S T A T E O F N E W Y O R K

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Introduced by M. of A. KOON, GALEF, SCARBOROUGH, BING, COLTON, COOK -- Multi-Sponsored by -- M. of A. ALFANO, BARRA, DIAZ, HOOPER, JOHN, PHEFFER, SWEENEY, TOWNS, WRIGHT -- read once and referred to the Committee on Transportation

AN ACT to amend the transportation law, the environmental conservation law, the vehicle and traffic law and the insurance law, in relation to enacting the "hazardous materials transport security act"

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. This act shall be known and may be cited as the "hazardous materials transport security act".

S 2. Legislative findings. Since the World Trade Center and Pentagon attacks of September 11, 2001, it has become evident that terrorists intend to attack the United States economy by any and every means available, including using hazardous materials vehicles as potential "weapons of mass destruction". Although several laws, both at the federal and state level, have been considered to enhance the security of transporting these hazardous materials, much remains to be done, especially in high-risk states such as New York. Basic best practices security regulations must be implemented for the transport of hazardous materials to protect the citizens, economy, and environment of New York from terrorist attacks. A successful attack would severely damage the New York economy and, in particular, threaten the viability of the vital industries which now produce, transport, and consume the hazardous materials that are essential inputs for a modern industrial economy.

The federal government has issued several warnings and advisories to hazardous materials transporters that such vehicles could be weaponized by terrorists or other enemies of the United States. There currently exist many devices that can prevent the theft or hijacking of these vehicles; other devices provide local law enforcement officials with the tools to take control of such vehicles if a hijacking cannot be

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets [ ] is old law to be omitted.

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prevented. This act establishes a task force to review, examine, and make recommendations on the efficacy, operational feasibility, and economic impacts of mandating such security devices across the New York hazardous materials fleet.

This act mandates that authorized representatives of generators of products considered to be hazardous materials with responsibility for loading those hazardous products and waste shall, prior to that loading, ensure that the driver of the transport vehicle be in possession of the proper commercial driver's license, including hazardous materials endorsements, required to lawfully operate the transport vehicle with its intended load. This act also mandates that vehicles used to transport hazardous materials and wastes be equipped with a two-way communication device that would allow immediate communication with a New York state-authorized emergency response center in the event of an emergency involving hazardous materials.

S 3. Section 14-f of the transportation law is amended by adding a new subdivision 7 to read as follows:

7. TASK FORCE ON HAZARDOUS MATERIALS MOTOR CARRIER SECURITY TECHNOLOGY. (A) THERE IS HEREBY ESTABLISHED WITHIN THE DEPARTMENT A TEMPORARY TASK FORCE ON HAZARDOUS MATERIALS MOTOR CARRIER SECURITY TECHNOLOGY. THE TASK FORCE SHALL CONSIST OF THE COMMISSIONER, WHO SHALL SERVE AS CHAIRPERSON, AND FOURTEEN OTHER MEMBERS, NO MORE THAN SEVEN OF WHOM SHALL BELONG TO THE SAME POLITICAL PARTY. THE GOVERNOR SHALL APPOINT THE COMMISSIONER OF MOTOR VEHICLES, THE SUPERINTENDENT OF STATE POLICE, THE DIRECTOR OF THE OFFICE FOR TECHNOLOGY, AND THE DIRECTOR OF THE OFFICE OF PUBLIC SECURITY, OR THEIR DESIGNATED REPRESENTATIVES. THE TEMPORARY PRESIDENT OF THE SENATE AND THE SPEAKER OF THE ASSEMBLY SHALL EACH APPOINT FOUR MEMBERS, AND THE MINORITY LEADER OF THE SENATE AND THE MINORITY LEADER OF THE ASSEMBLY SHALL EACH APPOINT ONE MEMBER. THREE APPOINTMENTS OF THE TEMPORARY PRESIDENT OF THE SENATE AND THREE APPOINTMENTS OF THE SPEAKER OF THE ASSEMBLY SHALL BE APPOINTED AS FOLLOWS: ONE EACH SHALL BE A MEMBER, OFFICER, OR EMPLOYEE OF A FIRST RESPONDER OR LAW ENFORCEMENT ORGANIZATION THAT SERVES A MUNICIPAL CORPORATION; ONE EACH SHALL POSSESS EXPERTISE IN THE FIELD OF HOMELAND SECURITY TECHNOLOGY; AND ONE EACH SHALL BE A REPRESENTATIVE IN THE FIELD OF THE TRANSPORT OF HAZARDOUS MATERIALS BY MOTOR CARRIER.

