

ASSEMBLY, No. 2206

STATE OF NEW JERSEY

INTRODUCED JUNE 27, 1996

By Assemblyman SULIGA

1 AN ACT prohibiting motor carriers from compensating conveyors of  
2 hazardous materials by means of certain incentives and amending  
3 and supplementing P.L.1983, c.401.

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5 **BE IT ENACTED** *by the Senate and General Assembly of the State*  
6 *of New Jersey:*

7  
8 1. (New section) The Legislature finds and declares:

9 a. The safe and responsible transport of hazardous materials on  
10 New Jersey's congested roadways is of paramount concern to the  
11 citizens of this State;

12 b. The Legislature has acted to regulate the transportation of  
13 hazardous materials in this State pursuant to P.L.1983, c.401  
14 (C.39:5B-25 et seq.) and subsequent enactments;

15 c. Increasingly, companies responsible for the transport of  
16 hazardous materials across this State are decreasing the regular hourly  
17 salaries of their drivers and instead are offering drivers compensation  
18 for shortening delivery times, or time-based "pay-for-performance"  
19 incentives;

20 d. Preliminary research by the National Transportation Safety  
21 Board and the Federal Highway Administration suggests that truckers  
22 paid on a "pay-for-performance" basis have more accidents than those  
23 drivers who are paid by the hour.

24 e. Recently there has been an alarming increase in roadway  
25 accidents in this State involving tanker trucks carrying hazardous  
26 materials.

27 f. Therefore, in an effort to decrease the risk of roadway disasters  
28 and to preserve the health, safety and welfare of the people and  
29 environment of this State, this Legislature finds and declares that "pay-  
30 for-performance" methods of compensation that require conveyors of  
31 hazardous materials in an unsafe manner are *per se* illegal, and violate  
32 New Jersey's strong public policy of enforcing the safe transport of  
33 hazardous materials.

**EXPLANATION - Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and intended to be omitted in the law.**

**Matter underlined thus is new matter.**

1       2. Section 1 of P.L.1983, c.401 (C.39:5B-25) is amended to read  
2 as follows:

3       1. As used in this act:

4       a. "Department" means the Department of Transportation;

5       b. Hazardous material" means a substance or material determined  
6 by the Secretary of the United States Department of Transportation to  
7 be capable of posing an unreasonable risk to health, safety, and  
8 property when transported in commerce and so designated pursuant  
9 to the provisions of the "Hazardous Materials Transportation Act of  
10 1994," [Pub.L. 93-633 (49 U.S.C. §1801 et seq.)] Pub.L.103-272 (49  
11 U.S.C. §5101 et seq.).

12       c. "Motor carrier" means a motor carrier, motor private carrier,  
13 and freight forwarder as those terms are defined in the "Hazardous  
14 Materials Transportation Act of 1994," Pub.L.103-272 (49 U.S.C.  
15 §5101 et seq.) and regulations promulgated thereunder.

16       d. "Conveyor of hazardous material" means any individual,  
17 partnership, association, corporation, or employee, agent or  
18 representative thereof that directly affects hazardous material  
19 transportation safety, as determined by the regulations of the United  
20 States Secretary of Transportation and the New Jersey Department of  
21 Transportation. A "conveyor of hazardous material" includes an  
22 owner-operator of a motor vehicle transporting hazardous material in  
23 commerce, and includes an individual employed by a motor carrier  
24 who, during the course of employment (1) loads, unloads, or handles  
25 hazardous material; (2) manufactures, reconditions, or tests containers,  
26 drums, and packagings represented as qualified for use in transporting  
27 hazardous material; (3) prepares hazardous material for transportation;  
28 (4) is responsible for the safety of transporting hazardous material; or  
29 (5) operates a vehicle used to transport hazardous material.

30       e. "Pay-for-performance incentive" means any program, scheme or  
31 method that compensates or otherwise provides benefits to conveyors  
32 of hazardous materials the object of which is to minimize the time  
33 taken for performance of their duties in the transport or handling of  
34 hazardous materials, and the operation of which causes conveyors of  
35 hazardous materials to perform their duties in an unsafe manner.

