

# Administrative notice

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## Abstract

The exercise of police power of Tennessee state government upon transportation is authorized through Titles 55 and 65 of the Tenn. Code Ann. The power regulates the for-profit use of the roads and highways by carriers whose owners, operators, chauffeurs and drivers operate motor vehicles in carrying people or goods for hire. Such conduct is regulable in the public interest — for the public health, safety and welfare. This regulation of transportation does not infringe on the right of travel upon the roadways. Constitutionally guaranteed rights were not abrogated with the imposition of the driver license in 1937 and other statutes, which rights are practiced today by people in this state for their pleasure, private purpose, and for the exercise of myriad other God-given rights such as religion and assembly.

# Administrative Notice

## On Authority to Regulate Transportation, Travel on Tennessee Public Roadways

The Tennessee constitution, state law and court rulings delineate the state's authority over human activity upon the people's right of way. on roads, streets, lanes, boulevards, thoroughfares and highways, and the limits thereto.

The state's authority over certain uses of the road is described in several places: Title 55 of Tennessee code annotated (motor and other vehicles), title 4 (department of safety), title 5 (uniform administrative procedures act) and title 65 (motor carriers).

Federal authority to regulate interstate commerce and intrastate commerce is found at title 49 of the U.S. code.

Driver licenses are under the Uniform Classified and Commercial Driver License Act of 1988, regulating transportation on Tennessee roads, Title 55.

Transportation is "the removal of goods or persons from one place to another, by a carrier." A carrier is an "individual or organization engaged in transporting passengers or goods for hire." Black's Law Dictionary 6th ed.

Two types of carrier exist.

➤ "Common carriers are those that hold themselves out or undertake to carry persons or goods of all persons indifferently, or of all who choose to employ it. Merchants Parcel Delivery v. Pennsylvania Public Utility Commission, 150 Pa.Super. 120, 28 A.2d 340, 344. Those whose occupation or business is transportation of persons or things for hire or reward. Common carriers of passengers are those that undertake to carry all persons indifferently who may apply for passage, so long as there is room, and there is no legal excuse for refusal." Black's Law Dictionary 6th ed.

➤ "Private carriers are those who transport only in particular instances and only for those they choose to contract with." Black's Law Dictionary 6th ed.

Commerce means trade, traffic and transportation within the jurisdiction of the United States; between a place in a state and a place outside of the state, including a place outside the United States. It also means trade, traffic and transportation in the United States which affects any trade, traffic and transportation in any state. Tenn. Code Ann. § 55-50-102. Definitions 9(A), 9(B).

"Of course, the legislature has full authority over the highways of the State and may lay out their routes and regulate their use, and it may likewise prescribe the conditions on which highways may be used for gain by carriers for hire." S.E. Greyhound Lines v. Dunlap, 160 S.W.2d 418 (Tenn. 1942).

## Controlling authorities: Tenn. Code Ann., 49 U.S. Code

"Commercial driver license" means a license issued by the department in accordance with the standards contained in 49 CFR part 383 to an individual that authorizes the individual to operate a class of commercial motor vehicle." Tenn. Code Ann. § 55-50-102. Chapter definitions. "'Commercial motor vehicle' means \*\*\* a self-propelled or towed vehicle used on the highways in commerce principally to transport passengers or cargo" if the vehicle weighs 5 tons, carries more than 10 passengers or hauls hazardous materials. 49 U.S. Code § 31101 - Definitions

Tennessee department of safety and homeland security is an administrative department serving the governor's office and engages hearing officers to conduct contested case hearings under the Uniform Administrative Procedures Act, Tenn. Code Ann. § 4-3-2005. The commissioner "has the authority to establish and to promulgate such rules and regulations governing the administration and operation of the department \*\*\* not inconsistent with the laws of this state," under the authority of the state constitution. Tenn. Code Ann. § 4-3-2009.

The department has authority to oversee “administration and enforcement of title 65, chapter 15.” Tenn. Code Ann. § 4-3-2012. Rules and regulations regarding motor carriers. It also has authority to implement title 55, chapter 50. Tenn. Code Ann. § 55-50-201.

## Purpose of regulation: Protect public assets

Title 65, chapter 15, concerns itself with the public safety and the preservation of the people’s assets, namely the highways and roads in Tennessee. The law is enacted “for the sole purpose of promoting and conserving the interest and convenience of the public” and “to supervise and regulate the transportation of persons and property by motor vehicle over or upon the public highways of this state” as well as “certain businesses closely allied with such motor transportation.” Tenn. Code Ann. § 65-15-101. Purpose — Participation in the unified carrier registration system.

The department’s duty in a unified carrier registration system is to “protect the property of the state and its highways from unreasonable, improper or excessive use.”

The regulable activity of operating as a motor carrier is to carry goods and people for hire. “(11) ‘Motor carrier’ means any person, firm, partnership \*\*\* operating any motor vehicle with or without semitrailers attached, upon any public highway for the transportation of persons or property, or both, or for providing or furnishing such transportation service, for hire as a common carrier.” Tenn. Code Ann. § 65-15-102. Part definitions.

Taxicab, sedan, shuttle, motor vehicle, limousine are instrumentalities used by a “for-hire motor carrier,” who is a “person engaged in the transportation of goods or passengers for compensation.” People and companies involved in for-hire services moving goods and people use “motor vehicles,” which term means “any automobile, automobile truck, motor bus, truck bus or any other self-propelled vehicle not operated or driven upon fixed rails or tracks” Tenn. Code Ann. § 65-15-102(14).

The people’s roads are turned into instrumentalities, too, when used in interstate commerce. 29 CFR § 776.29 Instrumentalities and channels of interstate commerce. “(a) Typical examples. Instrumentalities and channels which serve as the media for the movement of goods and persons in interstate commerce or for interstate communications include railroads, highways, city streets; telephone, gas, electric and pipe line systems; radio and television broadcasting facilities; rivers \*\*\*.”

The department of safety and homeland security has the authority to “license, supervise and regulate every motor carrier in the state and promulgate rules and regulations pertaining thereto” Tenn. Code Ann. § 65-15-106. Powers of department.

Since 1921 in Tennessee, the law is concerned about the damage to the public right of way and puts parties who damage the roads for private profit under state supervision and criminal penalty.

