



March 28, 2023

Via Hand Delivery

Dear Member of Congress:

The Board of Directors of the 501(c)(6) non-profit trade group Small Business in Transportation Coalition, Inc. (SBTC) aka Truckers.com has asked that I write you to ask that you please consider sponsoring our attached proposed bill entitled the *Transportation Intermediaries Accountability Act of 2023* ("TIA Act of 2023).

*On May 6, 2020, the SBTC filed a petition with the Secretary asking for rulemaking to stop large property brokers from coercing small motor carriers and independent truck drivers to waive their 49 CFR § 371.3 rights to brokers' records which reveal brokers' commissions as a condition to be offered loads, suggesting this practice violates 49 U.S. Code § 14906 Evasion of Regulation of Carriers and Brokers . The Secretary, through the Federal Motor Carrier Safety Administration (FMCSA), granted the SBTC's request to commence rulemaking on March 16, 2023 and this matter is pending.*

The TIA Act of 2023 would hold third-part transportation intermediaries accountable to Federal law & regulation and would help protect shippers, motor carriers, independent truck drivers & duly licensed small property ("freight") brokers from unlicensed activity, evasion of regulation, and unlawful attempts to circumvent existing transparency regulations. It would define the term "dispatcher" to eliminate use of the term by unlicensed brokers currently arranging for transportation unlawfully with impunity.

If you are interested in working with us on enacting this much-needed protection for independent truckers, motor carrier, and other small players in the transportation industry, please contact our attorney Laurence Socci on (202) 262-5843 or via [Laurence.Socci@SocciLawFirm.com](mailto:Laurence.Socci@SocciLawFirm.com) within the next thirty days.

We look very much forward to including your name on our list of members of Congress who are standing up to protect the rights of independent truck drivers and small businesses on Truckers.com, which will be published on or around May 1st.

Thank you.

Sincerely,

JAMES LAMB  
Executive Director

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118TH CONGRESS  
1ST SESSION

# H. R. \_\_\_\_\_

An Act to Hold Transportation Intermediaries Accountable to Federal Law & Regulation to Protect Shippers, Motor Carriers, Independent Truck Drivers & Small Property Brokers from Unlicensed Activity, Evasion of Regulation, and Unlawful Attempts to Circumvent Transparency.

## IN THE HOUSE OF REPRESENTATIVES

MARCH 27, 2023

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

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# A BILL

To acknowledge and enact public policy to ensure surface transportation intermediaries operate in a lawful, fair, and ethical manner in order to ensure fair competition and reasonable rates; establish statutory broker commission transparency requirements, clarify that violation of transparency requirements constitutes statutory evasion of regulation, which carries civil and/or criminal penalties, create a private cause of action for shippers and carriers who suffer broker transparency violations, establish a starter broker bond to assist new entrant brokers in getting licensed, along with an escrow requirement for new brokers, enact a statutory definition of dispatcher to prevent and deter unlicensed brokerage activity.

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*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

**SECTION 1. SHORT TITLE. TRANSPORTATION INTERMEDIARIES ACCOUNTABILITY ACT OF 2023 (“the TIA Act”).**

**SECTION 2. FINDINGS**

(a) IN GENERAL.—It is the sense of Congress that it is a national priority and in furtherance of interstate commerce to promote safe, adequate, economical, and efficient transportation and ensure that surface transportation intermediaries that arrange for transportation using duly authorized motor carriers operate pursuant to the licensing and bonding requirements set forth in 49 U.S. Code § 13904 and in accordance with the Secretary’s regulations duly promulgated under 49 CFR § 371.

(1) Congress has enacted Federal Law --codified at 49 U.S. Code §13101.  
Transportation policy:

*(a) In General.—To ensure the development, coordination, and preservation of a transportation system that meets the transportation needs of the United States, including the United States Postal Service and national defense, it is the policy of the United States Government to oversee the modes of transportation and—*

*(1) in overseeing those modes—*

*(A) to recognize and preserve the inherent advantage of each mode of transportation;*

*(B) to promote safe, adequate, economical, and efficient transportation;*

*(C) to encourage sound economic conditions in transportation, including sound economic conditions among carriers;*

*(D) to encourage the establishment and maintenance of reasonable rates for transportation, without unreasonable discrimination or unfair or destructive competitive practices;*

*(E) to cooperate with each State and the officials of each State on transportation matters;  
and*

*(F) to encourage fair wages and working conditions in the transportation industry;*

*(2) in overseeing transportation by motor carrier, to promote competitive and efficient transportation services in order to—*

*(A) encourage fair competition, and reasonable rates for transportation by motor carriers of property;*

