

111TH CONGRESS
2^D SESSION

S. _____

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 SENATE OF THE UNITED STATES

Ms. SNOWE (for herself and Ms. KLOBUCHAR) introduced the following bill;
which was read twice and 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 “Motor Carrier Protec-
5 tion Act of 2010”.

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

7 (a) IN GENERAL.—

1 (1) ANNUAL REGISTRATION FEE.—Each freight
2 forwarder or freight broker that registers under
3 chapter 139 of title 49, United States Code, shall—

4 (A) pay an annual registration renewal fee
5 in an amount to be determined by the Sec-
6 retary;

7 (B) provide updated information for each
8 registration; and

9 (C) submit proof that the registrant is in
10 compliance with the applicable surety and in-
11 surance requirements under such chapter 139.

12 (2) USE OF FEES.—All new fees collected by
13 the Secretary as a result of the new licensing re-
14 quirements under this Act and the amendments
15 made by this Act shall be used to administer and en-
16 force the registration and related requirements
17 under chapter 139 of title 49, United States Code.

18 (3) CONSEQUENCE OF NONCOMPLIANCE.—Not
19 later than 30 days after the date on which a broker,
20 freight forwarder, or motor carrier fails to comply
21 with this subsection, such entity shall be listed as in-
22 active on all relevant Department of Transportation
23 Internet websites.

24 (b) AMENDMENTS.—Section 13901 of title 49,
25 United States Code, is amended—

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

3 “(a) IN GENERAL.—A person”; and

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

5 “(b) REGISTRATION NUMBERS.—

6 “(1) IN GENERAL.—If the Administrator of the
7 Federal Motor Carrier Administration registers a
8 person under this chapter for 1 or more activities or
9 services, including motor carrier, freight forwarder,
10 or broker activities or services, the Administrator
11 shall issue a distinctive registration number to the
12 person for each such activity or service for which the
13 person is registered.

14 “(2) ACTIVITY OR SERVICE TYPE INDICATOR.—

15 Each number issued under paragraph (1) shall in-
16 clude an indicator of the type of activity or service
17 for which the registration number is issued, includ-
18 ing whether the registration number is issued for
19 registration of a motor carrier, freight forwarder, or
20 broker activity or service.

21 “(c) AUTHORITY.—For each shipment for which a
22 registered person seeks compensation, the registered per-
23 son shall specify, in writing, the operating authority under
24 which it is providing the services required.”.

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

2 Section 13902 of title 49, United States Code, is
3 amended—

4 (1) in subsection (a)—

5 (A) in paragraph (1), by inserting “using
6 vehicles the motor carrier owns or leases” after
7 “motor carrier”; and

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

9 “(6) SEPARATE REGISTRATION REQUIRED.—A
10 motor carrier may not broker transportation services
11 unless the motor carrier has registered as a broker
12 under this chapter.”; and

13 (2) in subsection (f), by adding at the end the
14 following:

15 “(4) INSURANCE REQUIREMENTS.—A motor
16 carrier registered under this section shall maintain
17 insurance for property damage required under sec-
18 tion 13906(a)(4) for all shipments transported
19 under its operating authority.”.

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

22 (a) IN GENERAL.—

23 (1) AMENDMENT.—Chapter 139 of title 49,
24 United States Code, is amended by striking sections
25 13903 and 13904 and inserting the following:

1 **“§ 13903. Registration of freight forwarders and bro-**
2 **kers**

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

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

10 “(1) ELIGIBILITY REQUIREMENTS.—The Ad-
11 ministrator of the Federal Motor Carrier Safety Ad-
12 ministration shall issue a freight forwarder’s permit
13 or broker’s license to any person that the Adminis-
14 tration determines—

15 “(A) to be qualified by experience and
16 character to act as a freight forwarder or
17 broker, respectively; and

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

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

25 “(c) REGISTRATION AS MOTOR CARRIER RE-
26 QUIRED.—

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

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

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

8 “(2) BROKERS.—A broker may not provide
9 transportation as a motor carrier unless the
10 broker—

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

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

15 “(d) REGISTRATION AS FREIGHT FORWARDER OR
16 BROKER REQUIRED.—A motor carrier registered under
17 this chapter—

18 “(1) may only provide transportation of prop-
19 erty with motor vehicles owned or leased by the
20 motor carrier; and

21 “(2) may not arrange such transportation un-
22 less the motor carrier has obtained a separate
23 freight forwarder’s permit or broker’s license under
24 this section.

