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PUBLIC CHAPTER 952, ACTS OF 2018: PROPOSED SHIPPERS' FRANCHISE AND EXCISE TAX LIABILITY CREDIT DOES NOT APPEAR TO BE NECESSARY

Tennessee's economy depends on the efficient movement of goods. Well over a third of the state's gross domestic product is attributable to industries and businesses that rely heavily on freight transportation—approximately \$110 billion of the \$280 billion total of all goods and services produced in 2012. Trucks carry most shipments originating in Tennessee—78.1% of shipments by value and 87.6% by weight. Trucking industry profitability improves with productivity, and productivity improves when drivers can pick up and deliver their loads as scheduled. But drivers sometimes experience delays—known as driver detention—at shipping and receiving facilities. Such delays can be costly to motor carriers, drivers, shippers, and the overall economy. A 2018 report by the United States Department of Transportation, Office of Inspector General (OIG), estimated that “detention reduces [motor carrier] net income by \$250.6 million to \$302.9 million annually.”

Consistent driver income is a factor in whether people choose to become or remain truck drivers, and driver recruitment and retention are critical to the industry, which faces competition from other industries for qualified employees. According to the United States Bureau of Labor Statistics (BLS), drivers are usually paid based on the number of miles driven, plus bonuses, however the per-mile rate varies by employer and, often, by driver experience and the type of cargo. According to the May 2018 Occupational and Employment Statistics data produced by the BLS, truck drivers earn an average wage of \$43,660 in Tennessee, which is below the average annual wage \$45,570 nationwide.¹ Based on the OIG report, “detention is associated with reductions in annual earnings of . . . between \$1,281 and \$1,534 per driver per year for truckload drivers.” Although some drivers occasionally receive pay for detention time, industry stakeholders say such pay is often difficult to get and not always as much as drivers would receive if they were on the road. The effect of detention time on pay is magnified by a Federal Motor Carrier Safety Administration (FMCSA) requirement that limits driver's hours-of-service (HOS) to 14 hours on duty, 11 of which may be used for driving. And that requirement is magnified by new, mandated technology that makes it easier to track driver time.

Responding to concerns about driver detention, the General Assembly passed Public Chapter 952, Acts of 2018, directing the Tennessee Advisory Commission on Intergovernmental Relations (TACIR) to study a proposal

Truck drivers can experience delays at shipping and receiving facilities—known as driver detention—which can be costly to motor carriers, drivers, shippers, and the overall economy.

¹ The annual median wage for truck drivers is \$41,940 in Tennessee and \$43,680 nationwide.

Though they agree that driver detention is a problem plaguing the trucking industry, the Federal Motor Carrier Safety Administration (FMCSA) and the American Trucking Associations say driver detention should be negotiated between shippers and motor carriers without government intervention.

that would provide a franchise and excise tax credit of 2% to any shipper (a person who enters into a contract for transportation services with a motor carrier) if that shipper implements a turnaround policy to ensure that pickups and deliveries are performed on time. The Act defines motor carrier as “a person who operates or causes to be operated a freight motor vehicle on a public highway for the purpose of performing transportation services.” The credit to the shipper would not exceed 50% of the combined franchise and excise tax liability before any credit is taken. Agreed-upon pickup and delivery times could not exceed two hours. The shipper would also provide contact information for the authorized parties involved in the pickup and delivery. The proposal applies to any companies with pickups or deliveries originating or terminating in Shelby County but is not limited to companies with a location in that county. Therefore companies from across Tennessee and from outside Tennessee would be eligible for the credit. See Appendix A for a copy of the Act.

Proponents say the incentive would encourage quicker turnaround and increase the amount of freight shipped in Tennessee—because more freight can be hauled with the same number of drivers if they are not slowed down by excessive delays. As a result, profitability would increase and drivers' incomes would then be more consistent. However, it is unclear what effect an incentive would have considering the number of companies already taking advantage of the nine existing franchise and excise tax credits (F&E). These include some portion of the 222 businesses that have reduced their F&E tax liability to zero by using the industrial machinery tax credit and the additional annual jobs tax credit—both indirectly related to trucking through the shipment of product. The proposed credit's effect is also unclear because it would be available to companies already in compliance with the proposed turnaround policy, and there is no enforcement mechanism to ensure that the policy is actually implemented and maintained for those not already in compliance. Proponents of the credit also say that improved efficiency would reduce the effects of the driver shortage by making truck driving more desirable, but the proposed legislation does not include a method to track such an effect. Given that Tennessee would be the first state to implement such a credit, it is unclear that the number of drivers would increase. Some in the industry argue that improving wages and benefits is the most direct way to address the driver shortage, and the competitive market is currently boosting pay and benefit packages for many drivers.

