

103^D CONGRESS
1ST SESSION

S. 412

AMENDMENTS

In the House of Representatives, U. S.,

November 15, 1993.

Resolved, That the bill from the Senate (S. 412) entitled “An Act to amend title 49, United States Code, regarding the collection of certain payments for shipments via motor common carriers of property and nonhousehold goods freight forwarders, and for other purposes”, do pass with the following

AMENDMENTS:

Strike out all after the enacting clause and insert:

1 ***SECTION 1. SHORT TITLE.***

2 *This Act may be cited as the “Negotiated Rates Act*
3 *of 1993”.*

4 ***SEC. 2. PROCEDURES FOR RESOLVING CLAIMS INVOLVING***
5 ***UNFILED, NEGOTIATED TRANSPORTATION***
6 ***RATES.***

7 *(a) IN GENERAL.—Section 10701 of title 49, United*
8 *States Code, is amended by adding at the end the following:*

9 ***“(f) PROCEDURES FOR RESOLVING CLAIMS INVOLVING***
10 ***UNFILED, NEGOTIATED TRANSPORTATION RATES.—***

11 ***“(1) IN GENERAL.—When a claim is made by a***
12 ***motor carrier of property (other than a household***
13 ***goods carrier) providing transportation subject to the***
14 ***jurisdiction of the Commission under subchapter II of***

1 *chapter 105 of this title, by a freight forwarder (other*
2 *than a household goods freight forwarder), or by a*
3 *party representing such a carrier or freight forwarder*
4 *regarding the collection of rates or charges for such*
5 *transportation in addition to those originally billed*
6 *and collected by the carrier or freight forwarder for*
7 *such transportation, the person against whom the*
8 *claim is made may elect to satisfy the claim under*
9 *the provisions of paragraph (2), (3), or (4) of this*
10 *subsection, upon showing that—*

11 “(A) *the carrier or freight forwarder is no*
12 *longer transporting property or is transporting*
13 *property for the purpose of avoiding the applica-*
14 *tion of this subsection; and*

15 “(B) *with respect to the claim—*

16 “(i) *the person was offered a transpor-*
17 *tation rate by the carrier or freight for-*
18 *warder other than that legally on file with*
19 *the Commission for the transportation serv-*
20 *ice;*

21 “(ii) *the person tendered freight to the*
22 *carrier or freight forwarder in reasonable*
23 *reliance upon the offered transportation*
24 *rate;*

1 “(iii) the carrier or freight forwarder
2 did not properly or timely file with the
3 Commission a tariff providing for such
4 transportation rate or failed to enter into
5 an agreement for contract carriage;

6 “(iv) such transportation rate was
7 billed and collected by the carrier or freight
8 forwarder; and

9 “(v) the carrier or freight forwarder
10 demands additional payment of a higher
11 rate filed in a tariff.

12 *If there is a dispute as to the showing under subpara-*
13 *graph (A), such dispute shall be resolved by the court*
14 *in which the claim is brought. If there is a dispute*
15 *as to the showing under subparagraph (B), such dis-*
16 *pute shall be resolved by the Commission. Pending the*
17 *resolution of any such dispute, the person shall not*
18 *have to pay any additional compensation to the car-*
19 *rier or freight forwarder. Satisfaction of the claim*
20 *under paragraph (2), (3), or (4) of this subsection*
21 *shall be binding on the parties, and the parties shall*
22 *not be subject to chapter 119 of this title.*

23 “(2) CLAIMS INVOLVING SHIPMENTS WEIGHING
24 10,000 POUNDS OR LESS.—A person from whom the
25 additional legally applicable and effective tariff rate

1 or charges are sought may elect to satisfy the claim
2 if the shipments each weighed 10,000 pounds or less,
3 by payment of 20 percent of the difference between the
4 carrier's applicable and effective tariff rate and the
5 rate originally billed and paid. In the event that a
6 dispute arises as to the rate that was legally applica-
7 ble to the shipment, such dispute shall be resolved by
8 the Commission.

9 “(3) CLAIMS INVOLVING SHIPMENTS WEIGHING
10 MORE THAN 10,000 POUNDS.—A person from whom the
11 additional legally applicable and effective tariff rate
12 or charges are sought may elect to satisfy the claim
13 if the shipments each weighed more than 10,000
14 pounds, by payment of 15 percent of the difference be-
15 tween the carrier's applicable and effective tariff rate
16 and the rate originally billed and paid. In the event
17 that a dispute arises as to the rate that was legally
18 applicable to the shipment, such dispute shall be re-
19 solved by the Commission.

