

SENATE No.

The Commonwealth of Massachusetts

PRESENTED BY:

Mr. Petruccelli

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the passage of the accompanying bill:

An Act relative to uniform hazardous material transportation procedures .

PETITION OF:

NAME:

Mr. Petruccelli

DISTRICT/ADDRESS:

First Suffolk and Middlesex

The Commonwealth of Massachusetts

In the Year Two Thousand and Nine

AN ACT RELATIVE TO UNIFORM HAZARDOUS MATERIAL TRANSPORTATION PROCEDURES.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 SECTION 1. Short Title. This act shall be known and may be cited as the "Hazardous Materials
2 Transportation Uniform Procedures Act."

3 SECTION 2. Purposes. The purposes of this section are as follows:

4 Public health and safety. The uniform procedures established by the act seek to enhance public
5 health and safety by increasing compliance by motor carriers with state requirements for the safe
6 transportation of hazardous materials.

7 Entrance into the Alliance for Uniform Hazmat Transportation Procedures. The purpose of this
8 section is to enable the Commonwealth to participate in and enter into the Alliance for Uniform
9 Hazmat Transportation Procedures ("the Uniform Program").

10 Establish a uniform program for hazardous material and hazardous waste transportation. In
11 conformity with the Uniform Program, the Commonwealth shall establish, implement and
12 administer a uniform registration and permitting program for persons who transport (*optional*: or

13 ship) hazardous material or hazardous waste by motor vehicle on the public highways in
14 interstate or intrastate commerce.

15 Retention of enforcement authority. It is the intention of the legislature that the Commonwealth
16 shall retain enforcement authority under the agreement. Nothing in the Uniform Program shall
17 limit the authority of the Commonwealth from enforcing laws governing the operation of
18 hazardous materials motor carriers.

19 Base state program. The Uniform Program is implemented through a single base state, with
20 reciprocal recognition of base state-issued credentials in other participating states. In its role as a
21 base state, the Commonwealth shall adhere to all requirements applying to base states under the
22 Uniform Program.

23 SECTION 3. Definitions. For the purposes of this section, the following words and phrases have
24 the meanings given to them in this section:

25 "Alliance for Uniform Hazmat Transportation Procedures (AUHMTP)" means the group of
26 states that have adopted the recommendations concerning uniform forms and procedures for
27 hazardous materials transportation registration and permitting pursuant to 49 CFR 5119.

28 "Applicant" means a motor carrier that completes the required application forms necessary to be
29 considered to receive a uniform program registration and/or permit credential. Complete means
30 all application requirements are met, fees are remitted, insurance requirements are met, and other
31 requirements are met that a state may deem appropriate.

32 "Base state" means the state selected by a carrier according to the procedures established by the
33 agreement.

34 "Base state agreement" means the agreement between participating states electing to register or
35 permit carriers of hazardous materials or hazardous waste.

36 "Credential" means the document issued by the base state indicating that a motor carrier has
37 successfully registered and received a permit allowing it to transport hazardous
38 materials/hazardous waste in participating states. (Note: A state may elect to only register motor
39 carriers.)

40 "Department" means the Massachusetts Highway Department.

41 "Designated hazardous material" means a hazardous material described in the Code of Federal
42 Regulations, Title 49, Section 107.6-1.

43 "Hazardous material" means any of the following:

44 a hazardous material of a type or in a quantity that requires the transport vehicle to be placarded
45 in accordance with the Code of Federal Regulations, Title 49, Part 172; or

46 a hazardous substance or marine pollutant when transported in bulk packaging as defined in the
47 Code of Federal Regulations, Title 49, Section 171.8.

48 a hazardous waste, which means hazardous waste of a type and amount that requires the
49 shipment to be accompanied by a uniform hazardous waste manifest described in the Code of
50 Federal Regulations, Title 40, Part 262, including state-designated hazardous wastes when a list
51 of state-designated hazardous wastes has been filed by the state with the national repository
52 under the uniform program.

53 "Hazardous material transportation" means the transportation of hazardous material or hazardous
54 waste, or both, on the public highways.

55 "Letter of filing" means a letter from a participating state to an applicant that has completed the
56 application process indicating the applicant's compliance with application requirements of the
57 Uniform Program, which is valid for up to 360 days. Letters of filing shall only be issued to
58 carriers that have filed complete applications. If the application is incomplete, the base state shall
59 notify the applicant of the deficiencies and indicate that the issuance of the letter of filing is
60 subject to the applicant providing, in writing on the appropriate forms, the missing information.
61 A letter of filing shall serve as a provisional credential.

