

112TH CONGRESS
1ST SESSION

H. R. 2357

To amend section 139 of title 49, United States Code, to increase the effectiveness of Federal oversight of motor carriers, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JUNE 24, 2011

Mr. GUINTA (for himself and Mr. CARNAHAN) introduced the following bill; which was referred to the Committee on Transportation and Infrastructure

A BILL

To amend section 139 of title 49, United States Code, to increase the effectiveness of Federal oversight of motor carriers, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Fighting Fraud in
5 Transportation Act of 2011”.

6 **SEC. 2. REGISTRATION REQUIREMENTS.**

7 (a) ANNUAL REVIEW OF ACTIVE REGISTRATIONS.—

8 The Administrator of the Federal Motor Carrier Safety
9 Administration shall establish processes and procedures to
10 screen its list of registered motor carriers, brokers and

1 freight forwarders annually, and the Administrator
2 shall—

3 (1) ensure that the list accurately reflects only
4 those entities with currently active operating author-
5 ity; and

6 (2) show as inactive any motor carriers, brokers
7 or freight forwarders that are no longer active or in
8 compliance with the requirements of chapter 139 of
9 title 49, United States Code.

10 (b) FUNDING.—There is hereby authorized from the
11 funds appropriated for the operations of the Federal
12 Motor Carrier Safety Administration \$2,000,000 to carry
13 out the requirements of subsection (a).

14 (c) AMENDMENTS.—Section 13901 of title 49,
15 United States Code, is amended—

16 (1) by striking “A person” and inserting the
17 following:

18 “(a) IN GENERAL.—A person”; and

19 (2) by adding at the end the following:

20 “(b) REGISTRATION NUMBERS.—

21 “(1) IN GENERAL.—If the Administrator of the
22 Federal Motor Carrier Safety Administration reg-
23 isters a person under this chapter for 1 or more ac-
24 tivities or services, including motor carrier, freight
25 forwarder, or broker activities or services, the Ad-

1 administrator shall issue a distinctive registration
2 number to the person for each such activity or serv-
3 ice for which the person is registered.

4 “(2) ACTIVITY OR SERVICE TYPE INDICATOR.—
5 Each number issued under paragraph (1) shall in-
6 clude an indicator of the type of activity or service
7 for which the registration number is issued, includ-
8 ing whether the registration number is issued for
9 registration of a motor carrier, freight forwarder, or
10 broker activity or service.

11 “(c) AUTHORITY.—For each agreement to provide
12 service for which registration is required under this chap-
13 ter, the registered person shall specify, in writing, the op-
14 erating authority under which it is providing the services
15 required.”.

16 **SEC. 3. REGISTRATION OF MOTOR CARRIERS.**

17 Section 13902 of title 49, United States Code, is
18 amended—

19 (1) in subsection (a)—

20 (A) in paragraph (1), by inserting “using
21 self-propelled vehicles the motor carrier owns or
22 leases” after “motor carrier”; and

23 (B) by adding at the end the following:

24 “(6) SEPARATE REGISTRATION REQUIRED.—A
25 motor carrier may not broker transportation services

1 unless the motor carrier has registered as a broker
2 under this chapter.”.

3 **SEC. 4. REGISTRATION AND SECURITY OF FREIGHT FOR-**
4 **WARDERS AND BROKERS.**

5 (a) IN GENERAL.—

6 (1) AMENDMENT.—Chapter 139 of title 49,
7 United States Code, is amended by striking sections
8 13903 and 13904 and inserting the following:

9 **“§ 13903. Registration of freight forwarders and bro-**
10 **kers**

11 “(a) IN GENERAL.—A person may not act as a
12 freight forwarder by providing service subject to the juris-
13 diction under subchapter III of chapter 135 or as a broker
14 unless the person holds a freight forwarder’s permit or
15 a broker’s license, as the case may be, issued by the Fed-
16 eral Motor Carrier Safety Administration.

17 “(b) ISSUANCE OF PERMIT OR LICENSE.—

18 “(1) ELIGIBILITY REQUIREMENTS.—The Ad-
19 ministrator of the Federal Motor Carrier Safety Ad-
20 ministration shall issue a freight forwarder’s permit
21 or broker’s license to any person that the Adminis-
22 tration determines—

23 “(A) to be qualified by experience and
24 character to act as a freight forwarder or
25 broker, respectively; and

1 “(B) to be fit, willing, and able to provide
2 the service and to comply with this part and ap-
3 plicable regulations of the Secretary.