20 “(4) CLAIMS INVOLVING PUBLIC WAREHOUSE-
21 MEN.—Notwithstanding paragraphs (2) and (3), a
22 person from whom the additional legally applicable
23 and effective tariff rate or charges are sought may
24 elect to satisfy the claim by payment of 5 percent of
25 the difference between the carrier's applicable and ef-

1 *fective tariff rate and the rate originally billed and*
2 *paid if such person is a public warehouseman. In the*
3 *event that a dispute arises as to the rate that was le-*
4 *gally applicable to the shipment, such dispute shall be*
5 *resolved by the Commission.*

6 “(5) *EFFECTS OF ELECTION.*—*When a person*
7 *from whom additional legally applicable freight rates*
8 *or charges are sought does not elect to use the provi-*
9 *sions of paragraph (2), (3), or (4), the person may*
10 *pursue all rights and remedies existing under this*
11 *title.*

12 “(6) *STAY OF ADDITIONAL COMPENSATION.*—
13 *When a person proceeds under this section to chal-*
14 *lenge the reasonableness of the legally applicable*
15 *freight rate or charges being claimed by a carrier or*
16 *freight forwarder described in paragraph (1) in addi-*
17 *tion to those already billed and collected, the person*
18 *shall not have to pay any additional compensation to*
19 *the carrier or freight forwarder until the Commission*
20 *has made a determination as to the reasonableness of*
21 *the challenged rate as applied to the freight of the per-*
22 *son against whom the claim is made.*

23 “(7) *LIMITATION ON STATUTORY CONSTRUC-*
24 *TION.*—*Except as authorized in paragraphs (2), (3),*
25 *(4), and (9) of this subsection, nothing in this sub-*

1 *section shall relieve a motor common carrier of the*
2 *duty to file and adhere to its rates, rules, and classi-*
3 *fications as required in sections 10761 and 10762 of*
4 *this title.*

5 “(8) NOTIFICATION OF ELECTION.—

6 “(A) GENERAL RULE.—A person must no-

7 *tify the carrier or freight forwarder as to its elec-*
8 *tion to proceed under paragraph (2), (3), or (4).*
9 *Except as provided in subparagraphs (B), (C),*
10 *and (D), such election may be made at any time.*

11 “(B) DEMANDS FOR PAYMENT INITIALLY

12 MADE AFTER DATE OF ENACTMENT.—If the car-

13 rier or freight forwarder or party representing

14 such carrier or freight forwarder initially de-

15 mands the payment of additional freight charges

16 after the date of the enactment of this subsection

17 and notifies the person from whom additional

18 freight charges are sought of the provisions of

19 paragraphs (1) through (7) at the time of the

20 making of such initial demand, the election must

21 be made not later than the later of—

22 “(i) the 60th day following the filing of

23 an answer to a suit for the collection of such

24 additional legally applicable freight rate or

25 charges, or

1 “(ii) the 90th day following the date of
2 the enactment of this subsection.

3 “(C) *PENDING SUITS FOR COLLECTION*
4 *MADE BEFORE OR ON DATE OF ENACTMENT.—If*
5 *the carrier or freight forwarder or party rep-*
6 *resenting such carrier or freight forwarder has*
7 *filed, before or on the date of the enactment of*
8 *this subsection, a suit for the collection of addi-*
9 *tional freight charges and notifies the person*
10 *from whom additional freight charges are sought*
11 *of the provisions of paragraphs (1) through (7),*
12 *the election must be made not later than the 90th*
13 *day following the date on which such notification*
14 *is received.*

15 “(D) *DEMANDS FOR PAYMENT MADE BE-*
16 *FORE OR ON DATE OF ENACTMENT.—If the car-*
17 *rier or freight forwarder or party representing*
18 *such carrier or freight forwarder has demanded*
19 *the payment of additional freight charges, and*
20 *has not filed a suit for the collection of such ad-*
21 *ditional freight charges, before or on the date of*
22 *the enactment of this subsection and notifies the*
23 *person from whom additional freight charges are*
24 *sought of the provisions of paragraphs (1)*