Though they agree that driver detention is a problem plaguing the trucking industry, the FMCSA and the American Trucking Associations say driver detention should be negotiated between shippers and motor carriers without government intervention. The Tennessee Trucking Association (TTA) says that, generally, driver detention issues should be worked out between shippers and motor carriers, but anything that reduces delays for drivers would be welcomed. A representative with the Owner-Operator

Independent Drivers Association (OOIDA) says that any specific limit on load or unload time could result in shippers becoming more restrictive and requiring all drivers to schedule appointments, removing flexibility for a driver stuck in traffic or at another shipping facility.

A new Electronic Logging Device (ELD) federal mandate enables motor carriers and drivers to collect data on driver detention.

According to the FMCSA, all commercial motor vehicles (CMVs) must be equipped with an ELD, which is intended to improve truck driver safety and make it easier to track, manage, and share driver HOS. The FMCSA explains “an ELD synchronizes with a vehicle engine to automatically record driving time for easier, more accurate hours of service (HOS) recording.” Motor carriers and drivers are also using ELDs to monitor and document a driver’s movement and track when drivers are detained at shipping facilities. TTA’s president said that motor carriers can gather data and approach a shipper with evidence for why the shipper should improve their processes.

If a shipper is unwilling or unable to improve their processes, motor carriers have at least two options to address excessive detention and its effect on profitability and consistent driver pay: raise their rates to compensate the driver, or tell the shipper to find another carrier. Some motor carriers are also using ELD technology to require that shippers pay drivers for detention time. The FMCSA administrator said in an interview that ELDs “could be a step toward holding shippers and receivers accountable for long detention times.” With the added pressure of the ELD mandate, motor carriers and drivers are using this type of software to determine which shippers they will do business with. A Zipline Logistics nationwide survey found 80% of carriers reported, “there are now facilities they will absolutely not load from. Forty-three percent of carriers state the amount of shipper/receivers they refuse to serve has increased since the ELD Mandate.” Shippers are already beginning to adapt to the realities of this new business environment by improving efficiency.

Some shippers are making improvements to onsite facilities.

Some shippers are making changes to their facilities to improve efficiency: reducing wait times by reducing paperwork; offering what is known as drop and hook, which allows the driver to drop off the trailer and hook onto another trailer; and using technology to locate trailers quickly. Some logistics companies say shippers that want to receive priority from motor carriers should provide appointment flexibility, improve check-in and check-out processes, avoid lane changes, and add weekend pick-up and delivery.

Motor carriers and drivers are using electronic logging devices (ELDs) to monitor and document a driver’s movement and track when drivers are detained at shipping facilities.

All stakeholders are benefiting from rapid improvements in logistics technology.

Efficiency improvements by motor carriers and shippers are made easier with advancements in technology. Companies have developed software that lets drivers schedule terminal times and rate shippers. This is being used both by motor carriers and independent drivers to help determine which shippers to work with. Owner-operators and shippers are benefiting from enhancements in GPS location tracking, following shipments in real time. This allows shippers to better schedule deliveries and pickups, which improves turnaround times. Motor carriers are also using GPS technology to track shipments and determine when a driver arrives and departs a warehouse. Companies like Uber Freight and Convoy advertise a fully automated process connecting drivers and shippers with little to no human interaction. Because the logistics and transportation industry is already using new technology to streamline logistics and improve efficiency, because there is no enforcement mechanism to ensure that the policy is actually implemented and maintained, and because it is unclear whether the proposed franchise and excise tax credit would result in reduced turnaround time, greater productivity, and more consistent driver pay, **the Commission recommends that the proposed credit not be adopted at this time.**

Efficiency improvements by motor carriers and shippers are made easier with advancements in technology.