4 “(2) DURATION.—The permit or license issued
5 under paragraph (1) shall remain in effect only as
6 long as the freight forwarder or broker is in compli-
7 ance with section 13904.

8 “(c) REGISTRATION AS MOTOR CARRIER RE-
9 QUIRED.—

10 “(1) FREIGHT FORWARDERS.—A freight for-
11 warder may not provide transportation as a motor
12 carrier unless the freight forwarder—

13 “(A) has registered separately to provide
14 transportation as a motor carrier; and

15 “(B) has met all the requirements under
16 this chapter applicable to motor carriers.

17 “(2) BROKERS.—A broker may not provide
18 transportation as a motor carrier unless the
19 broker—

20 “(A) has registered separately to provide
21 transportation as a motor carrier; and

22 “(B) has met all of the requirements under
23 this chapter applicable to motor carriers.

1 “(d) REGISTRATION AS FREIGHT FORWARDER OR
2 BROKER REQUIRED.—A motor carrier registered under
3 this chapter—

4 “(1) may only provide transportation of prop-
5 erty with self-propelled motor vehicles owned or
6 leased by the motor carrier or interchanges as per-
7 mitted under regulation issued by the Secretary,
8 provided that the originating carrier must physically
9 transport the cargo at some point, and retains liabil-
10 ity for the cargo and payment of interchanged car-
11 riers; and

12 “(2) may not arrange such transportation un-
13 less the motor carrier has obtained a separate
14 freight forwarder’s permit or broker’s license under
15 this section.

16 **“§ 13904. Security of freight forwarders and brokers**

17 “(a) REQUIREMENTS.—

18 “(1) IN GENERAL.—A person may not act as a
19 freight forwarder or broker unless the person fur-
20 nishes a bond, proof of trust fund, or other surety,
21 or combination of such sureties, in a form and
22 amount, and from a provider, determined by the Ad-
23 ministrator of the Federal Motor Carrier Safety Ad-
24 ministration to be adequate to insure financial re-
25 sponsibility.

1 “(2) STANDARDS.—The Administrator may au-
2 thorize the use of a group bond, trust fund, or other
3 surety, or combination of such securities that meet
4 the legal requirements under section 13904(d). The
5 Administrator may not accept proof of security from
6 any person whose surety or surety provider does not
7 meet the standards established by the Adminis-
8 trator, by regulation. Bonds issued under this sec-
9 tion may only be offered by a bonding company that
10 has been approved by the Secretary of the Treasury.

11 “(b) SCOPE OF FINANCIAL RESPONSIBILITY.—A
12 bond, trust fund, or other surety obtained under this sec-
13 tion shall be available to pay any claim against a freight
14 forwarder or broker arising from its failure to pay freight
15 charges in its contracts, agreements, or arrangements for
16 transportation subject to regulation under this chapter—

17 “(1) with the consent of the insured freight for-
18 warder or broker, subject to review by the surety
19 company;

20 “(2) if the claim is deemed valid by the surety
21 company after the freight forwarder or broker has
22 failed to respond to adequate notice to address the
23 validity of the claim; or

24 “(3) if the claim has been reduced to a judg-
25 ment against the freight forwarder or broker after

1 the claimant made a reasonable attempt to resolve
2 the claim under paragraphs (1) and (2), but the
3 claim was not resolved within a reasonable period of
4 time provided, however, that the surety must re-
5 spond to any claim within 30 days of receipt and,
6 if the claim is denied, shall set forth in writing to
7 the claimant the grounds for the denial. In any ac-
8 tion against a surety to recover on a claim that has
9 not been paid, the prevailing party shall be entitled
10 to recover its reasonable costs and attorneys fees.

11 “(c) FREIGHT FORWARDER INSURANCE.—

12 “(1) IN GENERAL.—The Administrator of the
13 Federal Motor Carrier Safety Administration may
14 not register a person as a freight forwarder under
15 section 13903 unless the person files with the Ad-
16 ministrator a bond, insurance policy, or other type
17 of security, in accordance with the standards estab-
18 lished by the Administrator under this section.

19 “(2) LIABILITY INSURANCE.—A security filed
20 under paragraph (1) shall be sufficient to pay an
21 amount, not to exceed the amount of the security,
22 for each final judgment against the freight for-
23 warder for bodily injury to, or death of, an indi-
24 vidual, or loss of, or damage to, property (other than
25 property referred to in paragraph (3)), resulting

1 from the negligent operation, maintenance, or use of
2 motor vehicles by, or under the direction and control
3 of, the freight forwarder when providing transfer,
4 collection, or delivery service under this part.