1 *through (7), the election must be made not later*
2 *than the later of—*

3 “(i) *the 60th day following the filing of*
4 *an answer to a suit for the collection of such*
5 *additional legally applicable freight rate or*
6 *charges, or*

7 “(ii) *the 90th day following the date of*
8 *the enactment of this subsection.*

9 “(9) *CLAIMS INVOLVING SMALL-BUSINESS CON-*
10 *CERNS, CHARITABLE ORGANIZATIONS, AND RECYCLA-*
11 *BLE MATERIALS.—Notwithstanding paragraphs (2),*
12 *(3), and (4), a person from whom the additional le-*
13 *gally applicable and effective tariff rate or charges*
14 *are sought shall not be liable for the difference be-*
15 *tween the carrier’s applicable and effective tariff rate*
16 *and the rate originally billed and paid—*

17 “(A) *if such person qualifies as a small-*
18 *business concern under the Small Business Act*
19 *(15 U.S.C. 631 et seq.),*

20 “(B) *if such person is an organization*
21 *which is described in section 501(c)(3) of the In-*
22 *ternal Revenue Code of 1986 and exempt from*
23 *tax under section 501(a) of such Code, or*

24 “(C) *if the cargo involved in the claim is re-*
25 *cyclable materials, as defined in section 10733.”.*

1 (b) *CONFORMING AMENDMENT.*—Subsection (e) of such
 2 section is amended by striking “In” and inserting “Except
 3 as provided in subsection (f), in”.

4 (c) *APPLICABILITY.*—The amendments made by sub-
 5 sections (a) and (b) of this section shall apply to all claims
 6 pending as of the date of the enactment of this Act and
 7 to all claims arising from transportation shipments ten-
 8 dered on or before the last day of the 24-month period begin-
 9 ning on such date of enactment.

10 (d) *REPORT.*—Not later than 18 months after the date
 11 of the enactment of this Act, the Interstate Commerce Com-
 12 mission shall transmit to Congress a report regarding
 13 whether there exists a justification for extending the appli-
 14 cability of amendments made by subsections (a) and (b) of
 15 this section beyond the period specified in subsection (c).

16 (e) *ALTERNATIVE PROCEDURE FOR RESOLVING DIS-*
 17 *PUTES.*—

18 (1) *GENERAL RULE.*—For purposes of section
 19 10701 of title 49, United States Code, it shall be an
 20 unreasonable practice for a motor carrier of property
 21 (other than a household goods carrier) providing
 22 transportation subject to the jurisdiction of the Com-
 23 mission under subchapter II of chapter 105 of such
 24 title, a freight forwarder (other than a household
 25 goods freight forwarder), or a party representing such

1 *a carrier or freight forwarder to attempt to charge or*
2 *to charge for a transportation service provided before*
3 *September 30, 1990, the difference between the appli-*
4 *cable rate that is lawfully in effect pursuant to a tar-*
5 *iff that is filed in accordance with chapter 107 of*
6 *such title by the carrier or freight forwarder applica-*
7 *ble to such transportation service and the negotiated*
8 *rate for such transportation service if the carrier or*
9 *freight forwarder is no longer transporting property*
10 *between places described in section 10521(a)(1) of*
11 *such title or is transporting property between places*
12 *described in section 10521(a)(1) of such title for the*
13 *purpose of avoiding the application of this subsection.*

14 (2) *JURISDICTION OF COMMISSION.*—*The Com-*
15 *mission shall have jurisdiction to make a determina-*
16 *tion of whether or not attempting to charge or the*
17 *charging of a rate by a motor carrier or freight for-*
18 *warder or party representing a motor carrier or*
19 *freight forwarder is an unreasonable practice under*
20 *paragraph (1). If the Commission determines that at-*
21 *tempting to charge or the charging of the rate is an*
22 *unreasonable practice under paragraph (1), the car-*
23 *rier, freight forwarder, or party may not collect the*
24 *difference described in paragraph (1) between the ap-*
25 *plicable rate and the negotiated rate for the transpor-*

1 *tation service. In making such determination, the*
2 *Commission shall consider—*

3 *(A) whether the person was offered a trans-*
4 *portation rate by the carrier or freight forwarder*
5 *or party other than that legally on file with the*
6 *Commission for the transportation service;*

7 *(B) whether the person tendered freight to*
8 *the carrier or freight forwarder in reasonable re-*
9 *liance upon the offered transportation rate;*

