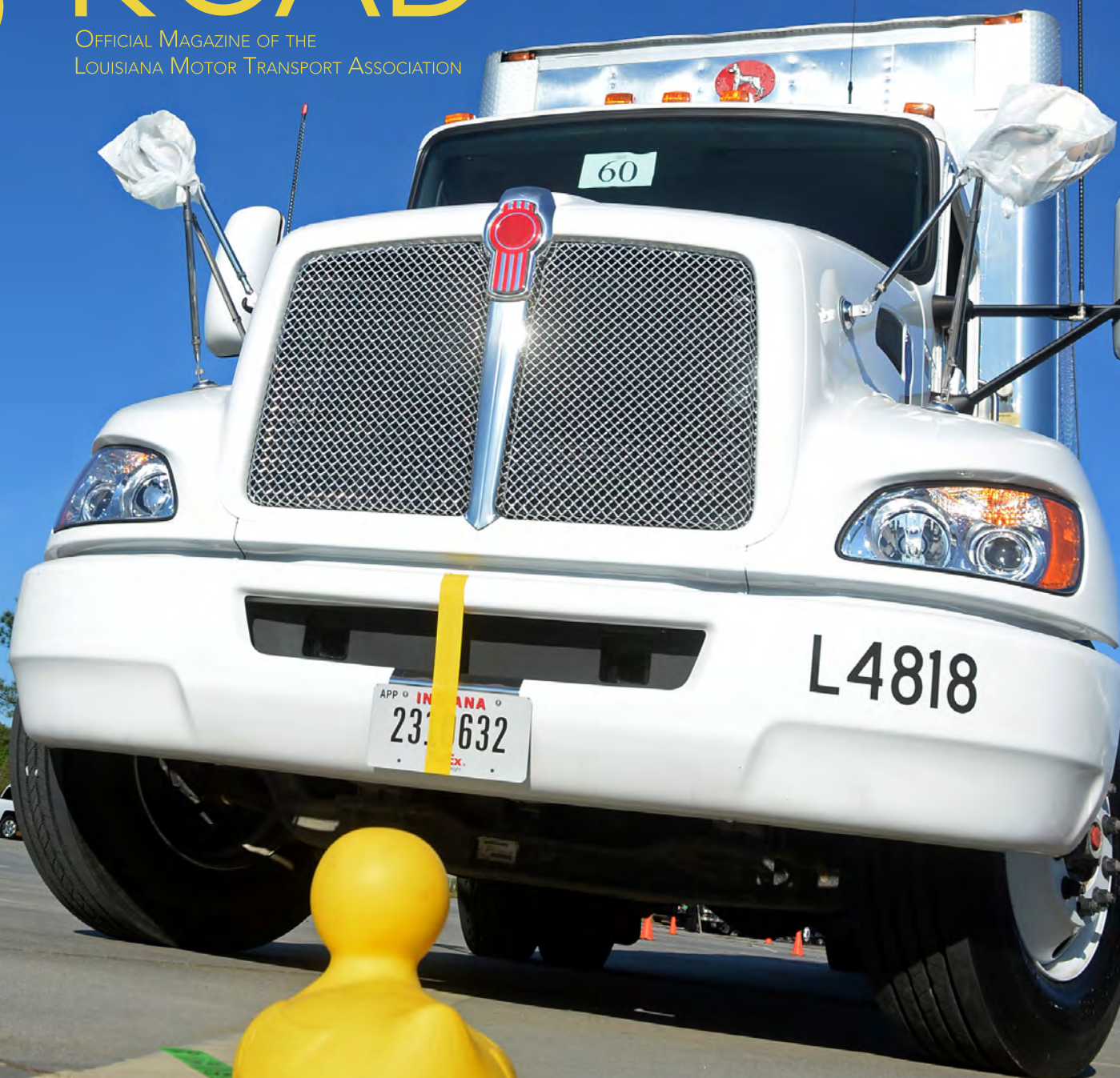


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### On the cover: "LMTA Past Presidents honored at 75th Annual LMTA Convention"

Standing from left to right: Martin Frisard, Frisard's Trucking Company, Gramercy (2009-2010); Kary Bryce, Preferred Materials, Sibley (2012-2013); Max Luna, Agway Systems, Baton Rouge (2004-2005); Doug Place, Dupre Logistics, Lafayette (2011-2012); John Majors, Quality Transport, Baton Rouge (1996-1997); Pat Hay, Hay Brothers, Lake Charles (1993-1994); Ellis Vliet, Turner Industries Group, Jefferson (2013-2014); Tom O'Neal, Hercules Transport, Choudrant (1994-1996); Randy Guillot, Triple G Express, Jefferson (2011-2012); Glen Guillot, Southeastern Motor Freight, Jefferson (2001-2003); Elmo Guillot, Southeastern Motor Freight, Jefferson (1973-1974); Seated: Greg Morrison, Quality Transport, Bossier City (2014-2015); Terry Warren, Aeropres Corporation, Sibley (2015-2016)





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.....  
LETTER FROM THE  
.....  
EXECUTIVE DIRECTOR  
.....

*“Most look up and admire the stars.*

*A champion climbs a mountain and grabs one.”*

*(Author Unknown)*

At press time, we learned that two Louisiana’s drivers who competed in the National Truck Driving Championships in St. Louis made it to the finals. In the end, Chad Rudesill with FedEx Ground won 2nd Place in the 5 Axle Division and Eric Courville with FedEx Freight won 3rd Place in the Sleeper Berth Division. Not too shabby in a national competition!

We are so very proud of the all of drivers who represented Louisiana at the state and national competition. It takes guts to enter the competition. It takes skill and nerves of steel to make it to the finals. One day we will bring home the big trophy. One day...

Speaking of champions, preparing for our 75th anniversary convention provided me with an opportunity to reflect on the past 30 years that I have had the privilege to experience at LMTA. Looking thru old photos, I recognized many of the champions who were instrumental in our accomplishments over the years. Sadly, many of those champions are no longer with us but their spirit lives in all of us as we continue to face the special challenges confronting the trucking industry today.