(B) THE TASK FORCE SHALL HAVE THE FOLLOWING FUNCTIONS, POWERS AND DUTIES:

(1) TO IDENTIFY AND REVIEW EXISTING SECURITY DEVICES, SYSTEMS, AND TECHNOLOGIES AVAILABLE TO PREVENT THE HIJACKING, MISUSE, OR UNAUTHORIZED USE OF COMMERCIAL MOTOR VEHICLES USED TO TRANSPORT HAZARDOUS MATERIALS; AND TO EVALUATE SUCH DEVICES, SYSTEMS, AND TECHNOLOGIES FOR THEIR COMMERCIAL AVAILABILITY, EFFICACY, RELIABILITY, AND ECONOMIC FEASIBILITY;

(2) TO RECOMMEND A LIST OF THOSE SECURITY DEVICES, SYSTEMS, AND TECHNOLOGIES THAT THE MEMBERS OF THE TASK FORCE DEEM TO BE MOST APPROPRIATE FOR USE BY MOTOR VEHICLES TRANSPORTING HAZARDOUS MATERIALS;

(3) TO IDENTIFY APPROPRIATE FINANCIAL ASSISTANCE MECHANISMS FOR USE BY OWNERS AND OPERATORS OF MOTOR VEHICLES TRANSPORTING HAZARDOUS MATERIALS IN IMPLEMENTING SUCH SECURITY DEVICES, SYSTEMS, AND TECHNOLOGIES;

(4) TO SUBMIT A REPORT ON OR BEFORE DECEMBER THIRTY-FIRST, TWO THOUSAND TEN TO THE GOVERNOR, THE TEMPORARY PRESIDENT OF THE SENATE, THE SPEAKER OF THE ASSEMBLY, THE MINORITY LEADER OF THE SENATE, AND THE MINORITY LEADER OF THE ASSEMBLY SETTING FORTH ITS FINDINGS AND RECOMMENDATIONS PURSUANT TO SUBPARAGRAPHS ONE, TWO, AND THREE OF THIS PARAGRAPH.

(C) THE TASK FORCE SHALL MEET AS NECESSARY TO CARRY OUT ITS FUNCTIONS AND DUTIES. MEMBERS OF THE TASK FORCE SHALL RECEIVE NO COMPENSATION FOR THEIR SERVICES AS MEMBERS BUT SHALL BE ALLOWED THEIR ACTUAL AND NECESSARY EXPENSES INCURRED IN THE PERFORMANCE OF THEIR DUTIES. THE TASK FORCE SHALL EXPIRE ON JANUARY FIRST, TWO THOUSAND ELEVEN.

S 4. Subdivision 3 of section 27-0305 of the environmental conservation law, as amended by chapter 592 of the laws of 1981, is amended to read as follows:

3. A generator of a waste may obtain a permit pursuant to this title to transport his OR HER own waste or if he OR SHE contracts with another person to remove, transport, or dispose of regulated wastes. If a generator obtains such a permit, a person engaged in the removal, transportation or disposal of his OR HER waste shall not be required to obtain a permit pursuant to this title for the transportation of such wastes. AN AUTHORIZED REPRESENTATIVE OF THE GENERATOR THAT IS RESPONSIBLE FOR LOADING SUCH WASTES INTO A TRANSPORT VEHICLE SHALL, PRIOR TO SUCH LOADING, ENSURE THAT THE DRIVER OF THE TRANSPORT VEHICLE IS IN POSSESSION OF THE APPROPRIATE CLASS OF DRIVER'S LICENSE AND THAT SUCH LICENSE INDICATES ANY ENDORSEMENT REQUIRED TO LAWFULLY OPERATE THE TRANSPORT VEHICLE WITH ITS INTENDED LOAD.