*(B) promote efficiency in the motor carrier transportation system and to require fair and expeditious decisions when required;*

*(C)meet the needs of shippers, receivers, passengers, and consumers;*

*(D)allow a variety of quality and price options to meet changing market demands and the diverse requirements of the shipping and traveling public;*

*(E)allow the most productive use of equipment and energy resources;*

*(F)enable efficient and well-managed carriers to earn adequate profits, attract capital, and maintain fair wages and working conditions;*

*(G)provide and maintain service to small communities and small shippers and intrastate bus services;*

*(H)provide and maintain commuter bus operations;*

*(I)improve and maintain a sound, safe, and competitive privately owned motor carrier system;*

*(J)promote greater participation by minorities in the motor carrier system;*

*(K)promote intermodal transportation;*

Congress therefore recognizes that all interstate transportation stakeholders must operate in a lawful, fair, and ethical manner in order to ensure fair competition and reasonable rates that ultimately affect consumer prices.

(2) Despite the Secretary's determination during household goods broker rulemaking that bonds over \$25,000 would have 'anti-competitive effects<sup>1</sup>,' on July 6, 2012, President Obama signed the *Moving Ahead for Progress in the 21<sup>st</sup> Century Act* (MAP-21), which raised the property broker bond from \$10,000 to \$75,000 and required freight forwarders for the first time to be bonded. This sudden 750% increase in financial security resulted in the immediate revocation of the operating authority and licenses of over 9,800 freight forwarders and property brokers (40% of the industry at the time according to FMCSA statistics) that failed to comply with the new bond in December of 2013 and new obstacles to enter the transportation intermediary industry.

(3) Thereafter, while some brokers and forwarders reinstated their revoked licenses after securing the higher bond, rather than secure licensure, other third-party intermediaries that arrange for interstate motor carrier transportation for compensation began unfairly competing with duly-licensed intermediaries by unlawfully operating with impunity, now calling themselves "independent dispatchers" offering "dispatch services" instead of operating as duly licensed surface transportation intermediaries. Congress has

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<sup>1</sup> 75 FR 72987.

recognized this problem and has directed the Secretary to report on unlicensed “dispatchers” to Congress by June 16, 2023.<sup>2</sup>

(4) On May 6, 2020, the Small Business in Transportation Coalition (SBTC) filed a petition with the Secretary asking for rulemaking to stop large property brokers from coercing small motor carriers and independent truck drivers to waive their 49 CFR § 371.3 rights to brokers’ records which reveal brokers’ commissions as a condition to be offered loads, suggesting this practice violates 49 U.S. Code § 14906 Evasion of Regulation of Carriers and Brokers<sup>3</sup>. The Secretary, through the Federal Motor Carrier Safety Administration (FMCSA), granted the SBTC’s request to commence rulemaking on March 16, 2023 and this matter is pending.

(5) On March 9, 2022, SBTC petitioned FMCSA for rulemaking to define the term “dispatcher” to eliminate the use of the term by unlicensed brokers, suggesting the term be alphabetically inserted into 49 CFR § 390.5 in between “Disabling damage” and “Driveaway-towaway operation” and defined in accordance with ICC precedent carried over in the ICC Termination Act of 1995<sup>4</sup> as follows:

*“Dispatcher means an employee or an agent of a motor carrier with a fiduciary duty to his principal who coordinates traffic with shippers, property brokers and receivers and devotes his service exclusively to a single carrier, is part of that carrier’s organization, and is not in a position to allocate shipments between competing principals.”*

This petition remains pending before FMCSA.

(6) On August 4, 2020, the Transportation Intermediaries Association (TIA) petitioned the Secretary to repeal the transparency provisions of 49 CFR § 371.3 arguing, in part, during an October 30, 2020 FMCSA “Listening Session”<sup>5</sup> that brokers are shippers entitled to waive 49 CFR § 371.3c under 49 CFR § 14101b by virtue of the *ICC Termination Act of 1995*. On March 17, 2023, FMCSA denied TIA’s petition for rulemaking.

(7) Congress recognizes the one-size-fits-all \$75,000 transportation intermediary bond has for a decade been an unreasonable barrier to entry for new entrant brokers giving rise to an illegal black market comprised of unlicensed intermediary players. According to the CPI-U, the \$10,000 broker bond amount set by the ICC in 1977 adjusts for inflation to about \$50,000 as of December 2022. Accordingly, it is sense of Congress that in order to fairly reconcile the interests of motor carriers and new entrant small business brokers, a starter bond of \$50,000 should be put into effect for new entrants for their first 24 months of operation, coupled with a new escrow requirement to ensure carrier money

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<sup>2</sup> Section 23021 of the *Infrastructure Investment and Jobs Act* (IIJA) Pub. L. 117-58, 135 Stat. 429.

