agreed to terms in an agree-  
10          ment that are consistent with the requirements of  
11          this subsection.

12          “(c) EFFECT ON OTHER LAWS.—This section shall  
13          not affect the damages that may be recovered under the  
14          Act of April 27, 1908 (45 U.S.C. 51 et seq.; otherwise  
15          known as the “Federal Employers’ Liability Act”) or  
16          under any workers compensation Act.

17          “(d) DEFINITIONS.—For purposes of this section:

18                 “(1) CLAIM FOR SUBSECTION (A).—The term  
19                 ‘claim’ as used in subsection (a)(1) means a claim  
20                 made—

21                         “(A) against Amtrak, any high-speed rail-  
22                         road authority or operator, any commuter au-  
23                         thority or operator, any rail carrier, or any  
24                         State; or

1           “(B) against an officer, employee, affiliate  
2 engaged in railroad operations, or agent, of  
3 Amtrak, any high-speed railroad authority or  
4 operator, any commuter authority or operator,  
5 any rail carrier, or any State.

6           “(2) PUNITIVE DAMAGES.—The term ‘punitive  
7 damages’ means damages awarded against any per-  
8 son or entity to punish or deter such person or enti-  
9 ty, or others, from engaging in similar behavior in  
10 the future.

11           “(3) RAIL CARRIER.—The term ‘rail carrier’ in-  
12 cludes a person providing excursion, scenic, or mu-  
13 seum train service, and an owner or operator of a  
14 privately owned rail passenger car.

15           “(4) CLAIM FOR SUBSECTION (B).—The term  
16 ‘claim’ as used in subsection (b) means a claim  
17 made—

18           “(A) against or by Amtrak, any high-speed  
19 railroad authority or operator, any commuter  
20 authority or operator, any rail carrier, or any  
21 State for personal injury, property damage or  
22 any other cause of action arising out of the op-  
23 eration of passenger rail service on the North-  
24 east Corridor; or

1           “(B) against an officer, employee, affiliate  
2 engaged in railroad operations, or agent, of  
3 Amtrak, any high-speed railroad authority or  
4 operator, any commuter authority or operator,  
5 any rail carrier, or any State.

6           “(5) COMMUTER AUTHORITY.—The term ‘com-  
7 muter authority’ has the same meaning given such  
8 term section 24102.

9           “(6) COMMUTER PASSENGER RAIL TRANSPOR-  
10 TATION.—The term ‘commuter passenger rail trans-  
11 portation’ has the same meaning given such term in  
12 section 24102.

13           “(7) NO FAULT.—The term ‘no fault’ means an  
14 agreement for allocation of liability between 2 or  
15 more parties in which each party agrees to—

16           “(A) bear the costs and liabilities of any  
17 harm or injury to its own passengers, invitees,  
18 agents, employees and property, and

19           “(B) waive all claims for any cause of ac-  
20 tion against all other parties or those in privity  
21 with such other parties, except if a claim is the  
22 result of willful misconduct on the part of a  
23 party or its employees or agents.

1           “(8) NORTHEAST CORRIDOR.—The term  
2           ‘Northeast Corridor’ has the same meaning given  
3           such term in section 24102.

4           “(9) WILLFUL MISCONDUCT.—The term ‘willful  
5           misconduct’ means conduct for which there is clear  
6           and convincing evidence that the claim arises out of  
7           an act or omission by the party in which an em-  
8           ployee of the party (including employees of the par-  
9           ty’s agents and contractors) has a specific awareness  
10          of a condition or situation, knows (or should know  
11          based on training required for his or her position)  
12          that failure to respond to such condition or situation  
13          presents a significant danger to persons, and, with-  
14          out regard to the likelihood that serious injury will  
15          probably result, consciously elects not to respond to  
16          such condition or situation in a manner that will  
17          avoid the danger.”.