10 *(C) whether the carrier or freight forwarder*
11 *did not properly or timely file with the Commis-*
12 *sion a tariff providing for such transportation*
13 *rate or failed to enter into an agreement for con-*
14 *tract carriage;*

15 *(D) whether the transportation rate was*
16 *billed and collected by the carrier or freight for-*
17 *warder; and*

18 *(E) whether the carrier or freight forwarder*
19 *or party demands additional payment of a high-*
20 *er rate filed in a tariff.*

21 *(3) STAY OF ADDITIONAL COMPENSATION.—When*
22 *a person proceeds under this subsection to challenge*
23 *the reasonableness of the practice of a motor carrier,*
24 *freight forwarder, or party described in paragraph*
25 *(1) to attempt to charge or to charge the difference de-*

1 scribed in paragraph (1) between the applicable rate
2 and the negotiated rate for the transportation service
3 in addition to those charges already billed and col-
4 lected for the transportation service, the person shall
5 not have to pay any additional compensation to the
6 carrier, freight forwarder, or party until the Commis-
7 sion has made a determination as to the reasonable-
8 ness of the practice as applied to the freight of the
9 person against whom the claim is made.

10 (4) *TREATMENT.*—Paragraph (1) of this sub-
11 section is enacted as an exception, and shall be treat-
12 ed as an exception, to the requirements of sections
13 10761(a) and 10762 of title 49, United States Code,
14 relating to a filed tariff rate for a transportation or
15 service subject to the jurisdiction of the Commission
16 and other general tariff requirements.

17 (5) *NONAPPLICABILITY OF NEGOTIATED RATE*
18 *DISPUTE RESOLUTION PROCEDURE.*—If a person
19 elects to seek enforcement of paragraph (1) with re-
20 spect to a rate for a transportation or service, section
21 10701(f) of title 49, United States Code, as added by
22 subsection (a) of this section, shall not apply to such
23 rate.

24 (6) *DEFINITIONS.*—For purposes of this sub-
25 section, the following definitions apply:

1 (A) COMMISSION, HOUSEHOLD GOODS,
2 HOUSEHOLD GOODS FREIGHT FORWARDER, AND
3 MOTOR CARRIER.—The terms “Commission”,
4 “household goods”, “household goods freight for-
5 warder”, and “motor carrier” have the meaning
6 such terms have under section 10102 of title 49,
7 United States Code.

8 (B) NEGOTIATED RATE.—The term “nego-
9 tiated rate” means a rate, charge, classification,
10 or rule agreed upon by a motor carrier or freight
11 forwarder described in paragraph (1) and a
12 shipper through negotiations pursuant to which
13 no tariff was lawfully and timely filed with the
14 Commission and for which there is written evi-
15 dence of such agreement.

16 (f) PRIOR SETTLEMENTS AND ADJUDICATIONS.—Any
17 claim that, but for this subsection, would be subject to any
18 provision of this Act (including any amendment made by
19 this Act) and that was settled by mutual agreement of the
20 parties to such claim, or resolved by a final adjudication
21 of a Federal or State court, before the date of the enactment
22 of this Act shall be treated as binding, enforceable, and not
23 contrary to law, unless such settlement was agreed to as
24 a result of fraud or coercion.

1 (g) *RATE REASONABLENESS.*—Section 10701(e) of
 2 title 49, United States Code, is amended by adding at the
 3 end the following: “Any complaint brought against a motor
 4 carrier (other than a carrier described in subsection
 5 (f)(1)(A)) by a person (other than a motor carrier) for un-
 6 reasonably high rates for past or future transportation shall
 7 be determined under this subsection.”.

8 **SEC. 3. STATUTE OF LIMITATIONS.**

9 (a) *MOTOR CARRIER CHARGES.*—Section 11706(a) of
 10 title 49, United States Code, is amended by striking the
 11 period at the end and inserting the following: “; except that
 12 a motor carrier (other than a motor carrier providing
 13 transportation of household goods) or freight forwarder
 14 (other than a household goods freight forwarder)—

15 “(1) must begin such a civil action within 2
 16 years after the claim accrues if the transportation or
 17 service is provided by the carrier in the 1-year period
 18 beginning on the date of the enactment of the Nego-
 19 tiated Rates Act of 1993; and

20 “(2) must begin such a civil action within 18
 21 months after the claim accrues if the transportation
 22 or service is provided by the carrier after the last day
 23 of such 1-year period.”.

