

HOUSE No. 3597

By Mr. Petrucci of Boston, petition of Anthony Petrucci for legislation to further regulate the transportation of hazardous materials. Transportation.

The Commonwealth of Massachusetts

In the Year Two Thousand and Seven.

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
2 cited as the “Hazardous Materials Transportation Uniform Proce-
3 dures Act.”

1 SECTION 2. Purposes. The purposes of this section are as
2 follows:—
3 Public health and safety. The uniform procedures established by
4 the act seek to enhance public health and safety by increasing com-
5 pliance by motor carriers with state requirements for the safe trans-
6 portation of hazardous materials.

7 Entrance into the Alliance for Uniform Hazmat Transportation
8 Procedures. The purpose of this section is to enable the Common-
9 wealth to participate in and enter into the Alliance for Uniform
10 Hazmat Transportation Procedures (“the Uniform Program”).

11 Establish a uniform program for hazardous material and haz-
12 ardous waste transportation. In conformity with the Uniform Pro-
13 gram, the Commonwealth shall establish, implement and administer
14 a uniform registration and permitting program for persons who
15 transport (optional: or ship) hazardous material or hazardous waste
16 by motor vehicle on the public highways in interstate or intrastate
17 commerce.

18 Retention of enforcement authority. It is the intention of the legis-
19 lature that the Commonwealth shall retain enforcement authority
20 under the agreement. Nothing in the Uniform Program shall limit the

21 authority of the Commonwealth from enforcing laws governing the
22 operation of hazardous materials motor carriers.

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

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

4 “Alliance for Uniform Hazmat Transportation Procedures
5 (AUHMTP)” means the group of states that have adopted the recom-
6 mendations concerning uniform forms and procedures for hazardous
7 materials transportation registration and permitting pursuant to 49
8 CFR 5119.

9 “Applicant” means a motor carrier that completes the required
10 application forms necessary to be considered to receive a uniform
11 program registration and/or permit credential. Complete means all
12 application requirements are met, fees are remitted, insurance
13 requirements are met, and other requirements are met that a state
14 may deem appropriate.

15 “Base state” means the state selected by a carrier according to the
16 procedures established by the agreement.

17 “Base state agreement” means the agreement between partici-
18 pating states electing to register or permit carriers of hazardous
19 materials or hazardous waste.

20 “Credential” means the document issued by the base state indi-
21 cating that a motor carrier has successfully registered and received a
22 permit allowing it to transport hazardous materials/hazardous waste
23 in participating states. (Note: A state may elect to only register
24 motor carriers.)

25 “Department” means the Massachusetts Highway Department.

26 “Designated hazardous material” means a hazardous material
27 described in the Code of Federal Regulations, Title 49, Section
28 107.6-1.

29 “Hazardous material” means any of the following:—

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

33 A hazardous substance or marine pollutant when transported in
34 bulk packaging as defined in the Code of Federal Regulations, Title
35 49, Section 171.8.

36 A hazardous waste, which means hazardous waste of a type and
37 amount that requires the shipment to be accompanied by a uniform
38 hazardous waste manifest described in the Code of Federal Regula-
39 tions, Title 40, Part 262, including state-designated hazardous wastes
40 when a list of state-designated hazardous wastes has been filed by
41 the state with the national repository under the uniform program.

42 “Hazardous material transportation” means the transportation of
43 hazardous material or hazardous waste, or both, on the public high-
44 ways.

45 “Letter of filing” means a letter from a participating state to an
46 applicant that has completed the application process indicating the
47 applicant’s compliance with application requirements of the Uniform
48 Program, which is valid for up to 360 days. Letters of filing shall
49 only be issued to carriers that have filed complete applications. If the
50 application is incomplete, the base state shall notify the applicant of
51 the deficiencies and indicate that the issuance of the letter of filing is
52 subject to the applicant providing, in writing on the appropriate
53 forms, the missing information. A letter of filing shall serve as a pro-
54 visional credential.

55 “Motor carrier” means a for-hire motor carrier or a private motor
56 carrier. The term includes a motor carrier’s agents, officers and rep-
57 resentatives as well as employees responsible for hiring, supervising,
58 training, assigning, or dispatching of drivers and employees con-
59 cerned with the installation, inspection, and maintenance of motor
60 vehicle equipment and/or accessories. This definition is found in 9
61 CFR 390.5 under “motor carrier.”

62 “Motor vehicle” has the meaning given by 49 CFR 390.5, e.g any
63 vehicle, machine, tractor, trailer or semi-trailer propelled or drawn
64 by mechanical power and used upon the highways in the transporta-
65 tion of passengers or property, or any combination thereof deter-
66 mined by the Federal Highway Administration, but does not include
67 any vehicle, locomotive or car operated exclusively on a rail or rails
68 or a trailer bus operated by electric power derived from a fixed

69 overhead wire, furnishing local passenger transportation similar to
70 street-railway service.

71 “Participating state” means a state electing to participate in the
72 uniform program by entering into the base state agreement.

73 “Permit” means the authority granted to qualified motor carriers,
74 that have been reviewed under procedures consistent with those rec-
75 ommended by the AUHMTP.