62 "Motor carrier" means a for-hire motor carrier or a private motor carrier. The term includes a
63 motor carrier's agents, officers and representatives as well as employees responsible for hiring,
64 supervising, training, assigning, or dispatching of drivers and employees concerned with the
65 installation, inspection, and maintenance of motor vehicle equipment and/or accessories. This
66 definition is found in 9 CFR 390.5 under "motor carrier."

67 "Motor vehicle" has the meaning given by 49 CFR 390.5, e.g. any vehicle, machine, tractor,
68 trailer or semi-trailer propelled or drawn by mechanical power and used upon the highways in
69 the transportation of passengers or property, or any combination thereof determined by the
70 Federal Highway Administration, but does not include any vehicle, locomotive or car operated
71 exclusively on a rail or rails or a trailer bus operated by electric power derived from a fixed
72 overhead wire, furnishing local passenger transportation similar to street-railway service.

73 "Participating state" means a state electing to participate in the uniform program by entering into
74 the base state agreement.

75 "Permit" means the authority granted to qualified motor carriers, that have been reviewed under
76 procedures consistent with those recommended by the AUHMTP.

77 "Person" means an individual, firm, co-partnership, cooperative, company, association, limited
78 liability company, corporation or public entity.

79 "Power unit" means a truck or truck tractor as defined in 49 CFR 390.5. A truck means any self-
80 propelled commercial motor vehicle except a truck tractor, designed and/or used for the
81 transportation of property. A truck tractor means a self-propelled commercial motor vehicle
82 designed and/or used primarily for drawing other vehicles.

83 "Principal place of business" means the state in which a motor carrier maintains its central
84 records relating to the transportation of hazardous materials.

85 "Public entity" means a carrier who is a federal or state agency or political subdivision.

86 "Registration" means the process by which a motor carrier of hazardous materials is identified by
87 the base state.

88 "Shipper" means a person who offers a hazardous material to another person for shipment or who
89 causes a hazardous material to be transported or shipped by another person, which maintains
90 facilities in the Commonwealth.

91 "Uniform application" means the uniform motor carrier registration and permit application form
92 and accompanying documents established under the uniform program.

93 "Uniform Program" means the forms and procedures developed pursuant to the "Hazardous
94 Materials Transportation Uniform Safety Act of 1990," United States Code, Title 49, Section
95 5119, known as the Alliance for Uniform Hazmat Transportation Procedures in reports submitted
96 to the U.S. Department of Transportation in 1993 and 1996, as modified and amended pursuant
97 to 49 U.S.C. 5119(b), and as contained in the current AUHMTP *State Program Administrators'*
98 *Manual*.

99 SECTION 4. Entrance into the uniform program. The Commonwealth shall enter into the
100 Uniform Program for Hazardous Materials Transportation Registration and Permitting developed
101 by the Alliance for Uniform Hazmat Transportation Procedures. The Department shall adopt all
102 rules and regulations necessary to establish, implement, and administer the terms of the Uniform
103 Program including, but not limited to, base state duties and responsibilities, participation in
104 AUHMTP governance activities, support of centralized AUHMTP activities and dispute
105 resolution. In administering the Uniform Program, the Department shall use the uniform
106 application and supporting documents and follow the administrative guidance of the AUHMTP.

107 SECTION 5. General requirements.

108 No motor carrier may transport a hazardous material by motor vehicle in the Commonwealth
109 unless it has complied with the terms of this Article.

110 No shipper may offer a designated hazardous material for shipment or cause a designated
111 hazardous material to be transported or shipped in the Commonwealth unless it has complied
112 with this Article.

113 SECTION 6. Hazardous materials transportation registration and permit.

114 A motor carrier shall determine its base state in the following manner:

115 A motor carrier that has its principal place of business in this state shall designate this state as its
116 base state.

117 A motor carrier that has its principal place of business outside of this state shall determine its
118 base state designation by the highest number of International Registration Plan, International
119 Fuel Tax Agreement or equivalent miles traveled among the states participating in the uniform
120 program.

121 A motor carrier that designates this state as its base state pursuant to subsection (a) shall register
122 with and obtain a permit from the department prior to transporting hazardous materials within
123 this state.

124 A motor carrier that designates another participating state as its base state pursuant to subsection
125 (a) shall register with and obtain a permit from that state, with the appropriate fees paid for this
126 state, prior to transporting hazardous materials in this state.