It’s interesting that many of the same issues that were around “back in the day” have not gone away – highway funding, truck size and weight, intermodal competition, etc. Sure, these issues have changed a little over the years, but the fundamental principles of the issues are still around...and probably always will be in some form or the other. The truck driver shortage and waste tires are new to the mix.

When the next issue of the OPEN ROAD is published, we will have a new Governor and fairly new Legislature (due to term limits) to introduce to the trucking industry – and vice versa. That alone will be a challenge, especially since we anticipate a special legislative session dedicated to highway funding in addition to the regular session.

We will be there representing the trucking industry...as this organization has been for the past 75 years...and we look forward to having you with us.



Cathy F. Gautreaux  
LMTA Executive Director



# TASK FORCE TACKLES

**L**ouisiana's Waste Tire Program, established in 1989 to prevent old tires from being illegally dumped, is on its way to a redesign.

"There hasn't been a real comprehensive, collaborative group effort to reform the program," said Department of Environmental Quality Assistant Secretary Chance McNeely. "As a result of that, some of the regulations admittedly are not consistent with statutes and practices."

DEQ hopes the Waste Tire Program Task Force can help resolve a lot of the existing issues, he said.

Stakeholders say those issues include tire disposal fees, identifying potential savings and new markets for processed tires, and speeding up DEQ's approval process for those tires.

Tire processors say the fees are the biggest problem. They say the fees set by state law don't cover the program's processing costs.

Other stakeholders, like the tire dealers, don't want to see the fees increased until other avenues have been explored like cutting costs or inefficiencies from the program.

"Our concerns are before we start increasing fees, let's see where wasted money is first," said Dennis Richard Jr., a Task Force member and second vice president of the Louisiana Independent Tire Dealers Association. "Maybe they don't need fee increases. Maybe there's some wasted money."

After all, DEQ is suing Port Allen-based Environmental Industries Recycling, claiming the company owes the state \$3.4 million because it delivered 46 million pounds more than the agency approved. The company is disputing the allegations.

Despite that problem and others, Richard said tire dealers love the Waste Tire Program because it works to stop illegal dumping.

Under the program, consumers are charged a \$2 disposal fee for new car tires; \$5 for medium truck tires, or those that weigh less than 100 pounds; and \$10 for off-road tires. The state pays processors 7.5 cents per pound of tires they recycle.

The problem is that the state is paying more to process the larger tires than it collects, said Kip D. Vincent, owner of Colt Scrap Tire in Scott. The opposite holds true for passenger vehicle tires, but that extra money is no longer enough to offset the other costs.

Processors see higher fees as the only way to fix the program.

They were upset that a proposed bill to do that was withdrawn during the most recent legislative session.

The bill, authored by Rep. James Armes, would have raised the fees to \$3 for passenger and light-truck tires and \$7.50 for medium truck tires. Processors would have been paid 9 cents per pound for recycling old tires.

Late in the session, an amendment to a House bill by Rep. Blake Miguez (R-Erath) was amended in the Senate committee to change the definition of "medium truck tire". By deleting the weight threshold of 100 pounds in the definitions, fees on tires used on vehicles larger than a pickup truck but smaller than an 18-wheeler were increased from \$2 to \$5: local delivery trucks, larger heavy duty pickup trucks, etc. The Fiscal Note indicated an increase in revenue of approximately \$87,000 per year.

The Louisiana Motor Transport Association led the charge that derailed the bill. LMTA Executive Director Cathy Gautreaux wanted to know the rationale behind the increase before the state saddled truckers with additional costs.



# WASTE TIRE PROGRAM

By Ted Griggs

Sen. Michael Walsworth, R-West Monroe and chair of the Senate Environmental Quality Committee, told Task Force members no one could answer those questions.

The fees have to be tied directly to the program's cost, he said. But those numbers weren't available to lawmakers, so the bill was withdrawn.

McNeely said from DEQ's perspective, it will be up to the stakeholders to decide on whether to change the fees.

**LMTA EXECUTIVE DIRECTOR CATHY GAUTREAUX WANTED TO KNOW THE RATIONALE BEHIND THE INCREASE BEFORE THE STATE SADDLED TRUCKERS WITH ADDITIONAL COSTS.**

However, there's no way to tell if all of the stakeholders will be able to agree, he said. If not, the Task Force will issue recommendations, with pros and cons for each.

McNeely said he expects the proposals could be ready by the end of the year.

Typically, bills based on task force findings tend to move more easily through the legislative process.

One issue that may not wait for those recommendations is whether processors begin charging tire retailers for picking up the old tires.

Vincent said without fee increases, he may have to bill retailers for the service.

"The program's not going to work if we all go out of business anyway," he said.

McNeely said that under the current law, DEQ doesn't have the authority to regulate whether processors charge tire dealers to pick up old tires.

Richard said originally there wasn't supposed to be a charge.

So now tire dealers have to worry about how much they will be charged for what was intended to be a free service, he said.

Other topics the Task Force is expected to discuss include:

- **Finding new markets for processed tires.** Richard said the processing fees were originally designed to help processors bridge the gap between collecting the tires and selling them to users.

The idea was that commercial uses for the processed tires would take off, and the state could get out of the business altogether, Richard said. That didn't happen.

Now, Louisiana has to figure out a way to make sure the processors stick around without overburdening consumers or tire retailers, he said.

McNeely said DEQ intends to open up new markets for the processed tires. One possibility is overseas customers, but the agency must first come up with a way to confirm that the processed tires have been sent to the customer and are being used for the intended purpose.

- **Speeding up DEQ approvals for end-market uses.** For standard uses, such as bulkheads, DEQ wants to be able to tell a processor how long it will take for approval, McNeely said.