5 “(3) CARGO INSURANCE.—The Administrator
6 may require a registered freight forwarder to file
7 with the Administrator a bond, insurance policy, or
8 other type of security approved by the Secretary,
9 that will pay an amount, not to exceed the amount
10 of the security, for loss of, or damage to, property
11 for which the freight forwarder provides service.

12 “(d) ADDITIONAL REQUIREMENTS.—

13 “(1) REISSUANCE OF LICENSES AND PER-
14 MITS.—Not later than 4 years after the date of the
15 enactment of the Fighting Fraud in Transportation
16 Act of 2011, freight forwarders and brokers shall
17 renew licenses and permits from the Federal Motor
18 Carrier Safety Administration that are subject to
19 the terms and conditions under this subsection. Such
20 licenses and permits shall expire 5 years after the
21 date of issuance and may be renewed as provided
22 under this chapter.

23 “(2) EXPERIENCE OR TRAINING REQUIRE-
24 MENT.—Each freight forwarder and broker shall em-
25 ploy, as an officer, an individual who—

1 “(A) has at least 3 years of relevant expe-
2 rience; or

3 “(B) provides the Administrator with satis-
4 factory evidence of certified training.

5 “(3) ONLINE.—The Administrator shall make
6 information on permits, licenses, and financial secu-
7 rity publicly available online, including—

8 “(A) the names and addresses of the prin-
9 cipals of each entity holding a permit or license;
10 and

11 “(B) the electronic address of its surety
12 for the submission of claims.

13 “(4) MINIMUM FINANCIAL SECURITY.—Each
14 freight forwarder and broker shall provide financial
15 security of \$100,000, regardless of the number of
16 branch offices or sales agents of such entities.

17 “(5) SPECIFIC PERFORMANCE STANDARDS.—
18 The Administrator shall set specific performance
19 standards for bonds or other acceptable surety, in-
20 cluding requirements that—

21 “(A) the broker or forwarder can file a
22 bond issued by a surety registered and in good
23 standing with the U.S. Department of Treas-
24 ury;

1 “(B) the broker or forwarder can file proof
2 of a trust or other security acceptable to the
3 Administrator provided that the surety amount
4 consists of assets readily available to pay valid
5 claims without resort to personal guarantees or
6 collection of pledged accounts receivable; and

7 “(C) the bond issuer, trust or other secu-
8 rity holder is ultimately financially responsible
9 for any failure to make the required payments.

10 “(6) NOTICE TO CANCEL.—If a surety required
11 under this subsection is canceled—

12 “(A) the holder of the surety shall provide
13 electronic notification to the Administrator of
14 such cancellation not later than 30 days before
15 the effective date of such cancellation; and

16 “(B) the Administrator shall immediately
17 post such notification on its public Web site.

18 “(7) SUSPENSION.—The Administrator shall
19 immediately suspend the registration of a freight
20 forwarder or broker if its available security falls
21 below the amount required under this subsection.

22 “(8) PAYMENT OF CLAIMS.—If a registered
23 freight forwarder or broker experiences financial
24 failure or insolvency, the freight forwarder’s or bro-
25 ker’s surety shall—

1 “(A) submit a notice to cancel the surety
2 to the Administrator in accordance with para-
3 graph (6);

4 “(B) publicly advertise for claims for 60
5 days beginning on the date of publication by the
6 Administrator of the notice to cancel the surety;
7 and

8 “(C) pay, not later than 30 days after the
9 expiration of the 60-day period for submission
10 of claims—

11 “(i) all uncontested claims received
12 during such period; or

13 “(ii) a pro rata share of such claims
14 if the total amount of such claims exceeds
15 the financial security available.

16 “(9) LIST OF CLAIMS PAID.—Each surety under
17 this subsection shall—

18 “(A) publish, on the surety’s Web site, a
19 list of the claims paid by the surety immediately
20 upon payment; and

21 “(B) immediately submit a copy of such
22 list to the Administrator.

23 “(10) PENALTIES.—

1 “(A) IN GENERAL.—Any surety that fails
2 to comply with the requirements under this sub-
3 section—

4 “(i) shall be liable to the United
5 States Government for a civil penalty in an
6 amount not to exceed \$10,000; and

7 “(ii) shall be ineligible to offer broker
8 and forwarder security under this chapter.