“No vehicle, truck, engine, or tractor of any kind \*\*\* shall be permitted to operate upon any street, road, highway, or other public thoroughfare that, either by reason of its weight or the character of its wheels, will materially injure the surface or foundation of the street, road, highway, public thoroughfare, including the bridges thereon, unless and until the owner or operator of the vehicle of any kind has complied with the rules and regulations that may be prescribed by the departments of transportation and safety \*\*\*.” Tenn. Code Ann. § 55-7-101. Operation of vehicles injurious to highways must conform to regulations.

“The owner of any vehicle driven upon the public thoroughfare, in violation of any of §§ 55-7-101 — 55-7-105, or regulations issued thereunder, shall also be liable in an action for damages caused to these public thoroughfares, the action to be prosecuted in the name of the state by the district attorney general of the district in which the violation occurs.” Tenn. Code Ann. 55-7-106. Liability for damages to highways — Suit by district attorney general.

The general assembly imposes detailed provisions about operating motor vehicles,— for example, about making left-hand turns and right-hand turns (Tenn. Code Ann. § 55-8-140); about a driver “of any motor vehicle carrying passengers for hire or of any school bus carrying any school child” being required to stop at railroad crossings, (Tenn. Code Ann. § 55-8-147), about following too closely (Tenn. Code Ann. § 55-8-124) and myriad other rules.

“Motor vehicles are dangerous machines; and, even when skillfully and carefully operated, their use is attended by serious dangers to persons and property. In the public interest the State may make and enforce regulations reasonably calculated to promote care on the part of all, residents and non-residents alike, who use its highways.” Hess v. Pawloski, 274 U.S. 352 (1927).

## Regulation ensures safety of traveling public, pedestrians

The state of Tennessee regulates commerce on the roads through Title 55 of Tenn. Code Ann. via the department of safety & homeland security. “(a) The department of safety is vested with the power and authority, and it is its duty, to license, supervise and regulate every motor carrier in the state and promulgate rules and regulations pertaining thereto.” Tenn. Code Ann. § 65-15-106. Powers of department.

“The ability to drive a motor vehicle on a public highway is not a fundamental ‘right.’ Instead, it is a revocable ‘privilege’ that is granted upon compliance with statutory licensing procedures. State and local governments possess an inherent power, i.e. police power, to enact reasonable legislation for the health, safety, welfare, morals, or convenience of the public. Thus, our legislature, through its police power, may prescribe conditions under which the ‘privilege’ of operating automobiles on public highways may be exercised.” State v. Booher, 978 S.W.2d 953 (Tenn. Crim. App. 1997).

Early court decisions in Tennessee and other states emphasize the need for the state to regulate commerce to promote public safety.

“The business of using the public highways for profit, earned by transporting persons and property for hire, has been definitely excluded from the category of private or personal rights arising from citizenship. Recent decisions of the Supreme Court of the United States have determined certain fundamental principles concerning the use of the highways. One is ‘that the primary use of the state highways is the use for private purposes; that no person is entitled to use the highways for gain as a matter of common right. \*\*\* The statute under consideration is a comprehensive regulation of the use of the state highway system by both common carriers and contract carriers. It is designed \*\*\* to promote and preserve economically sound transportation, to regulate the burden of use to which the highways may be subjected, to protect the safety of the traveling public, and to protect the property of the state in the highways from unreasonable, improper, or excessive use.’” State v. Harris, 76 s.w.2d 324, 168 Tenn. 159 (1934).

“The movement of motor vehicles over highways, being attended by constant and serious dangers to the public and also being abnormally destructive to the highways, is a proper subject of police regulation by the state. In the absence of national legislation covering the subject, a state may prescribe uniform regulations necessary for safety and order in respect to operation of motor vehicles on its highways, including those moving in interstate commerce. A reasonable graduated license fee on motor vehicles, when imposed on those engaged in interstate commerce, does not constitute a direct and material burden on such commerce and render the act imposing such fee void under the commerce clause of the federal Constitution.” Hendrick v. Maryland, 235 U.S. 610 (1915).

The Tennessee code provides myriad detailed rules of “vehicular traffic” to protect all users of the people’s highways. For example:

- Tenn. Code Ann. § 55-8-110, traffic-control signals, in which green means go, orange means caution and red means stop.
- Rules about how “a vehicle shall be driven upon the right half of the roadway,” Tenn. Code Ann. § 55-8-115.
- Rules about a “driver of a vehicle overtaking another vehicle,” Tenn. Code Ann. § 55-8-117.
- Rules holding that “[t]he driver of a motor vehicle shall not follow another vehicle more closely than is reasonable and prudent.” Tenn. Code Ann. § 55-8-124.

The law’s focus is that people involved in transportation be mindful of others, whether these others on the roadway are involved in transportation or in travel.

The law requires special care by those involved in transportation of another category of individual or person using the public right of way, namely the pedestrian.

“(a) Notwithstanding the foregoing provisions of this chapter, every driver of a vehicle shall exercise due care to avoid colliding with any pedestrian upon any roadway, and shall give warning by sounding the horn when necessary, and shall exercise proper precaution upon observing any child or any confused or incapacitated person upon a roadway.

“(b) Notwithstanding any speed limit or zone in effect at the time, or right-of-way rules that may be applicable, every driver of a vehicle shall exercise due care by operating the vehicle at a safe speed, by maintaining a safe lookout, by keeping the vehicle under proper control and by devoting full time and attention to operating the

vehicle, under the existing circumstances as necessary in order to be able to see and to avoid endangering life, limb or property and to see and avoid colliding with any other vehicle or person, or any road sign, guard rail or any fixed object either legally using or legally parked or legally placed, upon any roadway, within or beside the roadway right-of-way including, but not limited to, any adjacent sidewalk, bicycle lane, shoulder or berm.” Tenn. Code Ann. § 55-8-136. Drivers to exercise due care.

The duty of the Tennessee highway patrol is to “enforce all laws \*\*\* regulating traffic,” Tenn. Code Ann. 4-7-104. To this end, the state has created a unified carrier registration system to “[p]rotect the welfare and safety of the traveling and shipping public in their use of the highways,” Tenn. Code Ann. § 65-15-101(a)(3).

The provision makes clear: *Some people on the road travel, and some ship.* Shipping is a type of travel, a subcategory of travel.

Fees are collected from “freight motor vehicle” operators to fund regulatory activity protective of the traveling public in two categories of commercial and private. “This safety inspection fee shall provide a means for the state to exercise its police powers in order to protect the highways, and to promote the safety of the traveling public by the regulation of the use of and safe operation of such [commercial] vehicles over the highways.” Tenn. Code Ann. § 65-15-112. Inspection, control, and supervision fee — Motor vehicle account.

