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

5089

2009-2010 Regular Sessions

I N S E N A T E

April 27, 2009

Introduced by Sen. LEIBELL -- read twice and ordered printed, and when printed to be committed to the Committee on Transportation

AN ACT to amend the transportation law, in relation to requiring permits for the transportation of certain hazardous materials through high threat areas

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 "Terrorism Prevention and Safety in Hazardous Materials Transportation Act of 2009".

S 2. The transportation law is amended by adding a new section 14-f-1 to read as follows:

S 14-F-1. TRANSPORTATION OF HAZARDOUS MATERIALS; HIGH THREAT AREAS. 1. FOR PURPOSES OF THIS SECTION, THE FOLLOWING WORDS SHALL HAVE THE FOLLOWING MEANINGS:

(A) "EMERGENCY" MEANS AN UNANTICIPATED, TEMPORARY SITUATION THAT THREATENS THE IMMEDIATE SAFETY OF INDIVIDUALS OR PROPERTY, AS DETERMINED BY THE COMMISSIONER OF TRANSPORTATION.

(B) "HIGH THREAT AREA" MEANS ANY AREA OF THE STATE DESIGNATED BY THE STATE OFFICE OF HOMELAND SECURITY AS PRONE TO POTENTIAL TERRORIST ATTACKS.

(C) "PRACTICAL ALTERNATIVE ROUTE" MEANS A ROUTE:

(1) WHICH LIES ENTIRELY OUTSIDE THE HIGH THREAT AREA; AND

(2) WHERE SUCH USE WOULD NOT MAKE SHIPMENT OF THE MATERIALS IN QUESTION COST-PROHIBITIVE.

2. EXCEPT IN CASES OF EMERGENCY, IT SHALL BE ILLEGAL IN HIGH THREAT AREAS, WITHOUT A PERMIT TO:

(A) TRANSPORT ANY OF THE FOLLOWING:

(1) EXPLOSIVES OF CLASS 1, DIVISION 1.1, OR CLASS 1, DIVISION 1.2, AS DESIGNATED IN 49 CFR SECTION 173.2, IN A QUANTITY GREATER THAN 500 KG;

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

LBD04669-02-9

(2) FLAMMABLE GASSES OF CLASS 2, DIVISION 2.1, AS DESIGNATED IN 49 CFR SECTION 173.2, IN A QUANTITY GREATER THAN 10,000 LITERS;

(3) POISONOUS GASSES OF CLASS 2, DIVISION 2.3, AS DESIGNATED IN 49 CFR SECTION 173.2, IN A QUANTITY GREATER THAN 500 LITERS, AND BELONGING TO HAZARD ZONES A OR B AS DEFINED IN 49 CFR SECTION 173.116; AND

(4) POISONOUS MATERIALS, OTHER THAN GASSES, OF CLASS 6, DIVISION 6.1, IN A QUANTITY GREATER THAN 1,000 KG, AND BELONGING TO HAZARD ZONES A OR B AS DEFINED IN 49 CFR 173.133.

(B) OPERATE A VEHICLE OR MOVE A RAIL CAR WHICH:

(1) IS CAPABLE OF CONTAINING EXPLOSIVES OF CLASS 1, DIVISION 1.1, OR CLASS 1, DIVISION 1.2, AS DESIGNATED IN 49 CFR SECTION 173.2, IN A QUANTITY GREATER THAN 500 KG, AND HAS EXTERIOR PLACARDING OR OTHER MARKINGS INDICATING THAT IT CONTAINS SUCH MATERIALS;

(2) IS CAPABLE OF CONTAINING FLAMMABLE GASSES OF CLASS 2, DIVISION 2.1, AS DESIGNATED IN 49 CFR SECTION 173.2, IN A QUANTITY GREATER THAN 10,000 LITERS, AND HAS EXTERIOR PLACARDING OR OTHER MARKINGS INDICATING THAT IT CONTAINS SUCH MATERIALS;

(3) IS CAPABLE OF CONTAINING POISONOUS GASSES OF CLASS 2, DIVISION 2.3, AS DESIGNATED IN 49 CFR SECTION 173.2, IN A QUANTITY GREATER THAN 500 LITERS, AND BELONGING TO HAZARD ZONES A OR B AS DEFINED IN 49 CFR SECTION 173.116, AND HAS EXTERIOR PLACARDING OR OTHER MARKINGS INDICATING THAT IT CONTAINS SUCH MATERIALS; OR

(4) IS CAPABLE OF CONTAINING POISONOUS MATERIALS, OTHER THAN GASSES, OF CLASS 6, DIVISION 6.1, IN A QUANTITY GREATER THAN 1,000 KG, AND BELONGING TO HAZARD ZONES A OR B AS DEFINED IN 49 CFR SECTION 173.133, AND HAS EXTERIOR PLACARDING OR OTHER MARKINGS INDICATING THAT IT CONTAINS SUCH MATERIALS.

3. (A) THE COMMISSIONER OF TRANSPORTATION SHALL ISSUE PERMITS AUTHORIZING THE TRANSPORTATION OF MATERIALS LISTED IN SUBDIVISION TWO OF THIS SECTION THROUGH HIGH RISK AREAS, UPON A DEMONSTRATION THAT THERE IS NO PRACTICAL ALTERNATIVE ROUTE. SUCH PERMIT MAY REQUIRE ADOPTION OF SAFETY MEASURES, INCLUDING BUT NOT LIMITED TO TIME-OF-DAY RESTRICTIONS.

(B) THE COMMISSIONER MAY COLLECT FEES FOR PERMITS ISSUED IN ACCORDANCE WITH PARAGRAPH (A) OF THIS SUBDIVISION.

(C) PERMIT FEES COLLECTED PURSUANT TO THIS SUBDIVISION SHALL NOT EXCEED THE COST OF IMPLEMENTING AND ENFORCING THIS SECTION.

4. THE COMMISSIONER SHALL ESTABLISH PENALTIES IN THE FORM OF FINES FOR ANY PERSON, CORPORATION, COMPANY, ASSOCIATION, PARTNERSHIP OR ANY OFFICER OR AGENT THEREOF WHO IS IN VIOLATION OF SUBDIVISION THREE OF THIS SECTION.

5. THE DIRECTOR OF THE OFFICE OF HOMELAND SECURITY, IN CONSULTATION WITH THE COMMISSIONER, SHALL DEVELOP RULES AND REGULATIONS GOVERNING THE TRANSPORTATION OF HAZARDOUS MATERIALS THROUGH HIGH THREAT AREAS. THE DIRECTOR SHALL HAVE THE POWER AND IS HEREBY AUTHORIZED TO ENTER INTO COOPERATIVE AGREEMENTS WITH AGENCIES OF THIS AND OTHER STATES AND OF THE FEDERAL GOVERNMENT IN RELATION TO ENFORCEMENT OF SAID RULES AND REGULATIONS.

S 3. This act shall take effect on the one hundred twentieth day after it shall have become a law; provided, however, subdivision 5 of section 14-f-1 of the transportation law, as added by section two of this act, shall take effect immediately. Effective immediately, the addition, amendment and/or repeal of any rule or regulation necessary for the implementation of this act on its effective date are authorized and directed to be made and completed on or before such effective date.