The Task Force may also take a look at some other Waste Tire Program issues. The last two Legislative audits found the program lacks adequate monitoring to make sure tire processors aren't being overpaid. The program has paid \$71.1 million to six waste tire processors between July 1, 2007, and June 30, 2014.

DEQ officials have said changes are being made to address that and other issues. ♣





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# TWIN 33 CONTROVERSY

By Steve Wheeler

**I**n an industry where attacks can come from all directions, trucking companies are united in one common goal: safe, efficient and profitable highway transportation. Whether it's because of cordiality or self-preservation, the trucking industry usually sticks together in a pretty tight-knit group.

But while the industry rarely finds its members at odds with each other, occasionally an issue comes along that causes division. One issue that has split the trucking industry for years is the issue of legalizing larger trailers on double rigs, or more specifically, should the size of twin trailers be increased from 28 feet to 33 feet?

Congress is currently considering whether to permit 33-foot-long double trailers on the nation's highways, and the trucking industry remains divided on the issue. Current federal law passed in 1982 limits twin trailers to 28 feet in length, although 19 states that already allowed 33-foot trailers were grandfathered into the federal law. An amendment to the current U.S. transportation bill would force states to allow twin 33-foot trailers on all U.S. highways.

The Louisiana Motor Transport Association Board of Directors voted recently to oppose the measure.

"Although not unanimous, the LMTA Board of Directors did vote overwhelmingly to oppose the legislation," said LMTA Executive Director Cathy Gautreaux. "The most significant issue of concern to many on the Board who opposed the legislation was the fear that this legislation would pave the way for future federal mandates to

increase the minimum truck weight limits on the Interstate."

Proponents of the bill say the increased trailer length would not change the overall weight limit of 80,000 pounds because most trailers are filled to capacity long before reaching that federal weight limit. The proponents also say that "twin 33s" would increase productivity and would not be any more dangerous on the road than twin 28-foot trailers.

Opponents argue that twin 33s would not improve safety on state and national roadways and would give larger carriers an unfair advantage because smaller companies have neither the trained drivers nor the money to buy the larger trailers.

## COMPLEX ISSUES

The issues involved are complex and significant for the trucking industry. It's all about the public's perception of big rigs and their safety on the road, the market share of motor carriers and how shippers can often dictate those carriers' operations.

Twin 33s are not operated on Louisiana roads because the larger trailers are not authorized here. Motor carriers who favor the amendment believe the new standards would allow them to operate larger trucks that could haul more cargo. The carriers who are paid by volume or weight would make more money for hauling more cargo on the longer trailers.

The motor carriers who oppose the increase in trailer size also realize the new standards would allow them to operate bigger and heavier trucks. Their concern is that shippers would want them to buy the larger trailers, and they'd be forced by economics to buy new trailers and





“It’s all about the public’s perception of big rigs and their safety on the road, the market share of motor carriers and how shippers can often dictate those carriers’ operations.”

train drivers to haul them. But less-than-truckload carriers are paid by the truckload and not by volume or weight. Thus, they wouldn’t be reimbursed for the new equipment nor would they get any extra pay for hauling the extra cargo.

Another factor in the twin 33 debate is safety, or at least the public’s perception that these larger trailers are not as safe as the shorter ones. There are conflicting opinions about the safety of twin 33s compared to twin 28s, but the general public would likely consider the longer trailers less safe.

A group of motor transport companies opposed to the amendment sent a letter in June to members of the Senate Appropriations Committee asking that the amendment be removed from the highway transportation bill. LMTA member Reggie Dupre, CEO of Dupre Logistics in Lafayette, was one of the trucking executives who signed the letter.

Dupre said he opposes the amendment for several reasons. “Procedurally we haven’t followed the process,”

he said. Typically the highway transportation bill goes through the Senate Commerce Committee, but the current bill is in the Senate Appropriations Committee. “I’m not sure we’re even in the right committee,” Dupre said.

More importantly, he said, “I just don’t think this is going to improve safe operation on the highway.” Dupre said he respects the motor carriers who support the amendment, adding, “We’re just not in unanimity on this. We just disagree on this issue.”

Dupre also said he would like to see the issue studied specifically by the U.S. Department of Transportation. The Lafayette executive said that if such a study is done and it shows that safety will not be adversely affected by the longer trailers, he might be able to support some kind of similar legislation.

## SIGN OF A VIBRANT INDUSTRY

Sean McNally, a spokesman for the American Trucking Association, said trucking is a diverse industry, and it’s not unhealthy for different groups within the industry to take opposing positions. “It’s a sign of a vibrant industry,” he said.

McNally said the ATA decided a number of years ago that it would support several productivity issues for the trucking industry, including longer trailers. “We’re



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operating under rules that are almost 40 years old," he said. "We believe that by allowing twin 33s...there's a safety benefit, an environmental benefit and a congestion benefit."

McNally said figures from the Coalition for Efficient and Responsible Trucking (CERT) shows that allowing longer trailers – without increasing the 80,000 weight limit – would eliminate 6.6 million truck trips annually.

That would mean 1.3 billion fewer miles driven, fewer emissions and

fewer crashes. Eliminating 6.6 million truck trips could also help alleviate a nationwide truck driver shortage that is a current concern to the industry, McNally said.

CERT points to a study from the University of Michigan that indicates the extended wheelbase of twin 33s actually makes them more stable than twin 28s. "We've seen that (twin 33s) can be operated safely and efficiently on U.S. highways," McNally said. "We see this as something that would be a net positive for the industry. The economy can't wait for another study to reach the conclusion that we've already reached: these are safe and efficient vehicles," McNally said.

But David Berry, an ATA board and executive committee member who opposes twin 33s, said he thinks individual states – not Congress – should decide whether to allow the larger trailers.