“(16) ‘Public highway’ means every public street, alley, road, highway, or thoroughfare of every kind in this state used by the public, whether actually dedicated to the public and accepted by the proper authorities or otherwise.” Tenn. Code Ann. § 65-15-102.

“[T]he primary use of the state highways is the use for private purposes; that no person is entitled to use the highways for gain as a matter of common right; that as a proprietor, in preserving its highways, the state may, with little restraint, prescribe the conditions on which those highways can be used.” *Hoover Motor Express Co. v. Fort*, 167 Tenn. 628 \*; 72 S.W.2d 1052 \*\*; 1933 Tenn. LEXIS 71.

“An examination of the acts of Congress discloses no provision, express or implied, by which there is withheld from the State its ordinary police power to conserve the highways in the interest of the public and to prescribe such reasonable regulations for their use as may be wise to prevent injury and damage to them.” *Morris v. DUBY*, 274 U.S. 135 (1927).

“The reason for such a suspension or revocation is not to punish the driver but is to protect the general public by removing a potential menace from the highways. \*\*\* The reason for such a suspension or revocation is not to punish the driver but is to protect the general public by removing a potential menace from the highways. \*\*\* ” In other words, the granting of this license in the first instance to the operator is a privilege which is subject to reasonable regulations in the interest of the public under the police power of the State.” *Goats v. State*, 211 Tenn. 249, 364 S.W.2d 889, 891 (Tenn.1963).

“Because it is a means of guaranteeing a minimal level of driver competence, licensing improves safety on our highways and, thus, protects and enhances the well being of the residents and visitors of our state. Thus, our state legislature may properly within the scope of its police power enact reasonable regulations requiring licensing and registration of motor vehicles as it furthers the interests of public safety and welfare.” *State of Tennessee v. Robert K. Booher*, 978 S.W.2d 953.

“By reason of the competition of the many engaged in the business, frequent contests between the operators for points advantage in the streets would follow; that there was a tendency fraught with danger in the many so engaged seeking the streets of heaviest travel for passengers, thus leading to congestion, as well as in hasty efforts made to head off and divert those waiting on the curb as offerers for passage on Street railways; that the desire and necessity to collect many small fares would tempt operators to indulge in swift and careless running; that by reason of receiving and discharging passengers at Short, unscheduled intervals there would be an interruption of traffic and endangering of other vehicles in the streets; that by reason of the small investment required many who are financially irresponsible would embark in the business.” *Memphis Street Railway Co. v. Rapid Transit Co.*, 6 Thomp., 99, 1915, justifying regulation of jitneys.

## Driving, operating vehicle for profit is subject to regulation

The driving of an automobile is a privilege, not a property right, and is subject to reasonable regulation under the police power in the interest of the public safety and welfare. The driving of an automobile is a privilege, not a property right, and is subject to reasonable regulation under the police power in the interest of the public safety and welfare. 5 Am. Jur., 593; 42 C.J., 740, 746; *Hendrick v. Maryland*, 235 U.S. 610, 35 S.Ct., 140, 59 L.Ed., 385; *Rutherford v. City of Nashville*, 168 Tenn. 499, 79 S.W.2d 581.

“A state has power to regulate not only the use of its highways, but private contracts also, insofar as they contemplate that use; it may prescribe the terms upon which persons will be permitted to contract in respect of the use of the public highways for purposes of gain.” *Stephenson v. Binford*, 287 U.S. 251 (1932)

The *Stephenson* case stresses that regulation of “motor carrier[s] for hire” is necessary in light of rising danger and “hazard on public highways.”

TRAFFIC. Commerce; trade; sale or exchange of merchandise, bills, money, and the like. The passing of goods or commodities from one person to another for an equivalent in goods or money. *Senior v. Ratterman*, 44 Ohio St. 673, 11 N.E. 321; *Fine v. Moran*, 74 Fla. 417, 77 So. 533, 538; *Bruno v. U. S.*, C.C.A.Mass., 289 F. 649, 655; *Kroger Grocery and Baking Co. v. Schwer*, 36 Ohio App. 512, 173 N.E. 633. The subjects of transportation on a route, as persons or goods; the passing to and fro of persons, animals, vehicles, or vessels, along a route of transportation, as along a street, canal, etc. *United States v. Golden Gate Bridge and Highway Dist. of California*, D.C.Cal., 37 F. Supp. 505, 512.

“These cases, though involving regulatory statutes or ordinances, all recognize and are based upon the fundamental ground that the sovereign state has plenary control of the streets and highways, and, in the exercise of its police power, may absolutely prohibit the use of the streets as a place for the prosecution of a private business for gain. They all recognize the fundamental distinction between the ordinary right of a citizen to use the streets in the usual way and the use of the streets as a place of business or main instrumentality of a business for private gain. The former is a common right, the latter an extraordinary use. As to the former the legislative power is confined to regulation, as to the latter it is plenary and extends even to absolute prohibition. Since the use of the streets by a common carrier in the prosecution of its business as such is not a right, but a mere license or privilege, it follows that the Legislature may prohibit such use entirely without impinging any provision either of the state or federal Constitution. \*\*\* [T]he use to which the appellant purposes putting the streets is not their ordinary or customary use, but a special one. He purposes using them for the transportation of passengers for hire, a use for which they are not primarily constructed.” *Hadfield v. Lundin*, 98 Wash. 657. 1917.

“[T]he business of operating as a motor carrier of property for hire along the highways of the state is one affected with the public interest. It further declares that the rapid increase of motor carrier traffic and the lack of effective regulation have increased the dangers and hazards on public highways and made more stringent regulations imperative to the end that the highways may be rendered safer for public use, the wear and tear upon them reduced, discrimination in rates eliminated, congestion of traffic minimized, the use of the highways for transportation of property for hire restricted to the extent required by the necessities of the general public, and the various transportation agencies of the state adjusted and correlated ‘so that public highways may serve the best interest of the general public.’” *Stephenson v. Binford*, 287 U.S. 251 (1932).

Cars, trucks, motor vehicles of all kinds make up traffic, as defined in *Bouvier’s Law Dictionary* (1856). “TRAFFIC. Commerce, trade, sale or exchange of merchandise, bills, money and the like.” People involved in traffic are drivers. “DRIVER. One employed in conducting a coach, carriage, wagon, or other vehicle, with horses, mules, or other animals.” *Bouvier’s*, 1856.