REDUCING DELAYS AT TENNESSEE'S SHIPPING FACILITIES

Tennessee's economy depends on the efficient movement of goods, with well over a third of the state's gross domestic product attributable to industries and businesses that rely heavily on freight transportation—approximately \$110 billion of the \$280 billion total of all goods and services produced in 2012.² Trucks carry most shipments originating in Tennessee—78.1% of shipments by value³ and 87.6% by weight.⁴ The trucking industry is most productive when drivers can pick up and deliver their loads as scheduled, but they sometimes experience delays—known as driver detention⁵—at shipping and receiving facilities. Such delays can be costly to motor carriers, drivers, shippers, and the overall economy. Trucking industry stakeholders say that more freight can be hauled with the same number of drivers if they are not slowed down by excessive delays. A 2018 report by the United States Department of Transportation, Office of Inspector General (OIG), estimated that, nationally, “detention reduces [motor carrier] net income by \$250.6 million to \$302.9 million annually.”⁶ According to a 2009 report by the Federal Motor Carrier Safety Administration (FMCSA), the US economy could potentially gain \$6.6 billion annually by “overcoming the inefficiency of time spent loading and unloading.”⁷

Time allotted to load and unload freight is often negotiated, but delays can and do occur.

A 2012 report by the Intermodal Freight Transportation Institute at the University of Memphis found that the average turnaround time—the time it takes to check in the driver, load or unload, and send the driver on their way—for different facilities in Tennessee was 33 minutes for intermodal facilities, 52 minutes for warehouses, and 60 minutes for distribution facilities.⁸ According to many stakeholders, the industry standard turnaround time is two hours, although some argue that most trucks can be turned within an hour and that two hours is too long.⁹ Anything beyond the standard two hours, or some other negotiated time frame, is considered driver detention. A 2014 FMCSA study of the issue found that “drivers experienced an average duration of 1.4 hours of detention time at

According to many stakeholders, the industry standard turnaround time is two hours, although some argue that most trucks can be turned within an hour and that two hours is too long.

² Tennessee Department of Transportation 2016.

³ United States Department of Transportation Statistics 2017a.

⁴ United States Department of Transportation Statistics 2017b.

⁵ United States Department of Transportation, Federal Motor Carrier Safety Administration 2014.

⁶ United States Department of Transportation, Office of Inspector General 2018.

⁷ United States Department of Transportation, Federal Motor Carrier Safety Administration 2009.

⁸ Golias et al. 2012, defines intermodal facility as a facility that “expedites the transfer of goods between modes of transportation.”

⁹ Croke 2018. Telephone interview with Donna Lemm, Executive Vice President of National Sales, IMC Companies, LLC, January 23, 2019.

Drivers are usually paid by number of miles driven, so when they experience detention at a shipping or receiving facility they often lose income.

approximately 1 in every 10 stops.”¹⁰ The study also found that truckload carriers (with most or all of each truck filled from a single shipper) experience driver detention more frequently than less-than-truckload carriers (with multiple shippers sharing each truck).¹¹ A 2018 OOIDA Foundation detention time survey reported that 31% of respondent drivers “lose three to four loads per month because of detention.”¹²

Drivers often experience a loss of income when driver detention occurs at a shipping or receiving facility, because the driver must be present with the vehicle, and according to the United States Bureau of Labor Statistics (BLS), “Drivers . . . usually are paid by how many miles they have driven, plus bonuses. The per-mile rate varies from employer to employer and may depend on the type of cargo and the experience of the driver.”¹³ A 2018 report by the United States Department of Transportation, Office of Inspector General, found that detention was associated with a loss of annual income “between \$1,281 and \$1,534 per driver per year for truckload drivers.”¹⁴ In Tennessee, that amounts to approximately 3% of the average annual income for a truck driver. Although some drivers occasionally receive pay for detention time, industry stakeholders say it is often difficult to get and not always as much as drivers would receive if they were on the road. According to the May 2018 Occupational and Employment Statistics data produced by the United States Bureau of Labor Statistics, truck drivers earn an average annual wage of \$43,660 in Tennessee, which is below the average annual wage of \$45,570 nationwide.¹⁵ Providing consistent income to drivers is a factor in whether people choose to become or remain drivers, and driver recruitment and retention are critical to the industry, which faces competition from other industries for qualified employees.¹⁶

Proponents of the credit also say that improved efficiency would reduce the effects of the driver shortage by making truck driving more desirable, but the proposed legislation does not include a method to track such an effect. Given that Tennessee would be the first state to implement such a credit, it is unclear whether the number of drivers would increase. Some in the industry argue that improving wages and benefits is the most direct way to address the driver shortage, and the competitive market is currently boosting pay and benefit packages for many drivers.^{17 18}

¹⁰ United States Department of Transportation, Federal Motor Carrier Safety Administration 2014.

¹¹ United States Department of Transportation, Office of Inspector General 2018.

¹² Owner-Operator Independent Drivers Association Foundation 2018.