9 “(B) WILFUL VIOLATIONS.—Any surety
10 that knowingly and willfully violates the posting
11 and notification requirements under this sub-
12 section shall be held financially liable for all
13 valid claims submitted against the broker or
14 forwarder involved, regardless of the amount of
15 the security.

16 “(11) DEDUCTION OF COSTS PROHIBITED.—
17 The amount of the financial security required under
18 this subsection may not be reduced by deducting at-
19 torney’s fees or administrative costs.

20 “(12) AUDIT.—Claim payments by sureties
21 shall be annually audited by a public accounting
22 firm. The results of such audits shall be made pub-
23 licly available on the surety’s Web site.”.

24 “(2) RULEMAKING.—Not later than 270 days
25 after the date of the enactment of this Act, the Ad-

1 administrator of the Federal Motor Carrier Safety Ad-
2 ministration shall issue regulations to enforce the re-
3 quirements under section 13904(d) of title 49,
4 United States Code, as added by paragraph (1).

5 (3) EFFECTIVE DATE.—Section 13904(d) of
6 title 49, United States Code, as added by paragraph
7 (1), shall take effect on the date that is 270 days
8 after the date of the enactment of this Act.

9 (b) REPEAL.—Subsections (b) and (c) of section
10 13906 of title 49, United States Code, are repealed.

11 (c) CLERICAL AMENDMENTS.—The table of sections
12 for chapter 139 of title 49, United States Code, is amend-
13 ed—

14 (1) by striking the item relating to section
15 13903 and inserting the following:

“13903. Registration of freight forwarders and brokers.”;

16 and

17 (2) by striking the item relating to section
18 13904 and inserting the following:

“13904. Security of freight forwarders and brokers.”.

19 **SEC. 5. REVIEW.**

20 (a) REVIEW BY INSPECTOR GENERAL.—Not later
21 than 15 months after the date of the enactment of this
22 subsection, the Inspector General of the Department of
23 Transportation shall—

1 (1) review the regulations and enforcement
2 practices of the Federal Motor Carrier Safety Ad-
3 ministration under section 13904(d) of title 49,
4 United States Code, as added by section 4(a); and

5 (2) make any recommendations to the Secretary
6 of Transportation that may be necessary to improve
7 the enforcement of such regulations.

8 (b) SECURITY AND INSURANCE AMOUNT ASSESS-
9 MENT.—Every 5 years, the Administrator of the Federal
10 Motor Carrier Safety Administration shall review, with
11 public notice and comment, the amount of the security and
12 insurance required under section 13904 of title 49, United
13 States Code, to determine whether such amounts are suffi-
14 cient to provide adequate financial security, and shall be
15 authorized to increase those amounts, if necessary, based
16 upon that determination.

17 **SEC. 6. UNLAWFUL BROKERAGE ACTIVITIES.**

18 (a) IN GENERAL.—Chapter 149 of title 49, United
19 States Code, is amended by adding at the end the fol-
20 lowing:

21 **“§ 14916. Unlawful brokerage activities**

22 “(a) PROHIBITED ACTIVITIES.—Any person that acts
23 as a broker, other than a non-vessel-operating common
24 carrier (as defined in section 40102(16) of title 46), or
25 an ocean freight forwarder providing brokerage as part of

1 an international through movement involving ocean trans-
2 portation between the United States and a foreign port,
3 is prohibited from providing interstate brokerage services
4 as a broker unless that person—

5 “(1) is registered under, and in compliance
6 with, section 13903; and

7 “(2) has satisfied the financial security require-
8 ments under section 13904.

9 “(b) CIVIL PENALTIES AND PRIVATE CAUSE OF AC-
10 TION.—Any person who knowingly authorizes, consents to,
11 or permits, directly or indirectly, either alone or in con-
12 junction with any other person, a violation of subsection
13 (a) is liable—

14 “(1) to the United States Government for a
15 civil penalty in an amount not to exceed \$10,000 for
16 each violation; and

17 “(2) to the injured party for all valid claims in-
18 curred without regard to amount.

19 “(c) LIABLE PARTIES.—The liability for civil pen-
20 alties and for claims under this section for unauthorized
21 brokering shall apply, jointly and severally—

22 “(1) to any corporate entity or partnership in-
23 volved; and

24 “(2) to the individual officers, directors, and
25 principals of such entities.”.

1 (b) CLERICAL AMENDMENT.—The table of sections
2 for chapter 149 of title 49, United States Code, is amend-
3 ed by adding at the end the following:

“14916. Unlawful brokerage activities.”.