Drivers are people involved in commerce or who are servants. Tennessee statute identifies two types, one under authority of a commercial driver’s license, the other under a classified driver license. “Commercial driver license” means a license issued by the department in accordance with the standards contained in 49 CFR part 383 to an individual that authorizes the individual to operate a class of commercial motor vehicle.”

“Every person applying for an original or renewal driver license shall be required to comply with and be issued a classified driver license \*\*\*. Tenn. Code Ann. 55-50-301. License required — Requirements — Exception — Applicability to temporary licenses and permits. Among the requirements: “No person, except those expressly exempted in this section, shall drive any motor vehicle upon a highway in this state unless the person has a valid driver license under this chapter for the type or class of vehicle being driven.” Tenn. Code Ann. § 55-50-301(a)(1).

Licenses give permission to do that which otherwise forbidden or prohibited. With reference to highways and roads: “Streets and Ways A permit to use street is a mere license revocable at pleasure. *City of Boston v. A.W. Perry, Inc.*, 304 Mass. 18, 22 N.E.2d 627, 630; *Lanham v. Forney*, 196 Wash. 62, 81 P.2d 777, 779. City having right to regulate use of its streets by motor vehicles for hire may issue licenses; license being permission. *Ex parte Schutte*, 118 Tex.Cr.R. 182, 42 S.W.2d 252, 255. Permissive use and license as synonymous, *Aldine Realty Co. of Pittsburgh v. Manor Real Estate & Trust Co.*, 297 Pa. 583, 148 A. 56, 58. Street railway location or elevated railway location as license. *Boston Elevated Ry. Co. v. Commonwealth*, 310 Mass. 528, 39 N.E.2d 87, 103, 106, 108. The privilege of using the streets and highways by the operation thereon of motor carriers for hire can be acquired only by permission or license from the state or its political subdivisions. *Blashfield, Cyc. of Automobile Law and Prac.*, Perm. Ed., 331.” *Black’s Law Dictionary*, 4th edition.

“The driving of an automobile is a privilege, not a property right, and is subject to reasonable regulation under the police power in the interest of the public safety and welfare.” Earl Sullins was a licensee who had obtained the privilege of driving an automobile by application and the remission of fees. He violated the 1939 driver license law, Section 11 of the original act, as amended by the 1939 Act, section 5, is as follows: “(b) In the event of any final judgment for damages to property or personal injury resulting from the negligent operation of any motor vehicle,\*\*\* the Department of Safety shall forthwith suspend the license of any chauffeur or operator of the motor vehicle \*\*\* until conditions are met.” Sullins v. Butler, 135 S.W.2d 930 (Tenn. 1940).

The holding of a driver license by someone involved in regulable activity is subject to civil sanction; the seizure of a license or a finding that a person is a habitual offender against rules for operators of motor vehicles is subject to statute. “If the court finds that the defendant is not an habitual offender, the proceeding shall be dismissed, but if the court finds that such defendant is an habitual offender, the court shall make an order directing that such person shall not operate a motor vehicle on the highways of this state and that such person shall surrender to the court all licenses to operate a motor vehicle upon the highways of this state.” Tenn. Code Ann. § 55-10-613(a)

“We conclude that the use of the word ‘shall’ by the legislature removes all discretion from the trial court as to the decision to revoke a person’s license to drive once the determination that he is an habitual offender has been made. The sanction of declaring an individual to be an habitual offender is not a matter affected by principles of equity.” State vs. Jonathan Malady, 952 S.W.2d 440; 1996 Tenn. Crim. App. LEXIS 449

## Federal law controls transportation enforcement

“The power of the federal government to regulate interstate commerce gives it control over motor vehicles engaged in business between one state and another of the same degree as such control exists as to any other class of vehicles engaged in the same occupation.” 7A Am Jur 2d, Automobiles and highway traffic.

49 U.S. Code 13102, Motor Carriers etc. “(16) Motor vehicle. – The term ‘motor vehicle’ means a vehicle, machine, tractor, trailer, or semitrailer propelled or drawn by mechanical power and used on a highway in transportation, or a combination determined by the Secretary \*\*\*.” (23) Transportation.—The term ‘transportation’ includes – (A) a motor vehicle, vessel, warehouse \*\*\* or equipment of any kind related to the movement of passengers or property, or both, regardless of ownership or an agreement concerning use; and (B) services related to that movement, including arranging for, receipt, delivery, elevation, transfer in transit, refrigeration, icing, ventilation, storage, handling, packing, unpacking, and interchange of passengers and property.”

At 18 U.S. Code, Part 1, Chapter 2 - AIRCRAFT AND MOTOR VEHICLES, among the definitions:

“(6) **Motor vehicle.** — The term ‘[motor vehicle](#)’ means every description of carriage or other contrivance propelled or drawn by mechanical power and used for commercial purposes on the highways in the transportation of passengers, passengers and property, or property or cargo.

“(10) **Used for commercial purposes.** — The term ‘used for commercial purposes’ means the carriage of [persons](#) or property for any fare, fee, rate, charge or other consideration, or directly or indirectly in connection with any business, or other undertaking intended for profit.

Code of Federal Regulations 49, part 383. Definitions: “Driver means any person who operates any commercial motor vehicle.”

*Commercial motor vehicle* means any self-propelled or towed motor vehicle used on a highway in interstate commerce to transport passengers or property when the vehicle -

- (1) Has a gross vehicle weight rating or gross combination weight rating, or gross vehicle weight or gross combination weight, of 4,536 kg (10,001 pounds) or more, whichever is greater; or
- (2) Is designed or used to transport more than 8 passengers (including the driver) for compensation; or
- (3) Is designed or used to transport more than 15 passengers, including the driver, and is not used to transport passengers for compensation; or
- (4) Is used in transporting material found by the Secretary of Transportation to be hazardous under 49 U.S.C. 5103 and transported in a quantity requiring placarding under regulations prescribed by the Secretary under 49 CFR, subtitle B, chapter I, subchapter C.

“*Motor vehicle* means any vehicle, machine, tractor, trailer, or semitrailer propelled or drawn by mechanical power and used upon the highways in the transportation of passengers or property, or any combination thereof determined by the Federal Motor Carrier Safety Administration, but does not include any vehicle, locomotive, or car operated exclusively on a rail or rails, or a trolley bus operated by electric power derived from a fixed overhead wire, furnishing local passenger transportation similar to street-railway service.” 49 CFR 390.5 - Definitions.