¹³ United States Department of Labor, Bureau of Labor Statistics 2019a.

¹⁴ United States Department of Transportation, Office of Inspector General 2018.

¹⁵ United States Department of Labor, Bureau of Labor and Statistics 2019a. The annual median wage for truck drivers is \$41,940 in Tennessee and \$43,680 nationwide.

¹⁶ United States Department of Labor, Bureau of Labor and Statistics 2019b.

¹⁷ American Trucking Associations 2018.

¹⁸ Telephone interview with Mike Matousek, Manager of Government Affairs, Owner-Operators Independent Drivers Association, and Andrew King, Research Analyst, Owner-Operators Independent Drivers Association, April 10, 2019.

The Act proposes a pilot program for Shelby County to decrease driver detention.

Responding to concerns about driver detention, the General Assembly passed Public Chapter 952, Acts of 2018, directing TACIR to study a proposal that would provide a franchise and excise tax credit of 2% to any shipper (a person who enters into a contract for transportation services with a motor carrier) if that shipper implements a turnaround policy to ensure that pickups and deliveries are performed on time. The Act defines motor carrier as “a person who operates or causes to be operated a freight motor vehicle on a public highway for the purpose of performing transportation services.” The proposal in the Act seeks to incentivize shippers to turn freight quicker. Agreed-upon pickup and delivery times could not exceed two hours. The shipper would also provide contact information for the authorized parties involved in the pickup and delivery. See Appendix A for a copy of the Act. **The proposal applies to any companies with pickups or deliveries originating or terminating in Shelby County but is not limited to companies with a location in that county. Therefore companies from across Tennessee and from outside Tennessee would be eligible for the credit.** In testimony given to the Commission on February 1, 2019, stakeholders said that Tennessee would be the first state to adopt such a policy. In a review of other states, TACIR staff found that none have adopted a similar policy.

Some proponents say quicker freight turnaround would occur because many shippers would improve onsite facilities and hire more dockworkers with the funds resulting from the credits. However, there is no requirement for a shipper to target funds toward increasing efficiency at shipping facilities. Some, like Louis Dreyfus Company, have already made changes to reduce wait times, but when a driver is detained at one shipper's facility, it has a ripple effect on other shippers who experience delays waiting on the truck to deliver or pickup.¹⁹

Some shippers may already pay minimal or no franchise and excise taxes because of existing credits.

Franchise and excise taxes are state taxes on business conducted in the state. Each tax is calculated differently. The franchise tax is based on the taxpayers net worth, including real and tangible property used in Tennessee, and is applied at a rate of 25 cents per \$100 (minimum payable each year is \$100). The excise tax is based on net earnings from business done in Tennessee, taxed at a rate of 6.5%.

¹⁹ Telephone interview with Michael Symonanis, Director, Global Container Logistics Group, Louis Dreyfus Company, January 9, 2019.

When a driver is detained at one shipper's facility, it has a ripple effect on other shippers who experience delays waiting on the truck to deliver or pickup.

There are multiple credits that eligible businesses currently have access to—one applied to excise taxes only and eight that may be used to reduce both the franchise and excise tax liability.

Eligible businesses currently have access to one credit that is applied to excise taxes only—the state income tax credit—and eight that may be used to reduce both the franchise and excise tax liability (see table 1). All credits may be combined to reduce the total liability to zero. The Tennessee Department of Revenue only reports franchise and excise tax data at the statewide level and does not break it down by industry. In 2018, the DOR reported that there were 200,648 taxpayers who still owe franchise tax after credits, with an average franchise tax liability of \$4,297 remaining. There are 55,238 taxpayers who still owe excise tax after credits, with the average liability remaining just over \$26,000. There were 2,644 returns that benefited from a franchise tax credit, excise tax credit, or both. At least 222 of these taxpayers have been able to reduce their franchise and excise tax liability to zero, accomplished through a combination of tax credits or by using the industrial machinery tax credit and the additional annual jobs tax credit—both indirectly related to trucking through the shipment of product. The proposed credit's effect is also unclear because it would be available to companies already in compliance with the proposed turnaround policy, and there is no enforcement mechanism to ensure that the policy is actually implemented and maintained for those not already in compliance.