24 (b) *MOTOR CARRIER OVERCHARGES.*—Section
 25 11706(b) of title 49, United States Code, is amended by

1 striking “. If that claim is against a common carrier” and
 2 inserting the following: “; except that a person must begin
 3 a civil action to recover overcharges from a motor carrier
 4 subject to the jurisdiction of the Commission under sub-
 5 chapter II of chapter 105 of this title for transportation
 6 or service—

7 “(1) within 2 years after the claim accrues if
 8 such transportation or service is provided in the 1-
 9 year period beginning on the date of the enactment of
 10 the Negotiated Rate Act of 1993; and

11 “(2) within 18 months after the claim accrues if
 12 such transportation or service is provided after the
 13 last day of such 1-year period.

14 If the claim is against a common carrier”.

15 (c) CONFORMING AMENDMENT.—Section 11706(d) of
 16 title 49, United States Code, is amended—

17 (1) by striking “3-year period” each place it ap-
 18 pears and inserting “limitation periods”;

19 (2) by striking “is extended” the first place it
 20 appears and inserting “are extended”; and

21 (3) by striking “each”.

22 **SEC. 4. TARIFF RECONCILIATION RULES FOR MOTOR CAR-**
 23 **RIERS OF PROPERTY.**

24 (a) IN GENERAL.—Chapter 117 of title 49, United
 25 States Code, is amended by adding at the end the following:

1 **“§ 11712. Tariff reconciliation rules for motor com-**
2 **mon carriers of property**

3 “(a) *MUTUAL CONSENT.*—Subject to Commission re-
4 view and approval, motor carriers subject to the jurisdic-
5 tion of the Commission under subchapter II of chapter 105
6 of this title (other than motor carriers providing transpor-
7 tation of household goods) and shippers may resolve, by mu-
8 tual consent, overcharge and undercharge claims resulting
9 from incorrect tariff provisions or billing errors arising
10 from the inadvertent failure to properly and timely file and
11 maintain agreed upon rates, rules, or classifications in
12 compliance with sections 10761 and 10762 of this title. Res-
13 olution of such claims among the parties shall not subject
14 any party to the penalties of chapter 119 of this title.

15 “(b) *LIMITATION ON STATUTORY CONSTRUCTION.*—
16 Nothing in this section shall relieve the motor carrier of
17 the duty to file and adhere to its rates, rules, and classifica-
18 tions as required in sections 10761 and 10762, except as
19 provided in subsection (a) of this section.

20 “(c) *RULEMAKING PROCEEDING.*—Not later than 90
21 days after the date of the enactment of this section, the Com-
22 mission shall institute a proceeding to establish rules pursu-
23 ant to which the tariff requirements of sections 10761 and
24 10762 of this title shall not apply under circumstances de-
25 scribed in subsection (a) of this section.”.

1 (b) *CONFORMING AMENDMENT.*—The analysis for
 2 chapter 117 of title 49, United States Code, is amended by
 3 adding at the end the following:

“11712. Tariff reconciliation rules for motor common carriers of property.”.

4 **SEC. 5. CUSTOMER ACCOUNT CODES AND RANGE TARIFFS.**

5 (a) *CUSTOMER ACCOUNT CODES.*—Section 10762 of
 6 title 49, United States Code, is amended by adding at the
 7 end the following:

8 “(h) *CUSTOMER ACCOUNT CODES.*—No tariff filed by
 9 a motor carrier of property with the Commission before,
 10 on, or after the date of the enactment of this subsection may
 11 be held invalid solely on the basis that a numerical or alpha
 12 account code is used in such tariff to designate customers
 13 or to describe the applicability of rates. For transportation
 14 performed on and after the 180th day following such date
 15 of enactment, the name of the customer for each account
 16 code must be set forth in the tariff (other than the tariff
 17 of a motor carrier providing transportation of household
 18 goods).”.