Berry, vice president of Swift Transportation in Phoenix, said that in the 1980s individual states began allowing trailers to increase in size from 48 feet to 53 feet. More and more states allowed the size increase, and, "Finally,

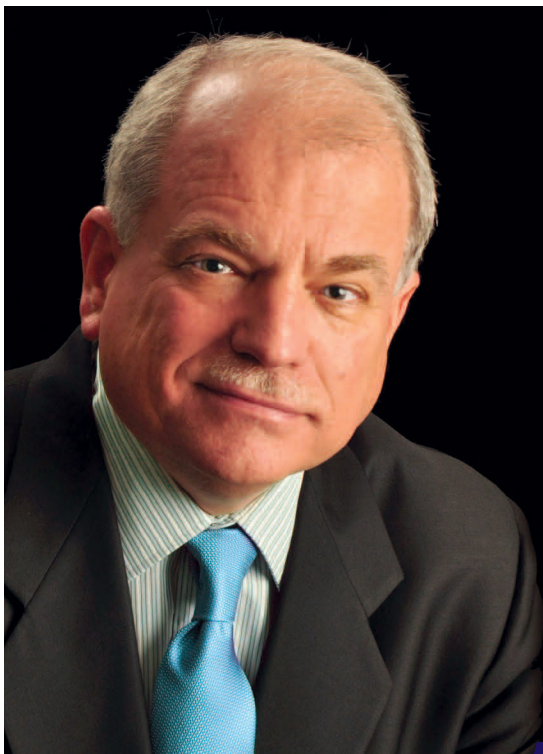
*"Trucking is a diverse industry, and it's not unhealthy for different groups within the industry to take opposing positions. It's a sign of a vibrant industry."*

*- Sean McNally, spokesman for the American Trucking Association*

every state permitted 53-foot trailers, and then every 48-foot trailer became highly devalued," he said. Berry predicts the same kind of result if twin 33s are permitted.

"The difference is a 24 percent increase in cubic volume," Berry said. "How are you going to compete with that? You're going to have to join them. What we're going to have to do if this passes is to buy twin 33s in order to compete," he said. "That's going to have a profound impact." ♣

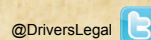
*Editor's note: At press time, the transportation bill had not received final passage.*



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**T**he 2015 Louisiana Regular Legislative Session was a fiscal-only session, and the state's budget problems completely dominated legislative activity.

Special thanks to all of you who answered our call for help to protect the trucking industry during this chaotic session. The following are the most significant pieces of legislation that impacted the trucking industry during the 2015 Legislative Session:

**WARRANTY REPAIR.** (SB 243) For the second year in a row, we were able to protect a motor carrier's right to enter into a contract or agreement with a vehicle manufacturer to repair their equipment without additional state restrictions or regulations impacting that relationship. There is a specific exemption for vehicles used to transport goods, products and freight in interstate or intrastate commerce. We fought really hard for this provision.

**HAZ-MAT TASK FORCE.** (HCR 158) After filing legislation (HB 469) to impose the federal standards on the "Right to Know" program and hazardous materials enforcement and penalties, we agreed to defer the legislation. Instead, we will participate on a task force to examine the hazardous materials enforcement in Louisiana and make recommendations on changes to the program before the next legislative session.

**PERMITS TO SELL.** (HB 833/HB 445) After funding for the State Police from the Highway Trust Fund was significantly reduced, legislation was introduced to increase the cost of certificates of title, salvage titles and permits to sell by \$50 each. On behalf of our towing members, we were able to keep the cost of permits to sell to the current price of \$15.

**WASTE TIRE FEES.** (HB 476) We were successful in preventing an increase in the waste tire fees on medium truck tires that was amended onto a bill at the end of the session. The overall program and the fee schedule will be discussed by the Waste Tire Task Force, of which LMTA is a member, and recommendations will be made to the 2016 legislature.

Now that the legislative session is over, the election season begins with all statewide elected officials and the entire Legislature up for primary elections October 24 and a runoff, if necessary, November 21. ♣



# THE 2015 LOUISIANA LEGISLATIVE SESSION

By Cathy Gautreaux



# LOTS OF WORK NEED

## LIABILITY, CONGESTION, DRIVER S





# ED ON TRUCKING ISSUES HORTAGE, HIGHWAY FUNDING...

1939 -  
2014  
**75**  
Years  
LMTA

By Ted Griggs

Louisiana's trucking liability insurance costs are driven by a number of factors, including venue shopping that awards plaintiffs with a "home court" advantage and often larger damage awards.

The high number of liability lawsuits and the causes for that were the topics of a heavily attended panel discussion at Louisiana Motor Transport Association's 75th annual convention in Sandestin, Fla. Other convention topics included lively presentations on the worsening shortage of drivers; the state's chronic budget woes; motor carrier safety issues; and the federal Highway Bill.

Panel members suggested a number of reasons why so many accidents in Louisiana result in lawsuits and higher costs. The panel discussed issues such as jury threshold, a culture of litigation, and the differences between various rural and urban juries.

Ken Pixley, who oversees Great West Casualty Company, claims in the Southern Region, said an admittedly unscientific survey of 200,000 claims from his company and other industry members revealed a disturbing trend. The average cost of an injury claim in Louisiana is much higher than in the surrounding states, Pixley said.

Pixley acknowledged that the numbers came from industry sources and were approximations. However, he went on to state that "At the end of the day, it's pretty clear that something is driving that. We may not agree on what that is, but ... it's something".

"There's no doubt that Louisiana is a very litigious state," said 19th Judicial District Court Judge Tim Kelley. "But I question the numbers from Great West." It's well-known that liability costs in some parts of the state are much higher than in the rest of Louisiana, Kelley said. So it may be that claims costs are closer to average in the rest of the state, and that certain areas have an outsized impact on the overall numbers.

Frequently cited figures from Southern Farm Bureau Casualty Insurance Co. show that Louisiana is over-repre-

sented in the courts. Louisiana represents 17 percent of the population in a six-state area that includes Arkansas, Colorado, Florida, Mississippi and South Carolina, but 51 percent of the pending auto lawsuits. In the New Orleans metro area, auto rates are 40 percent higher than the rest of the state. Insurance Commissioner Jim Donelon has said truckers face similar cost issues.