Table 1: Franchise and Excise Tax Credits, Tennessee

Tax Credit	What is the value of the credit?	What is the maximum percentage of the tax that may be credited?	When can the credit be taken?	Can the credit be carried forward?	Minimum Number of New Jobs Created to Qualify for Credit
Proposed Shippers Tax Credit	2% of qualified transportation expenditures	50% of Franchise Tax and 50% of Excise Tax	The initial year the turnaround policy is established and implemented	Yes Up to 15 years	n/a
Income Tax Credit	100% of Tennessee Individual Income Tax	100% of Excise Tax Liability	Every year the tax is paid	No	n/a
Industrial Machinery Tax Credit	1% of the cost of industrial machinery purchased or leased during the tax year Or, as an alternative, taxpayers that have filed a business plan with the Commissioner of the Department of Revenue and have made the required capital investment during the investment period 3% if capital investment is greater than \$100 million 5% if capital investment is greater than \$250 million 7% if capital investment is greater than \$500 million 10% if capital investment is greater than \$1 billion	50% of Franchise and Excise Tax 100% for taxpayers that have established their international, national, or regional headquarters in the state and qualifies for the sales and use tax exemption	The initial year the industrial machinery is purchased or leased	Yes Up to 15 years	n/a
Standard Job Tax Credit	\$4,500 for each net new job created during the investment period Minimum investment of \$500,000	50% of Franchise and Excise Tax	The initial year these jobs are created and subsequent years when new jobs are created during investment period	Yes Up to 15 years	25 new jobs 20 new jobs if in a Tier 3 Enhancement County 10 new jobs if in a Tier 4 Enhancement County

Tax Credit	What is the value of the credit?	What is the maximum percentage of the tax that may be credited?	When can the credit be taken?	Can the credit be carried forward?	Minimum Number of New Jobs Created to Qualify for Credit
Additional Annual Credit Tier 2, Tier 3, or Tier 4 Enhancement County*	\$4,500 for each net new job created in addition to the standard job credit	100% of Franchise and Excise Tax	The initial year that these jobs are created Credit may be taken for the following number of years: 3 years if jobs created in Tier 1 or Tier 2 Enhancement County 5 years if jobs created in Tier 3 or Tier 4 Enhancement County	No	25 new jobs 20 new jobs if in a Tier 3 Enhancement County 10 new jobs if in a Tier 4 Enhancement County Commissioner of Revenue and Commissioner of Economic and Community Development may authorize the credit for fewer than 25 if in an Enhancement County
Additional Annual Credit for Higher Investment and Job Creation	\$5,000 for each net new job created in addition to the standard job credit	100% of Franchise and Excise Tax	The initial year that these jobs are created With a higher level of investment, credit may be taken for the following number of years: 3 years - \$10 million HQ 3 years - \$100 million 6 years - \$250 million 12 years - \$500 million 20 years - \$1 billion	Depends If investment is at or below \$1 billion, any unused job credits may not be carried forward If investment exceeds \$1 billion, any unused job credits may be carried forward until fully utilized	100 jobs for \$100 million level or \$10 million headquarters level 250 jobs for \$250 million level 500 jobs for \$500 million level 500 jobs for \$1 billion level

Tax Credit	What is the value of the credit?	What is the maximum percentage of the tax that may be credited?	When can the credit be taken?	Can the credit be carried forward?	Minimum Number of New Jobs Created to Qualify for Credit
Additional Annual Credit for Enterprises Located in an Adventure Tourism District	\$4,500 for each net new job created	100% of Franchise and Excise Tax	The initial year that these jobs are created or one year after investment period Credit may be taken for the following number of years: 3 years if jobs created in Tier 1 or Tier 2 Enhancement County 5 years if jobs created in Tier 3 or Tier 4 Enhancement County	No	25 new jobs in a Tier 1 Enhancement County 19 new jobs in a Tier 2 Enhancement County 13 new jobs in a Tier 3 Enhancement County 10 new jobs in a Tier 4 Enhancement County
Jobs Tax Credit for Employing Persons with Disabilities	\$5,000 for each net new job created \$2,000 for each net new part-time job created	50% of Franchise and Excise Tax	The year job is created	Yes Up to 15 years	Minimum of 1 new job is required to receive the credit
Community Resurgence Jobs Tax Credit	\$2,500 for each net new job created	50% of Franchise and Excise Tax	The initial year these jobs are created and subsequent years when new jobs are created	Yes Up to 15 years	Minimum of 10 jobs to be eligible
Brownfield Tax Credit	50% of the purchase price of brownfield property with capital investment of at least \$25 million 75% of the purchase price of brownfield property with capital investment of at least \$200 million	50% of Franchise and Excise Tax	The tax year covered by the return	Yes Up to 15 years	n/a

Source: Tennessee Franchise and Excise Tax Guide 2018 and Tennessee Code Annotated, Sections 67-4-2009 and 67-4-2109; Email correspondence with Christin Lotz, Research Director, Tennessee Department of Revenue, and Randy Hillard, Tax Auditor, Audit Division, Tennessee Department of Revenue, May 2, 2019.

