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(Original Signature of Member)

112TH CONGRESS  
1ST SESSION

**H. R.** \_\_\_\_\_

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

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**IN THE HOUSE OF REPRESENTATIVES**

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

\_\_\_\_\_  
**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

1 Administration shall establish processes and procedures to  
2 screen its list of registered motor carriers, brokers and  
3 freight forwarders annually, and the Administrator  
4 shall—

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

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9 or freight forwarders that are no longer active or in  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

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

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

18 (1) by striking “A person” and inserting the  
19 following:

20 “(a) IN GENERAL.—A person”; and

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

22 “(b) REGISTRATION NUMBERS.—

23 “(1) IN GENERAL.—If the Administrator of the  
24 Federal Motor Carrier Safety Administration reg-  
25 isters a person under this chapter for 1 or more ac-

1 activities or services, including motor carrier, freight  
2 forwarder, or broker activities or services, the Ad-  
3 ministrator shall issue a distinctive registration  
4 number to the person for each such activity or serv-  
5 ice for which the person is registered.

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

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

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

19 Section 13902 of title 49, United States Code, is  
20 amended—

21 (1) in subsection (a)—

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

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

1           “(6) SEPARATE REGISTRATION REQUIRED.—A  
2           motor carrier may not broker transportation services  
3           unless the motor carrier has registered as a broker  
4           under this chapter.”.

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

7           (a) IN GENERAL.—

8                   (1) AMENDMENT.—Chapter 139 of title 49,  
9           United States Code, is amended by striking sections  
10          13903 and 13904 and inserting the following:

11   **“§ 13903. Registration of freight forwarders and bro-**  
12                           **kers**

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

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

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

1           “(A) to be qualified by experience and  
2           character to act as a freight forwarder or  
3           broker, respectively; and

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

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

11          “(c) REGISTRATION AS MOTOR CARRIER RE-  
12          QUIRED.—

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

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

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

20           “(2) BROKERS.—A broker may not provide  
21          transportation as a motor carrier unless the  
22          broker—

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

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

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

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

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

18 **“§ 13904. Security of freight forwarders and brokers**

19           “(a) REQUIREMENTS.—

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

1       ministration to be adequate to insure financial re-  
2       sponsibility.

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

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

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

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

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

13          “(c) FREIGHT FORWARDER INSURANCE.—

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

21                 “(2) LIABILITY INSURANCE.—A security filed  
22          under paragraph (1) shall be sufficient to pay an  
23          amount, not to exceed the amount of the security,  
24          for each final judgment against the freight for-  
25          warder for bodily injury to, or death of, an indi-

1       vidual, or loss of, or damage to, property (other than  
2       property referred to in paragraph (3)), resulting  
3       from the negligent operation, maintenance, or use of  
4       motor vehicles by, or under the direction and control  
5       of, the freight forwarder when providing transfer,  
6       collection, or delivery service under this part.

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

14             “(d) ADDITIONAL REQUIREMENTS.—

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

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

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

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

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

11                   “(A) the names and addresses of the prin-  
12          cipals of each entity holding a permit or license;  
13          and

14                   “(B) the electronic address of its surety  
15          for the submission of claims.

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

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

1           “(A) the broker or forwarder can file a  
2           bond issued by a surety registered and in good  
3           standing with the US Department of Treasury;

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

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

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

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

19           “(B) the Administrator shall immediately  
20           post such notification on its public website.

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

1           “(8) PAYMENT OF CLAIMS.—If a registered  
2 freight forwarder or broker experiences financial  
3 failure or insolvency, the freight forwarder’s or bro-  
4 ker’s surety shall—

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

8                   “(B) publicly advertise for claims for 60  
9 days beginning on the date of publication by the  
10 Administrator of the notice to cancel the surety;  
11 and

12                   “(C) pay, not later than 30 days after the  
13 expiration of the 60-day period for submission  
14 of claims—

15                           “(i) all uncontested claims received  
16 during such period; or

17                           “(ii) a pro rata share of such claims  
18 if the total amount of such claims exceeds  
19 the financial security available.

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

22                   “(A) publish, on the surety’s website, a list  
23 of the claims paid by the surety immediately  
24 upon payment; and

1           “(B) immediately submit a copy of such  
2 list to the Administrator.

3           “(10) PENALTIES.—

4           “(A) IN GENERAL.—Any surety that fails  
5 to comply with the requirements under this sub-  
6 section—

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

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

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

19           “(11) DEDUCTION OF COSTS PROHIBITED.—

20 The amount of the financial security required under  
21 this subsection may not be reduced by deducting at-  
22 torney’s fees or administrative costs.

23           “(12) AUDIT.—Claim payments by sureties  
24 shall be annually audited by a public accounting

1 firm. The results of such audits shall be made pub-  
2 licly available on the surety's website.”.

3 (2) RULEMAKING.—Not later than 270 days  
4 after the date of the enactment of this Act, the Ad-  
5 ministrator of the Federal Motor Carrier Safety Ad-  
6 ministration shall issue regulations to enforce the re-  
7 quirements under section 13904(d) of title 49,  
8 United States Code, as added by paragraph (1).

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

13 (b) REPEAL.—Subsections (b) and (c) of section  
14 13906 of title 49, United States Code, are repealed.

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

18 (1) by striking the item relating to section  
19 13903 and inserting the following:

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

20 (2) by striking the item relating to section  
21 13904 and inserting the following:

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

## 22 **SEC. 5. REVIEW.**

23 (a) REVIEW BY INSPECTOR GENERAL.—Not later  
24 than 15 months after the date of the enactment of this

1 subsection, the Inspector General of the Department of  
2 Transportation shall—

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

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

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

19 **SEC. 6. UNLAWFUL BROKERAGE ACTIVITIES.**

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

23 **“§ 14916. Unlawful brokerage activities**

24 “(a) PROHIBITED ACTIVITIES.—Any person that acts  
25 as a broker, other than a non-vessel-operating common

1 carrier (as defined in section 40102(16) of title 46), or  
2 an ocean freight forwarder providing brokerage as part of  
3 an international through movement involving ocean trans-  
4 portation between the United States and a foreign port,  
5 is prohibited from providing interstate brokerage services  
6 as a broker unless that person—

7           “(1) is registered under, and in compliance  
8           with, section 13903; and

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

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

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

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

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

24               “(1) to any corporate entity or partnership in-  
25               volved; and

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

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

          “14916. Unlawful brokerage activities.”.