127 A motor carrier who engages in the interstate transportation of a hazardous material and who is
128 required to register its hazardous material transportation in this state shall file parts I, II and IV of
129 the uniform application with the Department and pay an administrative processing fee and an
130 apportioned vehicle registration fee. The amount of the apportioned vehicle registration fee must
131 be calculated under Section 5.

132 A motor carrier who engages only in the intrastate transportation of a hazardous material and
133 who is required to register its hazardous material in this state shall file parts I and IV of the
134 uniform application with Massachusetts Highway Department, and pay a registration fee as
135 determined by the Massachusetts Highway Department.

136 Upon a motor carrier's compliance with this section, the Department shall issue a registration
137 credential and permit to the carrier. A registration credential must include a company registration
138 number. A registration is valid for one year from the date a notice of registration form is issued.

139 A permit is valid for three years from the date issued or until a motor carrier fails to renew its
140 registration, whichever occurs first.

141 A motor carrier shall maintain a copy of the registration credential in each power unit used to
142 transport hazardous materials in all participating states. The registration credential and permit are
143 not transferable between motor carriers. The original registration credential and permit shall be

144 maintained at the motor carrier's principal place of business as noted on the credentials, and shall
145 be available for inspection during normal business hours.

146 The Commonwealth may issue a "letter of filing" to an applicant that has filed a completed
147 application in cases where the Commonwealth is unable to process such application within the
148 Uniform Program timeframe.

149 A motor carrier may obtain, for intrastate transportation only, a single-trip permit in lieu of a
150 notice of registration form and a permit. The single-trip permit shall expire 72 hours after
151 issuance, it shall only be valid within the borders of the Commonwealth, and a fee shall be
152 assessed for the single-trip permit.

153 SECTION 7. Vehicle registration fee calculation

154 The apportioned vehicle registration fee required under section 3 and section 4 shall be equal to
155 the percentage of transportation in this state multiplied by the percentage of all hazardous
156 materials transportation or hazardous waste transportation, multiplied by the total number of
157 power units operated, multiplied by a per-vehicle fee and shall be calculated as follows:

158 A motor carrier shall determine its percentage of transportation in this state by dividing the
159 number of miles traveled in this state under the international registration plan during the previous
160 year by the number of miles it traveled nationwide under the international registration plan. If a
161 motor carrier operated only in this state, its percentage is 100%. If a motor carrier is not
162 registered in the international registration plan, the motor carrier shall calculate the number of
163 miles traveled using the method in the international registration plan. If a motor carrier operates
164 more than 1 fleet under the international registration plan, the motor carrier may calculate each
165 fleet's contribution to the motor carrier's total fee separately. A motor carrier who operated in

166 another state under a reciprocal agreement with that state shall include the miles operated under
167 the agreement as miles traveled in this state in calculating mileage under this section.

168 A motor carrier shall determine its percentage of hazardous materials transportation or hazardous
169 waste transportation using one of the following:

170 For less than truckload shipments, it must divide the weight of all of the motor carrier's
171 hazardous materials shipments or hazardous waste shipments transported during the previous
172 year by the total weight of all shipments transported during the same year.

173 For truckload shipments, it must divide the total number of hazardous materials shipments or
174 hazardous waste shipments during the previous year by the total number of all shipments
175 transported during the same year.

176 A carrier that transports both less-than-truckload and truckload shipments of hazardous materials
177 shall calculate the percentage of hazardous materials activity on a proportional basis.

178 A motor carrier shall use data from its most recent complete fiscal year or the most recent
179 complete calendar year in calculating the percentages required under this section.

180 Revenues generated through registration fees shall be used by the Department for purposes that
181 enhance the safe transportation of hazardous materials. Revenues generated through permitting
182 fees shall be used only to cover the costs associated with administering the permit process. The
183 Department may develop a fee structure associated with the level of effort required to review
184 individual applications as long as the state provides an estimate of charges to the applicant and
185 establishes an appeals process. Revenues generated through the processing fee shall be used to
186 cover costs associated with administering the registration process.

187 SECTION 8. Base state agreement

188 The Department may enter into agreements with federal agencies, a national repository, or other
189 participating states as needed to allow for the reciprocal registration and permitting of motor
190 carriers transporting hazardous materials or hazardous waste. The agreements may include
191 procedures for determining base states, the collection and distribution of fees, dispute resolution,
192 the exchange of information for reporting and enforcement, and other provisions necessary to
193 administer this act and the Uniform Program.