* See Tennessee Code Annotated, Section 67-4-2109(a)(2) for an explanation of enhancement counties.

Beginning in 2015, the Federal Motor Carrier Safety Administration (FMCSA) has implemented an electronic logging device (ELD) mandate that requires commercial motor vehicles (CMVs) to incorporate electronic logs.

Though they agree that driver detention is a problem, the FMCSA²⁰ and the American Trucking Associations²¹ say it should be negotiated between shippers and carriers without government intervention. The Tennessee Trucking Association (TTA) says that driver detention issues should generally be worked out between shippers and carriers, but anything that reduces delays for the driver would be welcomed.²² A representative with the OOIDA said that any specific limit on load or unload time could result in shippers becoming more restrictive and requiring all drivers to schedule appointments, removing flexibility for a driver stuck in traffic or at another shipping facility.²³

Drivers have a limited number of hours for on-duty and off-duty work.

The FMCSA regulates the hours a driver may operate a commercial motor vehicle (CMV), which is currently limited to 14 hours of on-duty time, 11 hours of which may be used for driving. See Table 2 for a history of the hours-of-services regulations. Once the truck's engine is turned on, the clock begins the on-duty time and does not stop until the 14-hour period is up. Because most drivers are paid by the mile, they are not paid for all 14 hours. After the 14-hour period has expired, the driver is required to rest, off duty, for 10 hours. Driver's hours have been regulated since the 1930s, primarily with the use of paper logs. Beginning in 2015, the FMCSA has implemented an electronic logging device (ELD) mandate that requires CMVs to incorporate electronic logs. According to the FMCSA, the ELD mandate "is intended to help create a safer work environment for drivers, and make it easier and faster to accurately track, manage, and share records of duty status (RODS) data. An ELD synchronizes with a vehicle engine to automatically record driving time, for easier, more accurate hours of service (HOS) recording."²⁴ The 2018 American Transportation Research Institute report, *Critical Issues in the Trucking Industry*, noted that drivers' HOS ranked as the highest priority for commercial drivers. Recent regulatory guidance from the FMCSA may alleviate some of the frustration expressed by motor carriers and drivers. According to the FMCSA,

The FMCSA recognizes that much of the pressure on drivers . . . results from delays during the loading or unloading process causing a driver to run out of hours. This guidance will have a positive impact on the concerns expressed by [industry representatives] by giving drivers

²⁰ United States Department of Transportation, Office of Inspector General 2018.

²¹ American Trucking Associations 2017.

²² Email correspondence with Dave Huneryager, President and CEO, Tennessee Trucking Association, February 2, 2019.

²³ Telephone interview with Mike Matousek, Manager of Government Affairs, Owner-Operators Independent Drivers Association, and Andrew King, Research Analyst, Owner-Operators Independent Drivers Association, April 10, 2019.

²⁴ US Department of Transportation, Federal Motor Carrier Safety Administration 2018.

the flexibility to locate and obtain adequate rest as this would be off-duty time in personal conveyance status. . . . The movement from a shipper or receiver to the nearest safe resting area may be identified as personal conveyance, regardless of whether the driver exhausted his or her HOS, as long as the CMV is being moved solely to enable the driver to obtain the required rest at a safe location.

Table 2: A History of the Hours-of-Service Regulations

Enforcement Year	Minimum Duty Cycle (hours)	On-Duty Maximum (hours)	Driving Maximum (hours)	Off-Duty Minimum (hours)	Sleeper Berth Provision	Restart Provision
1938	24	15	12	9	None	None
1939	24	Rescinded	10	8	Can split 8 hours of off-duty time into two periods	None
1962	18	15	10	8	Can split 8 hours of off-duty time into two periods provided neither is less than 2 hours long	None
1963	18	15	10	8	Can split 8 hours of off-duty time into two periods of 4 hours each	None
2003	21	14	11	10	Can split 10 hours of off-duty time into periods of at least 2 hours	Restart weekly on-duty hours after 34 consecutive hours off duty: on-duty time limit is 60 hours in 7 days or 70 hours in 8 days
2011	24	14	11	10	8 consecutive hours in sleeper berth, plus a separate 2 consecutive hours either in sleeper berth, off duty, or a combination of the two	The 34 hours off duty must include two periods from 1 AM to 5 AM; use of restart provision limited to once a week
2013	24	14	11	10	Same as above	Suspended*

*Since the 2016 publication of this table, the 34-hour restart rule is reinstated, and the requirement for two off-duty periods of 1:00 a.m. to 5:00 a.m. will not be enforced, nor will the once-per-week limit on use of the restart.¹

Source: National Academies of Sciences, Engineering, and Medicine 2016.