“(56) ‘Vehicle’ means every device in, upon, or by which any person or property is or may be transported or drawn upon a public highway, excepting devices moved by human power or used exclusively upon stationary rails or tracks.” Tenn. Code Ann. § 55-50-102. Chapter definitions.

Federal law pre-empts state law when its standards are more stringent. 49 CFR Part 392, Subpart A - General.

“§ 392.1 Scope of the rules in this part.

“Every motor carrier, its officers, agents, representatives, and employees responsible for the management, maintenance, operation, or driving of commercial motor vehicles, or the hiring, supervising, training, assigning, or dispatching of drivers, shall be instructed in and comply with the rules in this part.

“§ 392.2 Applicable operating rules.

“Every commercial motor vehicle must be operated in accordance with the laws, ordinances, and regulations of the jurisdiction in which it is being operated. However, if a regulation of the Federal Motor Carrier Safety Administration imposes a higher standard of care than that law, ordinance or regulation, the Federal Motor Carrier Safety Administration regulation must be complied with.”

Federal jurisdiction over the Tennessee department of safety is through compacts under the interstate commerce clause of the U.S. constitution that give authority in Tennessee to 49 CFR Chapter III, Subchapter B - Federal Motor Carrier Safety Regulations (MCSAP). Rules for commercial trucks and drivers begin at part 390.

The federal government regulates interstate commerce to protect the public from injuries and losses caused by commercial motor vehicles. “The MCSAP is a federal grant program that provides financial assistance to states to reduce the number and severity of accidents and hazardous materials incidents involving commercial motor vehicles (CMVs). The goal of the MCSAP is to reduce CMV-involved accidents, fatalities, and injuries through consistent, uniform, and effective CMV safety programs” 49 CFR 350.101.

“The purpose of this part is to ensure that the Federal Motor Carrier Safety Administration (FMCSA), and states \*\*\* work in partnership to establish programs to improve motor carrier, CMV, and driver safety to support a safe and efficient transportation system. \*\*\* ” 49 CFR § 350.103 What is the purpose of this part?

The national Motor Carrier Safety Assistance Program spends tax dollars to help protect travelers on the highways — to “[i]ncrease public awareness and education on [commercial motor vehicle safety]” and “[t]arget unsafe driving of commercial motor vehicles and non commercial motor vehicles in areas identified as high risk crash corridors” 49 CFR § 350.110.

Traffic enforcement against offenses such as speeding is directed at commercial carriers. Enforcement “means enforcement activities of state or local officials, including the stopping of vehicles operating on highways, streets, or roads for moving violations of state or local motor vehicle or traffic laws (e.g., speeding, following too closely, reckless driving, improper lane changes)” 49 CFR § 350.111.

The U.S. government oversees state protocols “to promote adoption and enforcement of State laws and regulations pertaining to commercial motor vehicle safety” 49 CFR 355.1 - Purpose. “These provisions apply to any state that adopts or enforces laws or regulations pertaining to commercial motor vehicle safety in interstate commerce” 49 CFR § 355.3 Applicability.

Federal rules apply to road users involved in transportation. “(a) The rules in subchapter B of this chapter are applicable to all employers, employees, and commercial motor vehicles that transport property or passengers in interstate commerce. (b) The rules in part 383 of this chapter, Commercial Driver's License Standards; Requirements and Penalties, are applicable to every person who operates a commercial motor vehicle, as defined in § 383.5 of this subchapter, in interstate or intrastate commerce and to all employers of such persons.” 49 CFR § 390.3 General applicability.

## Operator defined as commercial

“(46) ‘Operator’ means: (A) For purposes of a conventionally operated vehicle, every person, other than a chauffeur, who drives or is in actual physical control of a motor vehicle upon a highway or who is exercising control over or steering a vehicle being towed by a motor vehicle.” Tenn. Code Ann. § 55-8-101. Chapter and part definitions.

Operators are users of the highway in commerce, starting at the beginning of regulable highway commerce in Tennessee.

“3079a199. Operator is a common carrier, and the business is a privilege, when. — any person, firm, or corporation operating for hire any public conveyance propelled by steam, compressed air, gasoline, naphtha, electricity, or other motive power for the purpose of affording a means of street transportation similar to that ordinarily afforded by street railways (but not operated upon fixed tracks) by indiscriminately accepting and discharging such persons as may offer themselves for transportation along the way in course of operation, shall be and the same is hereby declared and defined to be a common carrier, and the business of all such common carriers is hereby declared to be a privilege.” (1915, chapter 60 Section 1, cited Shannon’s *Compilation of Tennessee Statutes*, Volume 2, 1917.

From nearly the beginning of automobile use in Tennessee, cities were allowed to demand permits, licenses and bonds for those working as operators. “Cities May impose a tax for such privilege. — And all such incorporated cities and towns are hereby authorized and empowered to impose upon all such common carriers a tax for the exercise of the privilege herein granted.” Shannon’s *A Compilation of the Tennessee Statutes*, 3079a204, 1917.

“The word ‘Jitney’ we think may be defined to be a self-propelled vehicle, other than a streetcar, traversing the public streets between certain definite points or termini, and as a common carrier conveying passengers at a 5-cent or some small fare between such termini and indeterminate points, and so held out, advertised, or announced.” *Memphis Street Railway Co. v. Rapid Transit Co.*, 6 Thomp., 99, 1915.

## Driver defined as commercial

The distinction between driver and traveler appears ancient. In the Holy Bible, a driver is a hireling serving a master with a freight-carrying animal, or a soldier taking orders. Moses and the Israelites exalted God’s destruction of the Egyptian military in the Red Sea, “Both horse and driver he has hurled into the sea,” Exodus 15:1. In a battle with the king of Judah, wicked King Ahab is hit by a “chance” arrow: “The king told his chariot driver, ‘Wheel around and get me out of the fighting. I’ve been wounded,’” 2 Chronicles 18:33. In a lament, Job says, “Captives also enjoy their ease; they no longer hear the slave driver’s shout,” Job 3:18. The verb “drive” is used 89 times in the scriptures (NKJV) and often refers to the act of movement under compulsion and duress, as in, “I will send the hornet ahead of you to drive the Hivites, Canaanites and Hittites out of your way,” Exodus 23:28.

Synonyms from driver are from the era of horse-drawn commerce, including synonyms such as carter, coachman, porter, shipper, wagoner, cabman, conductor, hack, drayman, teamster, carman, hauler, waggoner.