Doug Williams, a partner with Breazeale, Sachse & Wilson LLP and the panel moderator, said the legal community is well aware that certain parishes are more generous than others. During jury selection in a recent case, a surprising number of jury pool members thought their job was to take care of the man who was injured, Williams said. But that's not the jury's job.

Panelists were split on whether Louisiana's \$50,000 jury threshold, the trigger that sends a case to a jury, should be reduced.

Kelley said the lower threshold would quickly overwhelm the courts.

Typically, Kelley said he can hear a non-jury case in around an hour or 2; as many as four a day. But a jury trial can take three days or more.

If all those non-jury trials go to juries, it could add years to the time it takes for a lawsuit to make it through the legal process, Kelley said.

Pixley respectfully disagreed.

The Louisiana Association of Business and Industry has pushed hard to lower the jury threshold in recent sessions of the Legislature, but those efforts have not proven successful. Panelists said it's unclear whether the business group can succeed, given the amount of money at stake for plaintiff attorneys.

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POPULATION IN A  
SIX-STATE AREA THAT  
INCLUDES ARKANSAS,  
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Williams said there may be a better chance to make changes in the way medical costs are awarded. At present, plaintiffs can recover the entire medical bill. These figures are basically fiction since insurers negotiate discounts with providers, and patients and insurers rarely pay the face amount of the bill.

Panelists said the bills are further inflated by agreements that some attorneys have with providers, who run plaintiffs through tests and office visits to increase the size of the claim. Frequently those providers discount the charges to the plaintiff's attorney, but do not disclose those discounts.

Williams said changing the law to allow plaintiffs to collect only the actual amount paid for treatment would go a long way to lowering damage costs.

### **LOUISIANA IS A PURE COMPARATIVE FAULT STATE. THIS MEANS THAT DEFENDANTS ARE GENERALLY ONLY LIABLE FOR THE PERCENTAGE OF THE DAMAGES THAT THE DEFENDANT ACTUALLY CAUSED.**

Despite these and other problems, Williams said Louisiana does have a few important advantages over some states when it comes to liability issues. Louisiana is a pure comparative fault state. This means that defendants are generally only liable for the percentage of the damages that the defendant actually caused.

Additionally, the state Legislature has basically eliminated punitive damages, so juries can't make awards over and above actual damages to punish the defendant in an effort to prevent similar behavior. Louisiana also passed the no-pay, no-play and intoxication defense laws, Williams said. Drivers who don't have insurance can't recover the first \$10,000 of damages, even if the accident wasn't their fault.

Also, if a driver was intoxicated and bears more than 25 percent of the responsibility for the accident, he or she can't collect any damages, Williams said. Zero.

### **HIGHWAY INFRASTRUCTURE**

Other major issues for the industry include interstate congestion, which costs the U.S. trucking industry \$9 billion a year, and a worsening driver shortage.

Keynote speaker Pat Thomas, American Trucking Associations first vice chairman, said infrastructure improvements are vital because freight shipments will increase by as much as 25 percent over the next 20 years.

The industry needs a long-term solution for highway money, one that generates enough money from a reliable, sustainable and efficient-to-collect source of cash,

Thomas said. The ATA thinks a higher fuel tax and user pay – the people who use the roads ought to pay for them – are the solution.

Congress can justify the tax increase because infrastructure is vital to the economy and the country's competitiveness, he said.

Rebecca Brewster, president of the American Transportation Research Institute, said interstate congestion resulted in 141 million hours of lost productivity in 2013. That's the equivalent of 51,000 drivers sitting still 24/7 for a year.

Close to 90 percent of those costs were incurred on 12 percent of the interstate system. "If we could get Congress to fix the infrastructure, about 90 percent of your problems would go away," she said.

Thomas said getting Congress to fix the federal Highway Bill, establishing a sustainable and adequate revenue source for the Highway Trust Fund, won't be easy.

But one area where the industry has a competitive advantage is through "Call on Washington," an annual event where industry members meet with their congressional delegations to discuss their concerns.

He praised the LMTA, which jumped on the program in its early stages and never let up.

### **DRIVER SHORTAGE**

Thomas said addressing the driver shortage is also a priority.

The industry is still suffering from high turnover rates and is 30,000 drivers short today. The shortage could reach 240,000 drivers in less than 10 years.

Both Thomas and Brewster said a graduated license for interstate work could increase the number of drivers.

Limiting the interstate work doesn't make a lot of sense when young drivers in states like Texas or California are putting in the same kind of mileage as someone in interstate commerce. It also means the industry is losing out on kids who aren't going to college because they end up finding another career during the gap between 18 and 21, Thomas said.

Brewster said it would help if more public high schools offered transportation-related training, and the industry needs to push for that. Carriers also need to make their work environments as pleasant as possible in order to convince older drivers to delay retirement and draw in younger drivers.

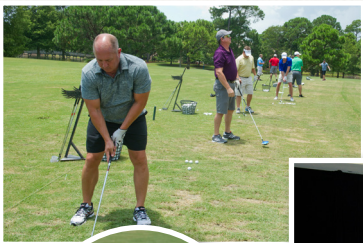
### **STATE BUDGET**

Meanwhile, Louisiana Public Affairs Research Council President Robert Travis Scott said the Legislature's ef-











forts to fix the Highway Trust Fund, which included two Constitutional amendments won't make much difference in the short term.

Among other things, the structural changes to state funding will, once the money becomes available, shift the emphasis from an almost-entirely federally focused strategy to more state projects.

Unfortunately, the complicated legislative package's success hinges on oil returning to the \$100 a barrel range, Scott said. This will happen eventually – historically, the price of oil has always increased -- but the recovery is expected to take years. Voters will also have to approve the Constitutional amendments shifting the funding source for roads and bridges.