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

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

84 “Principal place of business” means the state in which a motor
85 carrier maintains its central records relating to the transportation of
86 hazardous materials.

87 “Public entity” means a carrier who is a federal or state agency or
88 political subdivision.

89 “Registration” means the process by which a motor carrier of haz-
90 ardous materials is identified by the base state.

91 “Shipper” means a person who offers a hazardous material to
92 another person for shipment or who causes a hazardous material to
93 be transported or shipped by another person, which maintains facili-
94 ties in the Commonwealth.

95 “Uniform application” means the uniform motor carrier registra-
96 tion and permit application form and accompanying documents
97 established under the uniform program.

98 “Uniform Program” means the forms and procedures developed
99 pursuant to the “Hazardous Materials Transportation Uniform Safety
100 Act of 1990,” United States Code, Title 49, Section 5119, known as
101 the Alliance for Uniform Hazmat Transportation Procedures in
102 reports submitted to the U.S. Department of Transportation in 1993
103 and 1996, as modified and amended pursuant to 49 U.S.C. 5119(b),
104 and as contained in the current AUHMTP State Program Adminis-
105 trators’ Manual.

1 SECTION 4. Entrance into the uniform program. The Common-
2 wealth shall enter into the Uniform Program for Hazardous Mate-
3 rials Transportation Registration and Permitting developed by the
4 Alliance for Uniform Hazmat Transportation Procedures. The
5 Department shall adopt all rules and regulations necessary to estab-
6 lish, implement, and administer the terms of the Uniform Program
7 including, but not limited to, base state duties and responsibilities,
8 participation in AUHMTP governance activities, support of central-
9 ized AUHMTP activities and dispute resolution. In administering the
10 Uniform Program, the Department shall use the uniform application
11 and supporting documents and follow the administrative guidance of
12 the AUHMTP.

1 SECTION 5. General requirements. No motor carrier may trans-
2 port a hazardous material by motor vehicle in the Commonwealth
3 unless it has complied with the terms of this Article.

4 No shipper may offer a designated hazardous material for ship-
5 ment or cause a designated hazardous material to be transported or
6 shipped in the Commonwealth unless it has complied with this
7 Article.

1 SECTION 6. Hazardous materials transportation registration and
2 permit. A motor carrier shall determine its base state in the following
3 manner:—

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

6 A motor carrier that has its principal place of business outside of
7 this state shall determine its base state designation by the highest
8 number of International Registration Plan, International Fuel Tax
9 Agreement or equivalent miles traveled among the states partici-
10 pating in the uniform program.

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

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

19 A motor carrier who engages in the interstate transportation of a
20 hazardous material and who is required to register its hazardous
21 material transportation in this state shall file parts I, II and IV of the
22 uniform application with the Department and pay an administrative
23 processing fee and an apportioned vehicle registration fee. The
24 amount of the apportioned vehicle registration fee must be calcu-
25 lated under Section 5.

26 A motor carrier who engages only in the intrastate transportation
27 of a hazardous material and who is required to register its hazardous
28 material in this state shall file parts I and IV of the uniform applica-
29 tion with Massachusetts Highway Department, and pay a registration
30 fee as determined by the Massachusetts Highway Department.

31 Upon a motor carrier's compliance with this section, the Depart-
32 ment shall issue a registration credential and permit to the carrier. A
33 registration credential must include a company registration number.
34 A registration is valid for one year from the date a notice of registra-
35 tion form is issued. A permit is valid for three years from the date
36 issued or until a motor carrier fails to renew its registration,
37 whichever occurs first.

38 A motor carrier shall maintain a copy of the registration credential
39 in each power unit used to transport hazardous materials in all par-
40 ticipating states. The registration credential and permit are not trans-
41 ferable between motor carriers. The original registration credential
42 and permit shall be maintained at the motor carrier's principal place
43 of business as noted on the credentials, and shall be available for
44 inspection during normal business hours.

45 The Commonwealth may issue a "letter of filing" to an applicant
46 that has filed a completed application in cases where the Common-
47 wealth is unable to process such application within the Uniform Pro-
48 gram timeframe.

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

1 SECTION 7. Vehicle registration fee calculation. The apportioned
2 vehicle registration fee required under Section 3 and Section 4 shall
3 be equal to the percentage of transportation in this state multiplied

4 by the percentage of all hazardous materials transportation or haz-
5 arduous waste transportation, multiplied by the total number of power
6 units operated, multiplied by a per-vehicle fee and shall be calcu-
7 lated as follows:—

8 A motor carrier shall determine its percentage of transportation in
9 this state by dividing the number of miles traveled in this state under
10 the international registration plan during the previous year by the
11 number of miles it traveled nationwide under the international regis-
12 tration plan. If a motor carrier operated only in this state, its per-
13 centage is 100%. If a motor carrier is not registered in the
14 international registration plan, the motor carrier shall calculate the
15 number of miles traveled using the method in the international regis-
16 tration plan. If a motor carrier operates more than 1 fleet under the
17 international registration plan, the motor carrier may calculate each
18 fleet's contribution to the motor carrier's total fee separately. A
19 motor carrier who operated in another state under a reciprocal agree-
20 ment with that state shall include the miles operated under the agree-
21 ment as miles traveled in this state in calculating mileage under this
22 section.