1 **“§ 13904. Security of freight forwarders and brokers**

2 “(a) REQUIREMENTS.—

3 “(1) IN GENERAL.—A person may not act as a
4 freight forwarder or broker unless the person fur-
5 nishes a bond, proof of trust fund, or other surety,
6 or combination of such sureties, in a form and
7 amount, and from a provider, determined by the Ad-
8 ministrator of the Federal Motor Carrier Safety Ad-
9 ministration to be adequate to insure financial re-
10 sponsibility.

11 “(2) STANDARDS.—The Administrator may au-
12 thorize the use of a group bond, trust fund, or other
13 surety, or combination of such securities that meet
14 the cash and legal requirements under section
15 13904(d). The Administrator may not accept proof
16 of security from any person whose surety or surety
17 provider does not meet the standards established by
18 the Administrator, by regulation. Bonds issued
19 under this section may only be offered by a bonding
20 company that has been approved by the Secretary of
21 the Treasury.

22 “(b) SCOPE OF FINANCIAL RESPONSIBILITY.—A
23 bond, trust fund, or other surety obtained under this sec-
24 tion shall be available to pay any claim against a freight
25 forwarder or broker arising from its failure to pay freight

1 charges in its contracts, agreements, or arrangements for
2 transportation subject to regulation under this chapter—

3 “(1) with the consent of the insured freight for-
4 warder or broker, subject to review by the surety
5 company;

6 “(2) if the claim is deemed valid by the surety
7 company after the freight forwarder or broker has
8 failed to respond to adequate notice to address the
9 validity of the claim; or

10 “(3) if the claimant made a reasonable attempt
11 to resolve the claim under paragraphs (1) and (2),
12 but the claim was not resolved within a reasonable
13 period of time.

14 “(c) FREIGHT FORWARDER INSURANCE.—

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

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

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

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

15 “(d) ADDITIONAL REQUIREMENTS.—

16 “(1) REISSUANCE OF LICENSES AND PER-
17 MITS.—Not later than 4 years after the date of the
18 enactment of the Motor Carrier Protection Act of
19 2010, freight forwarders and brokers shall acquire
20 new licenses and permits from the Federal Motor
21 Carrier Safety Administration that are subject to
22 the terms and conditions under this subsection. Such
23 licenses and permits shall expire 5 years after the
24 date of issuance and may be renewed as provided
25 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 at least \$100,000, regardless of the num-
19 ber of 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—

24 “(A) at least \$10,000 be deposited with
25 the surety in cash;

1 “(B) the balance of the surety amount con-
2 sists of assets readily available to pay valid
3 claims without resort to personal guarantees or
4 collection of pledged accounts receivable; and

5 “(C) the surety is ultimately financially re-
6 sponsible for any failure to make the required
7 payments.

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

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

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

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

20 “(8) PAYMENT OF CLAIMS.—If a registered
21 freight forwarder or broker experiences financial
22 failure or insolvency, the freight forwarder’s or bro-
23 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 website, a list
19 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 website.”.

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) **CLERICAL AMENDMENTS.**—The table of sections
10 for chapter 139 of title 49, United States Code, is amend-
11 ed—

12 (1) by striking the item relating to section
13 13903 and inserting the following:

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

14 (2) by striking the item relating to section
15 13904 and inserting the following:

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

16 **SEC. 5. REVIEW.**

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

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

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

4 (b) SECURITY AND INSURANCE AMOUNT ASSESS-
5 MENT.—Every 5 years, the Administrator of the Federal
6 Motor Carrier Safety Administration shall review, with
7 public notice and comment, the amount of the security and
8 insurance required under section 13904 of title 49, United
9 States Code, to determine whether such amounts are suffi-
10 cient to provide adequate financial security.

11 **SEC. 6. UNLAWFUL BROKERAGE ACTIVITIES.**

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

15 **“§ 14916. Unlawful brokerage activities**

16 “(a) PROHIBITED ACTIVITIES.—Any person that acts
17 as a broker, other than a non-vessel-operating common
18 carrier (as defined in section 40102(16) of title 46), or
19 an ocean freight forwarder providing brokerage as part of
20 an international through movement involving ocean trans-
21 portation between the United States and a foreign port,
22 is prohibited from providing interstate brokerage services
23 as a broker unless that person—

24 “(1) is registered under, and in compliance
25 with, section 13903; and

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

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

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

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

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

16 “(1) to any corporate entity or partnership in-
17 volved; and

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

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

“Sec. 14916. Unlawful brokerage activities.”.