There were some more encouraging developments for the industry.

## MOTOR CARRIER ENFORCEMENT

Maj. Mark Morrison of the Louisiana State Police laid out a strategy that calls for closing several of the state's stationary weigh stations.

Many of those were built in the 1950s. They have not been maintained. They're expensive to operate, and their effectiveness is limited, Morrison said.

The plans call for keeping only the stationary stations at the points where trucks come into the state, Morrison said. The interior stations would be eliminated.

"I don't see the need for them," Morrison said.

Mobile enforcement can take care of the interior parts of the state, Morrison said. ♣

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# WHO WILL BE IN THE DRIVER'S SEAT?

REBECCA M. BREWSTER, President and COO,  
American Transportation Research Institute

With the driver shortage continuing to climb to the top of motor carrier concerns, ATRI has released a new report that highlights a challenging future for the trucking industry based on demographic data and a dramatic shift in the age of the industry's driver workforce.

ATRI's analysis of U.S. Census Bureau data found that the trucking industry is disproportionately dependent on employees 45 years of age or older, many of whom will retire in the next 10-20 years. Complicating this is a sharp decrease over the past 20 years in the number of younger drivers that make up the industry, particularly those under 35.

One of the challenges highlighted by the study is the lack of vocational education offerings for high school students to introduce them to a career in trucking. Based on data from the U.S. Department of Education,

less than 30 percent of high schools nationwide offer any type of trade and industry transportation vocational courses. Further exacerbating the issue is the gap between high school graduation and CDL eligibility.

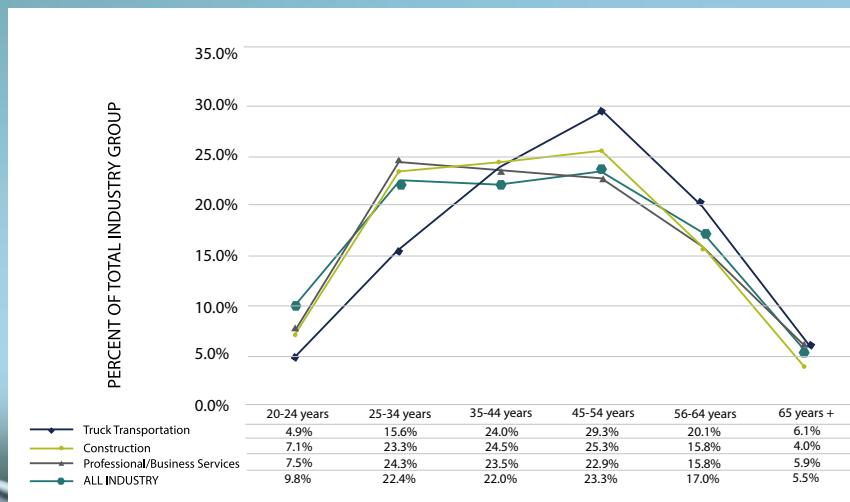
The results of this research prompted ATRI's Research Advisory Committee (RAC) to rank two companion studies on younger driver issues as part of its 2015 top research priorities list. The first, Getting Younger Drivers in the Driver's Seat, will focus on increasing the trucking industry's vocational presence and examine the potential for a Graduated Commercial Driver's License (GCDL).

The second, Younger Driver Assessment Tool, is designed to develop a screening tool to assess younger drivers that possess the cognitive decision-making attributes of mature, safe drivers. Once the tool is developed and validated, it could then be used to identify a pool of younger drivers for a GCDL pilot test involving commercial drivers 18-20 years old.

While finding ways to safely bring younger drivers into the industry is one potential solution to the growing driver shortage, the industry must also address a number of other challenges that make it difficult to retain the current driver population and recruit additional new entrant drivers.

When looking at commercial driver responses to ATRI's 2014 Annual Top Industry Issues Survey, drivers chose the Hours-of-Service (HOS) rules as their top pick, followed closely by Truck Parking. While Congress provided some relief to the more restrictive 34-hour restart provisions, continued uncertainty over the future of the HOS rules is a concern for many drivers.

The lack of available truck parking often puts drivers in the difficult position of having to decide whether to continue to drive tired (and possibly out of available hours) or park in less-than-safe locations like abandoned parking lots or highway exit and entrance ramps.



**WHILE FINDING WAYS TO SAFELY BRING YOUNGER DRIVERS INTO THE INDUSTRY IS ONE POTENTIAL SOLUTION TO THE GROWING DRIVER SHORTAGE, THE INDUSTRY MUST ALSO ADDRESS A NUMBER OF OTHER CHALLENGES THAT MAKE IT DIFFICULT TO RETAIN THE CURRENT DRIVER POPULATION AND RECRUIT ADDITIONAL NEW ENTRANT DRIVERS.**



ATRI's research is investigating a number of potential solutions for truck parking challenges including a real-time truck parking availability notification system that would let drivers know in real-time how many spots are available at a given exit so they don't waste valuable time driving around looking for a spot.

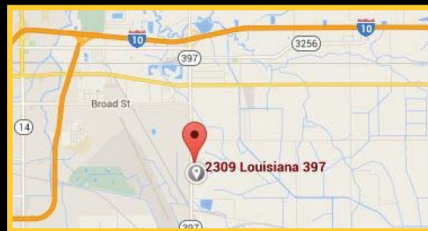
The growing burden of congestion on the highway is another big issue impacting the industry's ability to retain and recruit new drivers. At the number one truck bottleneck (the George Washington Bridge connecting New York and New Jersey) on ATRI's annual list of the top 100 most congested locations, truck speeds average just 36 miles per hour across a 24-hour period. Louisiana truck drivers also face congestion at one of the top 100 worst truck bottlenecks in the country. Number 18 on ATRI's list is in Baton Rouge, at the intersection of I-10 and I-110.

To see the entire list of ATRI's top 100 truck bottlenecks or to order any of ATRI's reports, visit [www.atri-online.org](http://www.atri-online.org).