Tenn. Code Ann. defines various classes of commercial users of the public right of way.

“‘Chauffeur’ means every person who is employed by another for the principal purpose of driving a motor vehicle and every person who drives a school bus transporting school children or any motor vehicle when in use for the transportation of persons or property for compensation;” Tenn. Code Ann. § 55-8-101(8)

“‘Driver’ means: (A) For purposes of a conventionally operated vehicle, every person who drives or is in actual physical control of a vehicle.” Tenn. Code Ann. § 55-8-101. Chapter and part definitions.

“DRIVER: One employed in conducting a coach, carriage, wagon, or other vehicle, with horses, mules, or other animals, or a bicycle, tricycle, or motor car, though not a street railroad car. See *Davis v. Petrinovich*, 112 Ala. 654, 21 South. 344, 36 L. R. A. 615; Gen. St. Conn. 1902.” *Black’s Law Dictionary* 1st edition

“DRIVER — One employed in conducting or operating a coach, carriage, wagon, or other vehicle, with horses, mules, or other animals, or a bicycle, tricycle, or motor car, though not a street railroad car. See *Davis v. Petrinovich*, 112 Ala. 654, 21 So. 344, 36 L.R.A. 615; *Isaacs v. Railroad Co.*, 7 Am. Rep. 418, 47 N.Y. 122.” *Black’s Law Dictionary*, 3rd Ed.

DRIVE, v. To impel motion and quicken. *Bosse v. Marye*, 80 Cal.App. 109, 250 P. 693, 696. To compel, urge, or move in some manner or direction. *Howell v. J. Mandelbaum & Sons*, 160 Iowa 119, 140 N.W. 397, 398, Ann.Cas.1915D, 349. To

control the motive power, as of a motor vehicle. *Grant v. Chicago, M. & St. P. Ry. Co.*, 78 Mont. 97, 252 P. 382, 385.” Black’s Law Dictionary 4th edition

“A driver’s license is usually prerequisite to the privilege of driving a motor vehicle on the highways, and no person except those individuals who are specifically exempted by law may drive or operate any motor vehicle on the highways of the state without a proper license to do so.” 7A Am Jur 2d Automobiles and highway traffic. A driver or chauffeur is required to have a license to operate in commerce. “(33) ‘License to operate a vehicle’ means any operator’s or chauffeur’s license, or any other license or permit to operate a motor vehicle issued under the laws of this state.” Tenn. Code Ann. § 55-8-101.

“‘For-hire motor carrier’ means a person engaged in the transportation of goods or passengers for compensation” Tenn. Code Ann. § 65-15-102(7).

“‘Contract hauler’ means any person, firm or corporation engaged in the transportation for compensation or hire of persons and/or property for a particular person or corporation to or from a particular place or places under special or individual agreement or agreements, and not operating as a common carrier” Tenn. Code Ann. § 65-15-102(4).

“‘Motor vehicle’ means any automobile, automobile truck, motor bus, truck, bus or any other self-propelled vehicle not operated or driven upon fixed rails or tracks \*\*\* ” Tenn. Code Ann. § 65-15-102(14).

“‘Private carrier’ means a person who provides transportation of property or passengers by a commercial motor vehicle and who is not a for-hire motor carrier” Tenn. Code Ann. § 65-15-102(15).

A driver who is a licensee is distinct from a traveler. Transportation is a category of travel.

“Appellant’s right to travel has not been infringed upon by the requirement by our legislature that an individual have a valid driver’s license to lawfully operate a motor vehicle on the public highways of this state.” *State of Tennessee v. Anthony Troy Williams* 2012 Tenn. Crim. App. LEXIS 832 \*; 2012 WL 4841547.

Travel is unaffected by and not infringed upon by the transportation law in Tennessee because transportation law controls transportation, and doesn’t infringe or abrogate the right of travel in Tennessee. The transportation statute passes the court’s constitutional muster.

## Are private cars subject to rules? Yes, if used in transportation

In some uses, privately owned cars are subject to regulation under transportation.

**Transportation network company.** In the context of Internet-based ride-sharing services such as Uber and Lyft, state law holds such cars used by private individuals as motor vehicles in ride-sharing services are subject to regulation under Title 65. “‘Personal vehicle’ means a vehicle that is used by a transportation network company driver and is: (A) Owned, leased, or otherwise authorized for use by the transportation network company driver; and (B) Not a taxicab, limousine, or for-hire vehicle.” Tenn. Code Ann. § 65-15-301. Part 3 definitions, transportation network companies. A rider in this context is involved in commercial activity as customer.

But “[a] transportation network company driver is not a chauffeur as defined in Tenn. Code Ann. 55-50-102(7) and is not subject to the requirements relating to commercial driver licenses or commercial vehicles covered under title 55, chapter 50.” Tenn. Code Ann. § 65-15-302. Laws and regulations applicable to transportation network companies.

In the interest of public safety, a transportation network company driver must “possess a valid driver license,” have “proof of registration for any motor vehicle used to provide a prearranged ride” and “possess proof of personal automobile liability insurance.” Tenn. Code Ann. § 65-15-306. Individuals prohibited from acting as drivers.

**Ridesharing and jitney services.** Similarly, ridesharing or jitney services are subject to regulation because they are involved in transportation. “Any person operating for hire any public conveyance \*\*\* for the purpose of affording a means of street transportation similar to that ordinarily afforded by street railways (but not operated upon fixed tracks) by indiscriminately accepting and discharging such persons as may offer themselves for transportation along the course of operation, is declared to be a common carrier, and the business of all such common carriers is declared to be a privilege.” Tenn. Code Ann. 65-19-101. Common carrier — Business declared a privilege. The common carrier is required to obtain a municipal privilege license, Tenn. Code Ann. § 65-19-102, and obtain a minimum \$5,000 bond. Tenn. Code Ann. § 65-19-103. Bond required.

**Ridesharing services.** In 2017 the general assembly passed a ridesharing act to regulate employers/employees involved in for-hire ridesharing arrangements.

“‘Ridesharing’ means the prearranged transportation of persons in a motor vehicle where such transportation is incidental to another purpose of a volunteer driver, and includes ridesharing arrangements known as carpools, vanpools, and buspools.” Tenn. Code Ann. § 65-19-202. Part 2 Tennessee Ridesharing Act. It regulates any act to “transport passengers for hire.”

Drivers transport goods or people for hire, but they also “travel.” A driver who does “not exercise a sound and reasonable discretion in travelling” will have a wreck and be liable. Bouvier’s 1853.