Many motor carriers, drivers, and shippers are using new technology to improve scheduling, pickups, and deliveries.

Some motor carriers are also using electronic logging device (ELD) technology to require that shippers pay drivers for the time they are detained.

Motor carriers and drivers are also using the ELD to monitor and document a driver's movement and track when drivers are detained at shipping facilities. TTA's president said that carriers can gather data and approach a shipper with evidence for why the shipper should improve their processes. Motor carriers have at least two options— raise their rates to compensate the driver or tell the shipper to find another carrier. The *Wall Street Journal* reported in 2018 that "trucking companies swamped with demand are turning down freight and raising contract rates by 10% or more, with further increases expected next year."²⁵ Some motor carriers are also using ELD technology to require that shippers pay drivers for the time they are detained. The FMCSA administrator said in an interview that ELDs "could be a step toward holding shippers and receivers accountable for long detention times." A Zipline Logistics survey found that 80% of carriers said "there are now facilities they will absolutely not load from. Forty-three percent of carriers state the amount of shipper/receivers they refuse to serve has increased since the ELD Mandate."²⁶

When drivers are in short supply, shippers compete to attract drivers to haul their products. Some shippers are making changes to their facilities to improve efficiency—offering what is known as drop and hook, which allows the driver to drop off the trailer and hook onto another trailer.²⁷ According to a representative for Dollar General Corporation, carriers have the option to drop a loaded trailer at any of their distribution centers instead of waiting for it to be unloaded, which ensures that the driver is back on the road in less than two hours.²⁸ In May of 2019, J.B. Hunt announced a new drop and hook program, J.B. Hunt 360box, which is advertised to eliminate "wasted time at the dock" and "also [help] drivers be more productive with their time, which is limited and valuable."²⁹

Shippers are also improving efficiency and reducing wait times by reducing paperwork³⁰ and using technology to locate trailers quickly.³¹ Some logistics companies say shippers that want to receive priority from motor carriers should provide appointment flexibility, improve check-in

²⁵ Smith 2018.

²⁶ Zipline Logistics 2018.

²⁷ Telephone interview with Donna Lemm, Executive Vice President of National Sales, IMC Companies, LLC, January 23, 2019.

²⁸ Email correspondence with Steve Brophy, Senior Director Master Data Management | EDI | SBT Dollar General Corporation, January 28, 2019.

²⁹ Hampstead 2019b.

³⁰ Telephone interview with Michael Symonanis, Director, Global Container Logistics Group, Louis Dreyfus Company, January 9, 2019.

³¹ Black 2018.

and check-out processes, avoid lane changes, and add weekend pick-up and delivery.³²

Efficiency improvements by motor carriers and shippers are made easier with advancements in technology. Companies have developed software that lets drivers schedule terminal times and rate shippers.³³ This is being used both by motor carriers and independent drivers to help determine which shippers to work with. Owner-operators and shippers are benefiting from enhancements in GPS location tracking, following shipments in real time.³⁴ This allows shippers to better schedule deliveries and pickups—improving turnaround times. Motor carriers are also using GPS technology to track shipments and measure the time a driver arrives and departs a warehouse.³⁵ Companies like Uber Freight and Convoy advertise a fully automated process connecting drivers and shippers with little to no human interaction.³⁶

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³² Schneider 2017; Zipline Logistics 2018a; Telephone interview with Michael Symonanis, Director, Global Container Logistics Group, Louis Dreyfus Company, January 9, 2019.

³³ Transport Topics 2018b.

³⁴ Long 2018.

³⁵ Transport Topics 2018a.

³⁶ Uber Freight 2017; Hampstead 2019a.

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APPENDIX A



State of Tennessee

PUBLIC CHAPTER NO. 952

HOUSE BILL NO. 1345

By Representatives Camper, Thompson

Substituted for: Senate Bill No. 1277

By Senators Norris, Kelsey

AN ACT to amend Tennessee Code Annotated, Title 55 and Title 67, relative to tax credits for shippers.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1.