ATRI is the trucking industry's 501(c)(3) not-for-profit research organization. The Institute's primary mission is to conduct transportation research with an emphasis on the trucking industry's essential role in a safe, efficient, and viable transportation system. ♣



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# FEDERAL HIGHWAY BILL

## *Important Safety Provisions*

**ROB ABBOTT**  
Vice-President, Safety Policy  
American Trucking Associations



**B**efore departing for its August recess, the U.S. Senate passed a 6-year highway bill containing a number of interesting provisions, particularly on matters relating to truck safety.

Here's a quick rundown of the most significant ones. Keep in mind that the Senate's bill must be merged with a similar version of the bill being developed by the House of Representatives, so these provisions are not yet a "done-deal."

First, the bill would require the Federal Motor Carrier Safety Administration (FMCSA) to commission a study of the CSA program to determine if carriers' scores reliably predict future crash risk. In the meantime, the agency would be required to remove scores from public view, until the study - and FMCSA's corresponding corrective action plan - have been completed. In addition, the

agency would need to establish a program to remove certain not-at-fault crashes from the system. Of concern is that FMCSA would be permitted to charge carriers a fee for processing challenged crashes. Finally, FMCSA would be required to develop a program to recognize outstanding safety practices and to provide positive points for investments in select, non-mandated, safety tools, programs and technologies.

Perhaps the most newsworthy section of the bill authorizes FMCSA to establish a six-year pilot program to permit contiguous states to allow 18 to 21 year old intrastate commercial drivers to cross state borders. Up to three

agreements, consisting of no more than four states each, would be permitted under the program. Participating states would be required to impose minimum licensure standards, limit distance travelled to within 100 air miles of the border, and prohibit participating drivers from operating special vehicle configurations (e.g., LCVs) or from transporting hazardous materials. Within three years of initiation of the pilot, FMCSA would be required to report the results to Congress along with a recommendation on whether or not to change the minimum interstate commercial driving age.

Also newsworthy is a provision that would require the Department of Health and Human Services to establish standards for hair testing for drugs. Ultimately, DOT would adopt these same standards for its regulated test program. In the meantime, FMCSA would be required to entertain applications for exemptions from fleets seeking to conduct hair tests (in lieu of urine) for pre-employment and random tests.



Though what's in the Senate bill may be interesting, what's not in it is also significant. There were several provisions in earlier versions of the bill that were excluded from the final version. Don't be surprised to see these same issues surface in the House version this fall. Here's a few that are likely to be proposed.

First, several members of Congress have called for legislation to better protect shippers and brokers that don't base hiring and contracting decisions on CSA scores. Such language would declare that unless a mo-

*FMCSA WOULD BE REQUIRED TO DEVELOP A PROGRAM TO RECOGNIZE OUTSTANDING SAFETY PRACTICES AND TO PROVIDE POSITIVE POINTS FOR INVESTMENTS IN SELECT, NON-MANDATED, SAFETY TOOLS, PROGRAMS AND TECHNOLOGIES*

tor carrier has an unsatisfactory safety rating, the carrier is fit for use by shippers and brokers. Further, in lawsuits involving carriers hired by shippers and brokers, only verification of the carrier's safety rating, crash data, and violations may be used in court, not CSA percentile rankings.

Also, there is interest in limiting FMCSA's ability to move forward with a rulemaking to raise minimum insurance limits. For instance, some want to require that the agency first determine if a significant number of crashes are not covered by the current limits; percentages of claims that



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are applied to medical care, victims compensation, and attorney fees; and the impact of increasing minimum insurance limits on the economic condition of the industry, especially the premiums that would be charged to small motor carriers, before conducting a rulemaking.

Finally, what many consider to be the most significant issue, hours of service, may not be included in either chamber's version of the highway bill. Instead, it was addressed in both the House and Senate versions of the Transportation, Housing, and Urban Development Appropriations Bills. These bills must still be merged. The final legislation will likely prohibit FMCSA from reinstating the suspended restrictions on use of the hours of service restart provision, unless their pending research study shows the restrictions result in significant safety benefits. Current law calls for the restrictions to be restored upon completion of the study, regardless of the outcome.

Though members of Congress have left Washington, D.C. for the balance of the summer, the drama over the highway bill is far from over. The House of Representatives will take the next step by developing a bill of its own. Which provisions it adopts from the Senate Bill, and which it does not, will be the talk of the town – at least for transportation folks. Then, the questions will revolve around which provisions survive, or get substantially changed, as the two chambers attempt to reconcile their bills. If nothing else, it sets the stage for an interesting Fall in the nation's capital. ♣



# NEW HIRES

## What You Can and Cannot Do

By Jerry "Jay" Stovall  
Partner, Breazeale, Sachse & Wilson



**A**lthough each new-hire is different, every interview and hiring decision presents similar issues and risks.

Many of the risks inherent in the hiring process can be minimized by the use of a standard interview script for each position. This will not only assure that all applicants are treated the same, thus reducing the chances of a discrimination claim, but it will also help ensure that the person conducting the interview avoids many of the "taboo" questions and topics. Below are some of the most common issues to be avoided during an interview

**Age:** Generally, you should not ask about an applicant's age. You may only ask about an applicant's age if the position has a legally mandated minimum age requirement. Asking about the dates that an applicant graduated from school can be seen as a 'back-door' way of gauging an applicant's age.

**National origin:** An employer cannot ask about an applicant's nationality, that of her relatives, where she or her relatives were born; or about what other languages she speaks, unless there is a legitimate employment reason for doing so. Generally, English-Only policies are presumed to be illegal. Do not ask for documents proving employment eligibility other than those listed in the I-9 form.

**Eligibility to Work in the U.S.:** An employer must require an applicant to prove that she is eligible to legally work in the United States. (aka the I-9 process). The documents submitted by the applicant must be from a list approved by the U.S. Citizenship and Immigration Services, but an employer may not specify which of those documents the applicant must produce.