<sup>3</sup> “A person, or an officer, employee, or agent of that person, that by any means tries to evade regulation provided under this part for carriers or brokers is liable to the United States for a civil penalty of at least \$2,000 for the first violation and at least \$5,000 for a subsequent violation, and may be subject to criminal penalties.”

<sup>4</sup> See Section 204 (“Saving Provisions”) of the *ICC Termination Act of 1995*:  
<https://www.govinfo.gov/content/pkg/PLAW-104publ88/pdf/PLAW-104publ88.pdf>

<sup>5</sup> 85 FR 64613.

is protected. Congress anticipates this will thwart unlicensed brokerage activity by third party intermediaries calling themselves independent “dispatchers.”

(8) Congress believes the term dispatcher should be defined by statute to remove any question as to what a dispatcher is and how it differs from a broker or bona fide agent of a motor carrier.

(9) Congress has defined the term property broker at 49 U.S. Code § 13102(2) as "a person, other than a motor carrier or an employee or agent of a motor carrier, that as a principal or agent sells, offers for sale, negotiates for, or holds itself out by solicitation, advertisement, or otherwise as selling, providing, or arranging for, transportation by motor carrier for compensation."

(10) A property broker is not a shipper for the purposes of 49 CFR § 14101b. Nor is a property broker operating under a property broker license authorized to act as an investor engaged in arbitrage trades, in terms of the simultaneous buying and selling of transportation services. It is therefore Congress' sense that it should be mandatory for all property brokers' third-party commissions to be disclosed to their shipper clients, and brokers should be required, upon request, to disclose their commissions to carriers that are parties contractually-involved in brokered transactions. Congress notes that disclosure of brokers' commissions in other industries is reasonable, customary and/or required by law as is the case with brokers in the real estate<sup>6</sup>, insurance<sup>7</sup> and stock market industries<sup>8</sup>; Congress concludes there shall be a statutory right to broker commission transparency that may not be lawfully waived by contract and that a private cause of action should be enacted to enforce this provision.

#### (b) STATUTORY CHANGES

(1) 49 U.S. Code §13101(6) is hereby amended by inserting the words:

*“Dispatcher means an employee or an agent of a motor carrier with a fiduciary duty to his principal who coordinates traffic with shippers, property brokers and receivers and devotes his service exclusively to a single carrier, is part of that carrier’s organization, and is not in a position to allocate shipments between competing principals.”*

The remainder of 49 U.S. Code §13101 is re-sequenced as follows:

*(7) Foreign motor carrier.-The term "foreign motor carrier" means a person (including a motor carrier of property but excluding a motor private carrier)-*

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<sup>6</sup> Real estate broker commissions are agreed upon in advance and are disclosed on closing statements.

<sup>7</sup> The Consolidated Appropriations Act (CAA) which became Pub. Law No: 117-328 on December 29, 2022 requires health insurance agents and brokers to disclose their commissions to clients, in writing, in advance of a sale.

<sup>8</sup> The average fee charged by stock brokerage firms is typically between 1% and 2% of the total transaction value and is disclosed to the stock broker’s client in advance.

*(A)(i) that is domiciled in a contiguous foreign country; or*

*(ii) that is owned or controlled by persons of a contiguous foreign country; and*

*(B) in the case of a person that is not a motor carrier of property, that provides interstate transportation of property by motor vehicle under an agreement or contract entered into with a motor carrier of property (other than a motor private carrier or a motor carrier of property described in subparagraph (A)).*

*(8) Foreign motor private carrier.-The term "foreign motor private carrier" means a person (including a motor private carrier but excluding a motor carrier of property)-*

*(A)(i) that is domiciled in a contiguous foreign country; or*

*(ii) that is owned or controlled by persons of a contiguous foreign country; and*

*(B) in the case of a person that is not a motor private carrier, that provides interstate transportation of property by motor vehicle under an agreement or contract entered into with a person (other than a motor carrier of property or a motor private carrier described in subparagraph (A)).*

*(9) Freight forwarder.-The term "freight forwarder" means a person holding itself out to the general public (other than as a pipeline, rail, motor, or water carrier) to provide transportation of property for compensation and in the ordinary course of its business-*

*(A) assembles and consolidates, or provides for assembling and consolidating, shipments and performs or provides for break-bulk and distribution operations of the shipments;*

*(B) assumes responsibility for the transportation from the place of receipt to the place of destination; and*

*(C) uses for any part of the transportation a carrier subject to jurisdiction under this subtitle.*