36 (cf. P.L.1983, c.401, s.1)

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38       3. Section 2 of P.L.1983, c.401 (C.39:5B-26) is amended to read  
39 as follows:

40       2. The department, in consultation with the Department of  
41 Environmental Protection, the Department of Labor, the Department  
42 of Commerce and Economic Development, the [Divisions] Division of  
43 [Motor Vehicles and] State Police of the Department of Law and  
44 Public Safety, the Division of Motor Vehicles, within the department  
45 and other appropriate State departments and agencies shall adopt,  
46 within 12 months of the effective date of this act and pursuant to the

1 provisions of the "Administrative Procedure Act," P.L.1968, c.410  
2 (C.52:14B-1 et seq.), rules and regulations concerning the  
3 transportation of hazardous material, which shall, to the maximum  
4 extent practicable, conform to the requirements established by [49  
5 CFR Parts 100-199] regulations adopted by the United States  
6 Department of Transportation pursuant to the provisions of the  
7 "Hazardous Materials Transportation Act of 1994," [Pub.L. 93-633  
8 (49 U.S.C. §1801 et seq.)] Pub.L.103-272 (49 U.S.C. §5101 et seq.).  
9 (cf. P.L.1983, c.401, s.2)

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11 4. (New section) a. No motor carrier shall schedule a run, nor  
12 permit nor require the operation of any motor vehicle transporting  
13 hazardous material between two or more points in a period of time  
14 which would necessitate the vehicle being operated in an unsafe  
15 manner, or at speeds greater than those prescribed by the jurisdictions  
16 in or through which the vehicle is being operated.

17 b. No motor carrier shall enter into any contract with a conveyor  
18 of hazardous material that includes a pay-for-performance incentive,  
19 the achievement of which incentive requires the conveyor to perform  
20 his duties in an unsafe manner, or operate his vehicle at speeds greater  
21 than those prescribed by the jurisdictions in or through which the  
22 vehicle is being operated.

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24 5. A person who violates the provisions of this 1996 amendatory  
25 and supplementary act shall be subject to the penalties and injunctive  
26 relief as provided in section 5 of P.L.1983, c.401 (C.39:5-29).

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28 6. This act shall take effect immediately.

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31 **STATEMENT**

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33 In an effort to decrease the risk of serious roadway accidents  
34 involving trucks carrying hazardous materials in this State, this bill  
35 prohibits motor carriers that transport hazardous materials from  
36 including "pay for performance" incentives in contracts with haulers  
37 and handlers. As defined in the act, a pay for performance incentive  
38 is any program, scheme or method that compensates or otherwise  
39 provides benefits to conveyors of hazardous materials based on  
40 minimizing the time taken for performance of their duties in the  
41 transport or handling of hazardous materials. Additionally, the bill  
42 explicitly bans the operation of any motor vehicle transporting  
43 hazardous material that would require the driver of the vehicle to  
44 speed or otherwise operate the vehicle in an unsafe manner. This  
45 requirement, which is already contained in both the State and federal  
46 Department of Transportation regulations, has been included for

1 greater emphasis.

2 Pay for performance incentives in contracts between motor carriers  
3 and their haulers can lead to the unsafe transport and handling of  
4 hazardous materials by rewarding employees for disregarding speed  
5 limits and other traffic laws. There is evidence that "pay for  
6 performance" incentives encourage employees to take unnecessary  
7 driving risks, thereby increasing the frequency of accidents involving  
8 dangerous, flammable and environmentally harmful substances.  
9 Recently there have been several serious accidents involving oil tanker  
10 trucks on the roadways of this State. As a result, the health and  
11 welfare of many New Jerseyans were put directly at risk, and  
12 thousands of gallons of petroleum product were discharged into the  
13 environment.

14 Time-based performance incentives are creating concern on a  
15 national level as well. The National Transportation Safety Board  
16 recently issued a report that suggests a link between methods of  
17 compensation that encourage drivers to drive for long hours or at  
18 greater speeds with fatigue-related accidents.

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23 Prohibits motor carriers from compensating conveyors of hazardous  
24 materials on a time-based "pay for performance" basis.