## Subject to state commercial regulation: ‘Vehicles’

“(c) ‘Motor vehicle’ means every vehicle that is self-propelled, excluding motorized bicycles and every vehicle that is propelled by electric power obtained from overhead trolley wires. ‘Motor vehicle’ means any low speed vehicle, or medium speed vehicle as defined in this chapter. ‘Motor vehicle’ means any mobile home or house trailer as defined in § 55-1-105.” Tenn. Code Ann. § 55-1-103.

“(e) ‘Vehicle’ and ‘freight motor vehicle’ means every device in, upon, or by which any person or property is or may be transported or drawn upon a highway, excepting devices moved by human power or used exclusively upon stationary rails or tracks.” Tenn. Code Ann. § 55-1-103. “Autocycle,” “motor bicycle,” “motor vehicle,” “motorcycle,” “vehicle” and “freight motor vehicle” defined.

“(87) ‘Vehicle’ means every device in, upon or by which any person or property is or may be transported or drawn upon a highway, excepting devices used exclusively upon stationary rails or tracks.” Tenn. Code Ann. § 55-8-101. Definitions

“(c) ‘Truck’ means every motor vehicle designed, used, or maintained primarily for the transportation of property.” § 55-1-104. “truck” defined.

“(b) ‘Owner’ means a person who holds the legal title of a vehicle, or in the event a vehicle is the subject of an agreement for the conditional sale or lease thereof with the right of purchase upon performance of the conditions stated in the agreement and with an immediate right of possession vested in the conditional vendee or lessee, or in the event a mortgagor of a vehicle is entitled to possession, then such conditional vendee or lessee or mortgagor shall be deemed the owner for the purpose of chapters 1-6 of this title. Tenn. Code Ann. § 55-1-112. ‘owner’ ‘person’ defined.

“(c) ‘Person’ means every natural person, firm, copartnership, association, or corporation. Tenn. Code Ann. § 55-1-112. ‘person’ defined.

“(40) ‘Motor vehicle’ means every vehicle, including a low speed vehicle or a medium-speed vehicle that is self-propelled \*\*\*,” with some trolley and electrical exceptions. Tenn. Code Ann. § 55-8-101.

Streets are available to public and private use. Statute focuses on for-profit use. “(76) ‘Street’ means the entire width between boundary lines of every way when any part thereof is open to the use of the public for purposes of vehicular travel” (Tenn. Code Ann. § 55-8-101).

(87) “‘Vehicle’ means every device in, upon or by which any person or property is or may be transported or drawn upon a highway, excepting devices used exclusively upon stationary rails or tracks” (Tenn. Code Ann. § 55-8-101).

The commercial use of automobiles in Tennessee first came under regulation in 1917 in chapter 38 of state code, “Registration of automobiles, and the regulation of their operation.”

### **3079a186. Registration of automobiles, etc., with secretary of state and county court clerk; fees therefor.**

— Before the owner of any automobile, motorcycle, auto truck, traction engine, or other vehicle of like character, used for the purpose of conveying persons or freight or for any other purpose, whether such vehicle is propelled by steam, gasoline, or electricity, or any other mechanical Power, she'll operate or permit to be operated,\*\*\* such owner shall register such vehicle with the Secretary of State, giving the motor power or horsepower and make the same together with the name and residence address of such owner, and shall upon payment of the following fees \*\*\*.”

Among its provisions: The “owner of a motor vehicle” shall report his ownership of a vehicle Jan. 1 and pay a fee of \$7.50 for a four-passenger automobile. The failure of a car dealer to report a sale to the secretary of state is a misdemeanor, and grand juries are given Inquisitorial powers to enforce the statute at 3079a193. “No automobile shall be run or driven upon any road, street, highway, or other public thoroughfare at a rate of speed in excess of twenty miles per hour[.]” 307a195. The traveler is obligated to stop his motor vehicle when approaching a wagon pulled by a horse. These are commercial relationships.

In provisions dealing with accidents, “there shall be a lien upon such automobile for the satisfaction of such recovery as the court may award whether, at the time of the injury, such automobile was driven by the owner thereof or by his chauffeur, agent, employee, servant, or any other person using the same by loan, hire, or otherwise.” 3079a197. Lien on automobile for damages.

Black’s Law Dictionary, 4th edition: “MOTOR VEHICLE. In the Uniform Act Regulating Traffic on Highways, 11 U.L.A., and similar statutes, any self-propelled ‘vehicle,’ defined as including every device in, upon, or by which any person or property is or may be transported or drawn upon a highway, except devices moved by human or muscular power or used exclusively upon stationary rails or tracks. The term ‘motor vehicles,’ although sometimes regarded as synonymous with or limited to ‘automobiles,’ often has a broader meaning, and includes not only ordinary automobiles, but also motorbuses and trucks, as well as motorcycles. Blashfield, Cyc. of Automobile Law and Prac., Perm. Ed., § 2.”

## Taxable activity

Any act of transportation, the operation of motor vehicles, working for hire, owning and using motor vehicles on Tennessee roadways are taxable because they are privileged. “Automobiles for hire or rent. For each automobile truck for hauling baggage, freight or express, twenty-five horsepower or less, each, per annum .... \$30.” Etc Shannon’s A Compilation of the Tennessee Statutes, Vol. V, 1918.

From the early 1900s, Tennessee state government demanded registration of cars used for profit on the roadway.

“Before the owner of any automobile, motorcycle, auto truck, or other vehicle of like character, used for the purposes of conveying persons of [or] freight or for any other purposes, whether such vehicle is propelled by steam, gasoline, or electricity, or any other mechanical power, shall operate or be permitted to operate upon any street, road, highway, or any other public thoroughfare in Tennessee, such owner shall register such vehicle with the state department of highways through the county clerk in the county in which owner resides, giving the motor number, rated horse power, tonnage capacity of motor trucks and make of same, together with the name and residence of such owner, and shall upon payment of the following fees \*\*\*.” 3079a194b1. Registration of automobiles, etc., with state department of highways, through County Court Clerk fees therefor. Shannon’s Compilation of Tennessee statutes, Vol. 4, 1918.

## Department of safety authority commercial

The department of safety and homeland security has authority to regulate commerce and traffic. “The department of safety is vested with the power and authority, and it is its duty, to license, supervise and regulate every motor carrier in the state and promulgate rules and regulations pertaining thereto” Tenn. Code Ann. § 65-15-106(a).