23 A motor carrier shall determine its percentage of hazardous mate-
24 rials transportation or hazardous waste transportation using one of
25 the following:—

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

30 For truckload shipments, it must divide the total number of haz-
31 arduous materials shipments or hazardous waste shipments during the
32 previous year by the total number of all shipments transported
33 during the same year.

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

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

40 Revenues generated through registration fees shall be used by the
41 Department for purposes that enhance the safe transportation of haz-
42 arduous materials. Revenues generated through permitting fees shall

43 be used only to cover the costs associated with administering the
44 permit process. The Department may develop a fee structure associ-
45 ated with the level of effort required to review individual applica-
46 tions as long as the state provides an estimate of charges to the
47 applicant and establishes an appeals process. Revenues generated
48 through the processing fee shall be used to cover costs associated
49 with administering the registration process.

1 SECTION 8. Base state agreement. The Department may enter
2 into agreements with federal agencies, a national repository, or other
3 participating states as needed to allow for the reciprocal registration
4 and permitting of motor carriers transporting hazardous materials or
5 hazardous waste. The agreements may include procedures for deter-
6 mining base states, the collection and distribution of fees, dispute
7 resolution, the exchange of information for reporting and enforce-
8 ment, and other provisions necessary to administer this act and the
9 Uniform Program.

10 The Department may make payments to agencies of other partici-
11 pating states in the Uniform Program for the purposes of reimburse-
12 ment of apportioned registration permit fees.

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

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

1 SECTION 9. Enforcement. The Department may inspect or
2 examine any motor vehicle or facility operated by a motor carrier, or
3 conduct investigations, audits, or compliance reviews as necessary to
4 determine compliance with this act and the Uniform Program, or to
5 determine eligibility for registration or permitting under this act and
6 the Uniform Program.

7 The Department may inspect and electronically reproduce any
8 papers, books, records, documents, or evidentiary material necessary
9 to determine if a motor carrier is complying with this act and the
10 Uniform Program, or to determine eligibility for registration or per-
11 mitting under this act and the uniform program.

12 The Department also may conduct investigations and audits nec-
13 essary to determine if a motor carrier is entitled to a permit or to
14 make suspension or revocation determinations.

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

1 SECTION 10. Suspension, revocation and denial. The Depart-
2 ment shall immediately suspend or revoke a registration or permit,
3 or deny an application for a registration or permit, upon determina-
4 tion of any of the following conditions:—

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

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

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

12 The motor carrier is under a current out of service order (49 CFR
13 395.13, 396.9(c)(12)).

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

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

18 If the Department determines that any of the conditions of subsec-
19 tion (a) exist, the Department shall do one (1) of the following, as
20 appropriate:—

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

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

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

27 Upon revocation, suspension, or application denial, the Depart-
28 ment shall notify the motor carrier, in writing, by certified mail, of
29 the reasons for suspension, revocation, or application denial, and
30 indicate the steps necessary for reinstatement. In the case of a sus-
31 pension, the Department shall also indicate the date by which com-
32 pliance is required prior to revocation being issued. The Department
33 shall also indicate the steps provided for appeal of suspension, revo-
34 cation or application denial.

35 Upon notification of suspension, revocation, or application denial,
36 a motor carrier may submit a written request for a contested case
37 hearing pursuant to Chapter 30A with the Department, by certified
38 mail, within 15 days of receipt of the notice of suspension, revoca-
39 tion, or application denial. A contested case hearing shall be sched-
40 uled within 30 days of the receipt of the request for a contested case.

41 The Department may reinstate a notice of registration form or
42 permit that was suspended pursuant to this section if the Department
43 is satisfied that the violations causing the suspension have been cor-
44 rected and the motor carrier's operations have changed sufficiently
45 to prevent further occurrences of violations.

46 The Department may issue a registration credential or permit that
47 was previously denied to a motor carrier if the department was satis-
48 fied that the violations causing the denial have been corrected and
49 the motor carrier's operations have changed sufficiently to prevent
50 further occurrences of the violations.

1 SECTION 11. Preemption. Any hazardous materials transporta-
2 tion registration or permitting program administered or enforced by
3 any state agency, city, county, or other political subdivision in the
4 state is preempted and superceded.

1 SECTION 12. Commonwealth participation in AUHMTP gover-
2 nance and central activities. To become party to the Uniform Pro-
3 gram, the Commonwealth shall meet the requirements of admittance
4 as contained in the Uniform Program Administrator's manual and
5 petition the Governing Board for admittance.

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

9 Massachusetts Highway Department shall supply information as
10 requested to the AUHMTP data repository.

11 The Department shall adhere to AUHMTP requirements
12 regarding the assessing of fees to support central AUHMTP func-
13 tions. Such fees will be paid by the Commonwealth to the AUHMTP
14 based on the Alliance fee schedule.