**Race/Color:** Unless required to do so by an applicable Executive Order, Affirmative Action plan or other legitimate business reason, an employer should not ask about an applicant's race or color. If an employer does ask an applicant about his race or color for a legitimate reason, it may consider using a form and keeping that information separate from the applicant's application.

**Gender/Sexual Orientation/Gender ID or Transgender Status:** An employer should not ask applicant about her gender, sexual orientation, gender identity or transgen-

**Many** of the risks inherent in the hiring process can be minimized by the use of a standard interview script for each position.



der status unless required to do so by an applicable Executive Order or Affirmative Action plan. Employers should also refrain from asking an applicant if she plans on having children or her plans for child-care as these questions can be seen as sexist. An employer may inform an applicant of its hours and attendance policies and ask if the applicant can meet those requirements. However, an employer should not inquire how the ap-

religious holidays which would prevent a candidate from working. Refusing to hire an applicant because of the need for an accommodation could be illegal. (Please refer to the U.S. Supreme Court opinion in EEOC v. Abercrombie & Fitch.)

**Disability:** An employer should not ask an applicant to submit to a medical exam or inquire if the applicant suffers from a disability or any questions that would be

## THE DETERMINATION OF WHAT IS PERMISSIBLE DURING THE JOB INTERVIEW PROCESS IS LIKE SHIFTING SANDS.

licant plans to meet its attendance requirements.

**Religion:** An employer should not inquire about an applicant's religious beliefs, customs or church attendance. An employer may inform an applicant of its policies and ask if the applicant is able to comply with those policies. If an applicant identifies a need for an accommodation based upon a sincerely held religious belief, or if the employer has a good faith reason to know that the accommodation is due to a sincerely held religious belief, the employer should discuss the accommodation with the applicant. An employer should not ask an applicant why she cannot work a required schedule, or if there are

likely to require the applicant to disclose a disability until after the employer has made a bona fide offer of employment. And, after an applicant has been hired an employer should not make medical inquiries or require the employee to submit to a medical examination unless doing so is job related and consistent with business necessity. Doing either is likely to violate the Americans with Disabilities Act and Louisiana law. Any documentation regarding an applicant's medical condition or disability must be kept in a separate, confidential file.

An employer can identify the essential functions of the position in question and ask the applicant if she can

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perform those functions with or without a reasonable accommodation. An employer can also ask the applicant to demonstrate how she will perform the functions. However, the employer should only do so if it asks this of all applicants. Employers should not require an applicant to complete a Second Injury Fund Questionnaire until after it has made a bona fide offer of employment.

**Criminal Background:** Employers should exercise caution in utilizing criminal background checks and arrest records in making an initial hiring decision. Arrests or criminal convictions should not be used as an automatic disqualification from employment. Doing so would have a disparate impact upon certain minorities and constitute race discrimination in violation of Title VII and state law. Rather, employers should consider, at a minimum, whether the applicant was merely arrested or was he convicted, the nature of the offense, is it related to the position that the applicant is applying for, how long ago it occurred and had the applicant successfully been employed since resolution of the conviction. Employers should make themselves thoroughly

conviction records can be found at: [http://www.eeoc.gov/laws/guidance/arrest\\_conviction.cfm](http://www.eeoc.gov/laws/guidance/arrest_conviction.cfm)

The determination of what is permissible during the job interview process is like shifting sands. There are competing social and economic issues which constantly challenge the extent to which an employer can vet a potential employee. It is critically important that employers stay abreast of developments in the employment law arena, and that they update their pre-employment practices as there are new EEOC pronouncements and court rulings. Employers have a right to screen potential employees to identify qualified candidates; however, that screening must be done in a nondiscriminatory manner, and is best done when it is done consistently with all applicants. ❁

**Employers** have a right to screen potential employees to identify qualified candidates; however, that screening must be done in a nondiscriminatory manner, and is best done when it is done consistently.

familiar with the EEOC's position on utilizing criminal background checks in the hiring process. The EEOC's 2012 Enforcement Guidance regarding arrest and

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**“The sales team is very knowledgable.”**

**BUILT FOR YOUR BUSINESS**

For Laurie Doiron, owner of Ag Logistics, in White Castle, Louisiana, hauling sugar is her business. The reliability and uptime of her truck fleet is a vital part of keeping her young company profitable. During harvest season, Ag Logistics hauls sugar cane for 100 days straight, 24 hours a day. Todd Doiron, Operations Manager, purchased their first set of Cat® CT660 Vocational Trucks in early 2014, and noted, “I have not asked a question that I have not got an answer for.”

**“We steered toward Cat trucks because of the service.”**

**BUILT TO HELP YOU GET THERE**

In Doiron’s line of work, communication is key and helps to make their business a success. Doiron says he enjoys working with Louisiana Cat because they “hold true to their word.” Ag Logistics hauls 1.7 million tons of sugar cane during harvest season, even if one of the trucks break.

“The service department at Louisiana Cat communicates back and forth with us and that helps us continue to be able to do our job.” If a problem arises with the trucks, Doiron is confident that the Louisiana Cat service department can fix the problem right away.

**“We have 10 more on order right now.”**

**BUILT TO DELIVER**

Ag Logistics currently owns three Cat CT660 Vocational Trucks. Doiron has been so impressed with the trucks, adding that “they’re running well and we currently have 10 more on order right now.”

Discover for yourself what Laurie and Todd Doiron already know ... Louisiana Cat not only offers the best truck in the business, but stands behind it with reliable and unrivaled dealer support, factory trained technicians and excellent parts availability.

**BUILT FOR IT.™**

**Give us a call today to learn how the Cat CT660 Vocational Truck can benefit your business.**

Alexandria | Bossier City | Lafayette | Lake Charles  
Monroe | Prairieville | Reserve

**866-843-7440**

**[www.LouisianaCat.com](http://www.LouisianaCat.com)**



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