(a) As used in this act:

(1) "Accessorial services":

(A) Means any service that is incidental to transportation services;
and

(B) Includes storage, packing, unpacking, hoisting or lowering, waiting time, overtime loading and unloading, and reweighing;

(2) "Best interests of the state" means a determination by the commissioner, with approval by the commissioner of economic and community development, that the qualified transportation expenditures are a result of the credit described in this act;

(3) "Freight motor vehicle" means a motor vehicle that is designed and used primarily to transport goods for hire or for commercial purposes;

(4) "Goods" means personal property that is treated as movable for the purposes of a contract for transportation services;

(5) "Line haul services" means the movement of goods over the public highways from the point of origination to the final destination;

(6) "Motor carrier" means a person who operates or causes to be operated a freight motor vehicle on a public highway for the purpose of performing transportation services;

(7) "Person" means every individual, firm, association, joint-stock company, syndicate, partnership, corporation, or other business entity;

(8) "Qualified transportation expenditures" means the total charges incurred by a shipper for line haul services, transportation services, and accessorial services performed by a motor carrier for shipments picked up at points of origination within this state or delivered to final destinations within this state;

(9) "Shipper" means any person that enters into a contract for transportation services with a motor carrier;

(10) "Transportation services" means the pickup or delivery, or both, of goods at the point of origination or final destination; and

(11) "Turn-around policy" means the uniform and internal policy established by a shipper that meets the requirements of subdivision (c)(2).

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(b) The Tennessee advisory commission on intergovernmental relations (TACIR) is directed to perform a study of the potential, overall effects of creating a franchise and excise tax credit for shippers with pickups or deliveries originating in, or destined to, any county having a population over nine hundred thousand (900,000) according to the 2010 federal census or any subsequent federal census.

(c) In conducting the study under subsection (b), TACIR shall consider a franchise and excise tax credit that meets the following criteria:

(1) The credit would be allowed to any shipper that establishes and implements a turn-around policy pursuant to subdivision (c)(2) against the sum total of the franchise and excise taxes owed by the shipper, equal to two percent (2%) of qualified transportation expenditures;

(2) To qualify for the credit described in this act, the shipper would establish and implement a uniform and internal turn-around policy for assuring that pickups and deliveries are performed during the period of time agreed upon by a motor carrier and a shipper and for preventing delays in the timely transportation of goods over the public highways. The policy must include the following minimum requirements:

(A) That pickups and deliveries shall be accomplished on the date scheduled for pickup or delivery, that pickups must be completed within the period of time agreed to by the shipper and the motor carrier, which period shall not exceed two (2) hours, and that deliveries must be completed within the period of time agreed to by the shipper and the motor carrier, which period shall not exceed two (2) hours; and

(B) That for each shipment of goods for which transportation services of the motor carrier is requested by a shipper, the shipper shall provide the motor carrier with contact information for:

(i) Any person who may authorize pickup or delivery of any goods to be transported if the shipper designates such a person;

(ii) The shipper and any person receiving the pickup or delivery, if different from the shipper; and

(iii) Any person to whom notification of delays or that goods are available for pickup or delivery, shall be given;

(3) The credit would only be available upon a determination by the commissioner of revenue, with approval by the commissioner of economic and community development, that the qualified transportation expenditures and the credit are in the best interests of the state;

(4) The credit would apply only in the tax year in which the shipper implements a turn-around policy meeting the criteria in subdivision (c)(2), incurs qualified transportation expenditures, and otherwise meets the requirements of this act; and

(5) The total credit claimed for any taxable year, including the amount of any carryforward credit claimed, would not exceed fifty percent (50%) of the combined franchise and excise tax liability shown by the return before any credit is taken. Any unused credit could be carried forward in any tax period until the credit is taken; provided, however, that the credit could not be carried forward for more than fifteen (15) years.

(d) All appropriate state agencies and departments shall provide assistance to TACIR upon the request of its executive director.

(e) TACIR shall submit a report disclosing the findings of the study and recommendations, including any proposed legislation or interim reports, to the general assembly no later than February 1, 2020.

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SECTION 2. This act shall take effect upon becoming a law, the public welfare requiring it.

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HOUSE BILL NO. 1345

PASSED: April 23, 2018


BETH HARWELL, SPEAKER
HOUSE OF REPRESENTATIVES


RANDY MCNALLY
SPEAKER OF THE SENATE

APPROVED this 15th day of May 2018


BILL HASLAM, GOVERNOR