*The term does not include a person using transportation of an air carrier subject to part A of subtitle VII.*

*(10) Highway.-The term "highway" means a road, highway, street, and way in a State.*

*(11) Household goods.-The term "household goods", as used in connection with transportation, means personal effects and property used or to be used in a dwelling, when a part of the equipment or supply of such dwelling, and similar property if the transportation of such effects or property is-*

*(A) arranged and paid for by the householder, except such term does not include property moving from a factory or store, other than property that the householder has purchased with the intent to use in his or her dwelling and is transported at the request of, and the transportation charges are paid to the carrier by, the householder; or*

*(B) arranged and paid for by another party.*

*(12) Household goods freight forwarder.-The term "household goods freight forwarder" means a freight forwarder of one or more of the following items: household goods, unaccompanied baggage, or used automobiles.*

*(13) Household goods motor carrier.-*

*(A) In general.-The term "household goods motor carrier" means a motor carrier that, in the ordinary course of its business of providing transportation of household goods, offers some or all of the following additional services:*

*(i) Binding and nonbinding estimates.*

*(ii) Inventorying.*

*(iii) Protective packing and unpacking of individual items at personal residences.*

*(iv) Loading and unloading at personal residences.*

(2) 49 U.S. Code §§13906(b)(3) is hereby amended in its entirety as follows:

*"Each new entrant broker subject to the requirements of this section shall provide financial security of \$50,000 for the first 24 months of operation and then \$75,000 thereafter for purposes of this subsection, regardless of the number of branch offices or sales agents of the broker. Each new entrant broker operating during its first 24 months under the \$50,000 starter bond shall be required to separately deposit and hold all carrier monies collected from shippers in escrow until paid out in full and not commingle carrier monies with the broker's operational accounts."*

(3) 49 U.S. Code § 13904(h) is hereby added:

*Broker Transparency*

*1. Transactions with shippers*

*(a) As a condition for maintaining registration, property brokers shall disclose their third-party commissions to their shipper clients on each load.*

*(b) Brokers shall be required to furnish commission documentation in writing and send the information electronically at the discretion of the requestor.*

*(c) This requirement cannot be waived by contract.*

*(d) Whenever by complaint or upon the Secretary's own initiative it is determined that a broker fails to reveal its commissions to a shipper, the Secretary shall commence an operating practices proceeding to determine if the broker should be assessed civil penalties, be referred for criminal prosecution, and/or if the broker's registration should be revoked for evasion of regulation under 49 U.S. Code § 14906 .*

## *2. Transactions with motor carriers*

*(a) As a condition for maintaining registration, property brokers shall disclose their third-party commissions to each carrier involved in a particular transaction with the broker upon the carrier's written or electronic request.*

*(b) Brokers shall be required to furnish commission documentation in writing and send the information electronically at the discretion of the requestor.*

*(c) This requirement cannot be waived by contract.*

*(d) Whenever by complaint or upon the Secretary's own initiative it is determined that a broker fails to reveal its commissions to a carrier involved in a particular transaction with the broker that has requested same, the Secretary shall commence an operating practices proceeding to determine if the broker should be assessed civil penalties, be referred for criminal prosecution, and/or if the broker's registration should be revoked for evasion of regulation under 49 U.S. Code § 14906 .*

*(4) 49 U.S. Code § 14916(a)(3) is hereby added:*

*"is in compliance with the broker transparency requirements set forth in section 13904."*

*(5) 49 U.S. Code § 13102(2) is hereby amended:*

*"The term "broker" means a person, other than a motor carrier or an employee or agent of a motor carrier, that as a principal or agent sells, offers for sale, negotiates for, or holds itself out by solicitation, advertisement, or otherwise as selling, providing, or*

*arranging for, transportation by motor carrier for compensation. A broker is not a shipper for the purposes of 49 CFR § 14101b“.*

(c) COMMENCEMENT OF STUDY

(1) IN GENERAL.—The Secretary of Transportation shall commence a study and report to Congress every four years on the appropriateness of current Federal law and regulations insofar as they impact property brokers and freight forwarders as transportation intermediaries with respect to registration, financial security, evasion of regulation, and transparency, in accordance with USDOT’s 1979 Regulatory Policies and Procedures (44 FR 11034, Feb. 26, 1979), Executive Order (E.O.) 12866, E.O. 13563, and section 610 of the Regulatory Flexibility Act.

(2) EFFECTIVE DATE.—The Secretary’s report shall be submitted to the Senate Committee on Commerce, Science, and Transportation and the House Committee on Transportation and Infrastructure one year after the date of the enactment of this Act and every four years thereafter.