194 The Department may make payments to agencies of other participating states in the Uniform
195 Program for the purposes of reimbursement of apportioned registration permit fees.

196 The Department may make payments to a national repository for the purposes of facilitating this
197 agreement.

198 The Department may develop the necessary forms, applications, and software required to
199 implement this act.

200 SECTION 9. Enforcement

201 The Department may inspect or examine any motor vehicle or facility operated by a motor
202 carrier, or conduct investigations, audits, or compliance reviews as necessary to determine
203 compliance with this act and the Uniform Program, or to determine eligibility for registration or
204 permitting under this act and the Uniform Program.

205 The Department may inspect and electronically reproduce any papers, books, records,
206 documents, or evidentiary material necessary to determine if a motor carrier is complying with
207 this act and the Uniform Program, or to determine eligibility for registration or permitting under
208 this act and the uniform program.

209 The Department also may conduct investigations and audits necessary to determine if a motor
210 carrier is entitled to a permit or to make suspension or revocation determinations.

211 A person who fails to comply with this act is responsible for a state civil infraction and may be
212 subject to a fine. This may be per violation or a per day penalty.

213 SECTION 10- Suspension, revocation and denial

214 The Department shall immediately suspend or revoke a registration or permit, or deny an
215 application for a registration or permit, upon determination of any of the following conditions:

216 The motor carrier made a materially false or misleading statement in an application.

217 The motor carrier's operation consists of one or more serious or repeated violations of the law of
218 this state.

219 The motor carrier has been issued an unsatisfactory rating under the motor carrier rating system
220 developed by the United States Department of Transportation.

221 The motor carrier is under a current out of service order (49 CFR 395.13, 396.9(c)(12)).

222 The motor carrier does not maintain the appropriate level of financial liability coverage
223 mandated by the laws of this state.

224 The motor carrier has exhibited a reckless disregard for the public and the environment.

225 If the Department determines that any of the conditions of subsection (a) exist, the Department
226 shall do one (1) of the following, as appropriate:

227 Suspend or revoke the registration credential or permit previously issued under this act.

228 Suspend or revoke the hazardous materials or hazardous waste transportation operations in this
229 state by a motor carrier operating under a registration or permit issued by another participating
230 state.

231 Deny an application for registration or permit by a motor carrier.

232 Upon revocation, suspension, or application denial, the Department shall notify the motor carrier,
233 in writing, by certified mail, of the reasons for suspension, revocation, or application denial, and
234 indicate the steps necessary for reinstatement. In the case of a suspension, the Department shall
235 also indicate the date by which compliance is required prior to revocation being issued. The
236 Department shall also indicate the steps provided for appeal of suspension, revocation or
237 application denial.

238 Upon notification of suspension, revocation, or application denial, a motor carrier may submit a
239 written request for a contested case hearing pursuant to chapter 30A with the Department, by
240 certified mail, within 15 days of receipt of the notice of suspension, revocation, or application
241 denial. A contested case hearing shall be scheduled within 30 days of the receipt of the request
242 for a contested case.

243 The Department may reinstate a notice of registration form or permit that was suspended
244 pursuant to this section if the Department is satisfied that the violations causing the suspension
245 have been corrected and the motor carrier's operations have changed sufficiently to prevent
246 further occurrences of violations.

247 The Department may issue a registration credential or permit that was previously denied to a
248 motor carrier if the department was satisfied that the violations causing the denial have been
249 corrected and the motor carrier's operations have changed sufficiently to prevent further
250 occurrences of the violations.

251 SECTION 11. Preemption

252 Any hazardous materials transportation registration or permitting program administered or
253 enforced by any state agency, city, county, or other political subdivision in the state is preempted
254 and superseded.

255 SECTION 12. Commonwealth participation in AUHMTP governance and central activities

256 To become party to the Uniform Program, the Commonwealth shall meet the requirements of
257 admittance as contained in the Uniform Program Administrator's manual and petition the
258 Governing Board for admittance.

259 As required by Uniform Program procedures, the Commonwealth shall appoint a person to
260 attend all meetings of the AUHMTP and serve on the Alliance Governing Board as appropriate.

261 Massachusetts Highway Department shall supply information as requested to the AUHMTP data
262 repository.

263 The Department shall adhere to AUHMTP requirements regarding the assessing of fees to
264 support central AUHMTP functions. Such fees will be paid by the Commonwealth to the
265 AUHMTP based on the Alliance fee schedule.

266