19 (b) *RANGE TARIFFS.*—Such section is further amended
 20 by adding at the end the following:

21 “(i) *RANGE TARIFFS.*—No tariff filed by a motor car-
 22 rier of property with the Commission before, on, or after
 23 the date of the enactment of this subsection may be held
 24 invalid solely on the basis that the tariff does not show a
 25 specific rate or discount for a specific shipment if the tariff

1 *is based on a range of rates or discounts for specific classes*
 2 *of shipments. For transportation performed on or after the*
 3 *180th day following such date of enactment, such a range*
 4 *tariff must identify the specific rate or discount from*
 5 *among the range of rates or discounts contained in such*
 6 *range tariff which is applicable to each specific shipment*
 7 *or must contain an objective means for determining the*
 8 *rate.”.*

9 **SEC. 6. CONTRACTS OF MOTOR CONTRACT CARRIERS.**

10 (a) *IN GENERAL.*—Section 10702 of title 49, United
 11 States Code, is amended by adding at the end the following
 12 new subsection:

13 “(c) *CONTRACTS OF CARRIAGE FOR MOTOR CONTRACT*
 14 *CARRIERS.*—

15 “(1) *GENERAL RULE.*—A motor contract carrier
 16 providing transportation subject to the jurisdiction of
 17 the Commission under subchapter II of chapter 105
 18 of this title shall enter into a written agreement, sepa-
 19 rate from the bill of lading or receipt, for each con-
 20 tract for the provision of transportation subject to
 21 such jurisdiction which is entered into after the 90th
 22 day following the date of the enactment of this sub-
 23 section.

24 “(2) *MINIMUM CONTENT REQUIREMENTS.*—The
 25 written agreement shall, at a minimum—

1 “(A) identify the parties thereto;

2 “(B) commit the shipper to tender and the
3 carrier to transport a series of shipments;

4 “(C) contain the contract rate or rates for
5 the transportation service to be or being pro-
6 vided; and

7 “(D)(i) state that it provides for the assign-
8 ment of motor vehicles for a continuing period of
9 time for the exclusive use of the shipper; or

10 “(ii) state that it provides that the service
11 is designed to meet the distinct needs of the
12 shipper.

13 “(3) *RETENTION BY CARRIER.*—All written
14 agreements entered into by a motor contract carrier
15 under paragraph (1) shall be retained by the carrier
16 while in effect and for a minimum period of 3 years
17 thereafter and shall be made available to the Commis-
18 sion upon request.

19 “(4) *RANDOM AUDITS BY COMMISSION.*—The
20 Commission shall conduct periodic random audits to
21 ensure that motor contract carriers are complying
22 with this subsection and are adhering to the rates set
23 forth in their agreements.”.

24 “(b) *CIVIL PENALTY.*—Section 11901(g) of such title is
25 amended—

1 (1) by inserting “or enter into or retain a writ-
 2 ten agreement under section 10702(c) of this title”
 3 after “under this subtitle” the first place it appears;
 4 and

5 (2) by striking “or (5)” and inserting “(5) does
 6 not comply with section 10702(c) of this title, or (6)”.

7 (c) *CRIMINAL PENALTY*.—Section 11909(b) of such
 8 title is amended—

9 (1) by inserting “or enter into or retain a writ-
 10 ten agreement under section 10702(c) of this title”
 11 after “under this subtitle” the first place it appears;
 12 and

13 (2) in clause (1) by inserting after “make that
 14 report” the following: “or willfully does not enter into
 15 or retain that agreement”.

16 **SEC. 7. BILLING AND COLLECTING PRACTICES.**

17 (a) *IN GENERAL*.—Subchapter IV of chapter 107 of
 18 title 49, United States Code, is amended by adding at the
 19 end the following:

20 **“§ 10767. Billing and collecting practices**

21 “(a) *REGULATIONS LIMITING REDUCED RATES*.—Not
 22 later than 120 days after the date of the enactment of this
 23 section, the Commission shall issue regulations that prohibit
 24 a motor carrier subject to the jurisdiction of the Commis-
 25 sion under subchapter II of chapter 105 of this title from

1 *providing a reduction in a rate set forth in its tariff or*
2 *contract for the provision of transportation of property to*
3 *any person other than (1) the person paying the motor car-*
4 *rier directly for the transportation service according to the*
5 *bill of lading, receipt, or contract, or (2) an agent of the*
6 *person paying for the transportation.*