S 5. Section 27-0305 of the environmental conservation law is amended by adding a new subdivision 13 to read as follows:

13. AS A CONDITION FOR THE PERMIT, ANY VEHICLE REQUIRED TO DISPLAY PLACARDS PURSUANT TO THIS SUBDIVISION OR SECTION FOURTEEN-F OF THE TRANSPORTATION LAW SHALL BE EQUIPPED WITH A TWO-WAY COMMUNICATION DEVICE, MAINTAINED IN GOOD WORKING ORDER, WHICH ENABLES THE DRIVER TO CONTACT A NEW YORK STATE-DESIGNATED EMERGENCY RESPONSE CENTER FOR EMERGENCY ASSISTANCE IN THE EVENT OF AN ACT OF TERRORISM OR ACCIDENT INVOLVING THE RELEASE OF A HAZARDOUS MATERIAL. FOR THE PURPOSES OF THIS SUBDIVISION, "TWO-WAY COMMUNICATION DEVICE" SHALL MEAN A RADIO, CELLULAR TELEPHONE, OR OTHER SIMILAR DEVICE THAT ALLOWS IMMEDIATE COMMUNICATION DIRECTLY WITH A DESIGNATED EMERGENCY RESPONSE CENTER FROM THOSE AREAS OF NEW YORK STATE WITH CELLULAR COVERAGE.

S 6. Section 375 of the vehicle and traffic law is amended by adding a new subdivision 52 to read as follows:

52. A VEHICLE REQUIRED TO DISPLAY PLACARDS PURSUANT TO SECTION 27-0305 OF THE ENVIRONMENTAL CONSERVATION LAW OR SECTION FOURTEEN-F OF THE TRANSPORTATION LAW SHALL BE EQUIPPED WITH A TWO-WAY COMMUNICATION DEVICE, MAINTAINED IN GOOD WORKING ORDER, WHICH ENABLES THE DRIVER TO CONTACT A NEW YORK STATE-DESIGNATED EMERGENCY RESPONSE CENTER FOR EMERGENCY ASSISTANCE IN THE EVENT OF AN ACT OF TERRORISM OR OTHER EMERGENCY INVOLVING THE RELEASE OF A HAZARDOUS MATERIAL. FOR THE PURPOSES OF THIS SUBDIVISION, "TWO-WAY COMMUNICATION DEVICE" SHALL MEAN A RADIO, CELLULAR TELEPHONE, OR OTHER SIMILAR DEVICE THAT ALLOWS IMMEDIATE COMMUNICATION DIRECTLY WITH AN EMERGENCY RESPONSE CENTER FROM THOSE AREAS OF NEW YORK STATE WITH CELLULAR COVERAGE.

S 7. Section 2336 of the insurance law is amended by adding a new subsection (i) to read as follows:

(I) BEGINNING JUNE FIRST, TWO THOUSAND ELEVEN, ANY SCHEDULE OR RATING PLAN APPLICABLE TO COMMERCIAL RISK INSURANCE FOR MOTOR VEHICLES WEIGHING IN EXCESS OF TEN THOUSAND POUNDS WHICH TRANSPORT HAZARDOUS MATERIALS PURSUANT TO SECTION FOURTEEN-F OF THE TRANSPORTATION LAW SHALL PROVIDE FOR AN ACTUARIALLY APPROPRIATE REDUCTION IN PREMIUM CHARGES FOR COMPREHENSIVE COVERAGE AND CARGO LOSS AND DAMAGE WITH RESPECT TO SUCH MOTOR VEHICLES EQUIPPED WITH ANY ANTI-THEFT DEVICE RECOMMENDED PURSUANT TO SUBDIVISION SEVEN OF SECTION FOURTEEN-F OF THE TRANSPORTATION LAW. THE

SUPERINTENDENT SHALL, AFTER CONSULTING WITH THE DEPARTMENTS OF MOTOR VEHICLES AND TRANSPORTATION, PROMULGATE RULES AND REGULATIONS ESTABLISHING THE QUALIFICATIONS AND STANDARDS FOR THE APPROVAL, UTILIZATION, AND INSTALLATION OF SUCH DEVICES.

S 8. This act shall take effect immediately; provided that section four of this act shall take effect on the thirtieth day after it shall have become a law and sections five and six of this act shall take effect on the one hundred eightieth day after this act shall have become a law.