7 “(b) *DISCLOSURE OF ACTUAL RATES, CHARGES, AND*
8 *ALLOWANCES.—The regulations of the Commission issued*
9 *pursuant to this section shall require a motor carrier to*
10 *disclose, when a document is presented or transmitted elec-*
11 *tronically for payment to the person responsible directly to*
12 *the motor carrier for payment or agent of such responsible*
13 *person, the actual rates, charges, or allowances for the*
14 *transportation service and shall prohibit any person from*
15 *causing a motor carrier to present false or misleading infor-*
16 *mation on a document about the actual rate, charge, or al-*
17 *lowance to any party to the transaction. Where the actual*
18 *rate, charge, or allowance is dependent upon the perform-*
19 *ance of a service by a party to the transportation arrange-*
20 *ment, such as tendering a volume of freight over a stated*
21 *period of time, the motor carrier shall indicate in any docu-*
22 *ment presented for payment to the person responsible di-*
23 *rectly to the motor carrier for the payment that a reduction,*
24 *allowance, or other adjustment may apply.*

1 “(c) *PAYMENTS OR ALLOWANCES FOR CERTAIN SERV-*
 2 *ICES.—The regulations issued by the Commission pursuant*
 3 *to this section shall not prohibit a motor carrier from mak-*
 4 *ing payments or allowances to a party to the transaction*
 5 *for services that would otherwise be performed by the motor*
 6 *carrier, such as a loading or unloading service, if the pay-*
 7 *ments or allowances are reasonably related to the cost that*
 8 *such party knows or has reason to know would otherwise*
 9 *be incurred by the motor carrier.”.*

10 (b) *CONFORMING AMENDMENT.—The analysis for such*
 11 *subchapter is amended by adding at the end the following*
 12 *new item:*

“10767. Billing and collecting practices.”.

13 (c) *VIOLATION.—*

14 (1) *IN GENERAL.—Section 11901 of such title is*
 15 *amended by redesignating subsection (l) as subsection*
 16 *(m) and by inserting after subsection (k) the follow-*
 17 *ing:*

18 “(l) *RATE DISCOUNTS.—A person, or an officer, em-*
 19 *ployee, or agent of that person, that knowingly pays, ac-*
 20 *cepts, or solicits a reduced rate or rates in violation of the*
 21 *regulations issued under section 10767 of this title is liable*
 22 *to the United States for a civil penalty of not less than*
 23 *\$5,000 and not more than \$10,000 plus 3 times the amount*
 24 *of damages which a party incurs because of such violation.*
 25 *Notwithstanding any other provision of this title, the ex-*

1 *press civil penalties and damages provided for in this sub-*
 2 *section are the exclusive legal sanctions to be imposed under*
 3 *this title for practices found to be in violation of the regula-*
 4 *tions issued under section 10767 and such violations do not*
 5 *render tariff or contract provisions void or unenforceable.”.*

6 (2) *VENUE.*—Section 11901(m)(2) of such title
 7 (as redesignated by paragraph (1)) is amended by
 8 striking “or (k)” and inserting “(k), or (l)”.

9 **SEC. 8. RESOLUTION OF DISPUTES RELATING TO CON-**
 10 **TRACT OR COMMON CARRIER CAPACITIES.**

11 *Section 11101 of title 49, United States Code, is*
 12 *amended by adding at the end the following:*

13 “(d) *RESOLUTION OF DISPUTES RELATING TO CON-*
 14 *TRACT OR COMMON CARRIER CAPACITIES.*—If a motor car-
 15 rier (other than a motor carrier providing transportation
 16 of household goods) subject to the jurisdiction of the Com-
 17 mission under subchapter II of chapter 105 of this title has
 18 authority to provide transportation as both a motor com-
 19 mon carrier and a motor contract carrier and a dispute
 20 arises as to whether certain transportation is provided in
 21 its common carrier or contract carrier capacity and the
 22 parties are not able to resolve the dispute consensually, the
 23 Commission shall have jurisdiction to, and shall, resolve the
 24 dispute.”.

1 **SEC. 9. LIMITATION ON STATUTORY CONSTRUCTION.**

2 *Nothing in this Act (including any amendment made*
 3 *by this Act) shall be construed as limiting or otherwise af-*
 4 *fecting application of title 11, United States Code, relating*
 5 *to bankruptcy; title 28, United States Code, relating to the*
 6 *jurisdiction of the courts of the United States (including*
 7 *bankruptcy courts); or the Employee Retirement Income Se-*
 8 *curity Act of 1974.*

Amend the title so as to read: “An Act to amend title 49, United States Code, relating to procedures for resolving claims involving unfiled, negotiated transportation rates, and for other purposes.”.

Attest:

Clerk.

S 412 EAH1S—2