DOS’ officers have the duty of “policing and enforcing this part” and have “authority to make arrests for violation of this part” as well as other “orders, decisions, rules” etc.

The people through the general assembly added to these powers. “Such enforcement officers while enforcing and policing the provisions of this part also have authority to make arrests for any violations of the Tennessee Drug Control Act of 1989, compiled in title 39, chapter 17, part 4, and for violations of title 55, chapter 10, part 4 [“Alcohol and drug related offenses], and Tenn. Code Ann. § 55-50-408 [“driving under the influence”], when such violations are committed by a driver or an occupant of a vehicle regulated under this part.” Tenn. Code Ann. § 65-15-106. Powers of department.

In a traffic stop in Tennessee upon someone involved in transportation for compensation under this part, such enforcement officer “upon reasonable belief that any motor vehicle is being operated in violation of this part” may demand the registration certificate issued to such vehicle, demand “any and all bills of lading, waybills, invoices or other evidences of the character of the lading being transported in such vehicle,” require the operator to “inspect the contents of such vehicle for the purpose of comparing same with bills of lading, waybills, invoices or other evidence of ownership or of transportation for compensation.” If the operator or chauffeur is performing “the transportation service” in violation of this part, the officer may “impound any books, papers, bills of lading, waybills and invoices” as evidence. Tenn. Code Ann. § 65-15-106. Powers of department.

It is unlawful for any motor carrier to not have a permit while using the public’s roadways. Tenn. Code Ann. § 65-15-107 Interstate permits.

“(a) It is unlawful for any motor carrier, contract hauler, or exempt for-hire motor carrier to use any of the public highways of this state for the transportation of persons or property, or both, in interstate or intrastate commerce, without first having received a permit from the department or from any state designated as the base jurisdiction state for that carrier pursuant

to 49 U.S.C. § 11506 [omitted] as amended by § 4005 of the Intermodal Surface Transportation Efficiency Act of 1991. Violators are subject to penalty pursuant to Tenn. Code Ann. § 65-15-113.” Tenn. Code Ann. § 65-15-107. Interstate permits.

The motor carrier or contract hauler must fill out forms and pay \$50. Tenn. Code Ann. 65-15-109. Applications for permits. Insurance is required for parties involved in transportation to “adequately protect the interests of the public in the use of the public highway and with due regard to the number of persons and the amount of property to be transported, which liability or cargo insurance shall bind the obligors thereunder to make compensation for injury to persons, and loss of or damage to property resulting from the negligent operation by such motor carrier or contract hauler” Tenn. Code Ann. 65-15-110. Liability insurance requirements.

The department’s highway patrol officers “have jurisdiction and authority to make such investigation of operators of motor vehicles for hire” Tenn. Code Ann. § 4-7-105. Enforcement of motor carrier laws.

In a stop alongside a roadway, the officer is investigating compliance with rules for transportation.

“(3) Such enforcement officers, upon reasonable belief that any motor vehicle is being operated in violation of this part, shall be authorized to require the driver thereof to:

(A) Stop and exhibit the registration certificate issued for such vehicle;

(B) Submit to such enforcement officer for inspection any and all bills of lading, waybills, invoices or other evidences of the character of the lading being transported in such vehicle; and

(C) Permit such officer to inspect the contents of such vehicle for the purpose of comparing same with bills of lading, waybills, invoices or other evidence of ownership or of transportation for compensation.

(4) It is the further duty of such enforcement officers to impound any books, papers, bills of lading, waybills and invoices which would indicate the transportation service being performed is in violation of this part, subject to the further orders of the court having jurisdiction over the alleged violation.” [Tenn. Code Ann. § 65-15-106](#). Powers of the department.

It is a Class C misdemeanor for any licensee operating a motor vehicle to not have his license available for exhibit on demand. “(a) Every licensee shall have the licensee’s license in immediate possession at all times when operating a motor vehicle and shall display it upon demand of any officer or agent of the department or any police officer of the state, county or municipality \*\*\* ” 55-50-351. License to be carried and exhibited on demand -- Arrest and penalty for violations.

Travelers who apply for licenses are given a Class D license, subject to the rules of transportation that apply to other classes whose weights and conditions are described in Title 55.

## No derogation of common law

The operation of the department of safety and homeland security does not abrogate or derogate common law rights of the people, and is constitutional.

Derogation defined: “The partial repeal or abolishing of a law, as by a subsequent act which limits its scope or impairs its utility and force. Distinguished from abrogation, which means the entire repeal and annulment of a law.” Black’s Law Dictionary 4th edition.

State agencies such as DOS are governed by the Uniform Administrative Procedures Act, which does no injury to the exercise of travel and other common law rights by either abrogation nor derogation. “(a)(1) This chapter shall not be construed as in derogation of the common law, but as remedial legislation designed to clarify and bring uniformity to the procedure of state administrative agencies and judicial review of their determination and shall be applied accordingly.

“(2) Administrative agencies shall have no inherent or common law powers, and shall only exercise the powers conferred on them by statute or by the federal or state constitutions.” Tenn. Code Ann. § 4-5-103. Construction of chapter.

# Free use of public right of way

## ‘Roads used principally for travel, transportation’

Roads and highways in Tennessee are built for public benefit. “Public highways and streets are intended principally for public travel and transportation” TCA 54-5-801. Declaration of policy. “All roads and ferries laid out or appointed agreeably to law are to be deemed public roads and ferries. Tenn. Code Ann. § 54-10-101. Public roads and ferries.

“The roads belong to the public, and the county court holds them in trust for the public, and while it is proprietor for the purposes of its trust, it is not proprietor in the sense that it is owner of the roads against the public, or any member thereof. The public road is a way open to all the people, without distinction, for passage and repassage at their pleasure.” *Sumner County v. Interurban Transp. Co.*, 141 Tenn. 493, 213 S.W. 412, 1918 Tenn. LEXIS 112, 5 A.L.R. 765 (1919).

The right of members of the public to travel on the road is recognized in commercial regulatory statute as being without [outside of] its purview as the rules pertain “exclusively to the operation of vehicles” upon highways. Tenn. Code Ann. § 55-8-102. Provisions refer to vehicles upon highways — Exceptions.

(a) The provisions of this chapter and chapter 10, parts 1-5 of this title, relating to the operation of vehicles, refer exclusively to the operation of vehicles upon highways, except where a different place is specifically referred to in a given section.

(b) (1) This chapter and chapter 10, parts 1-5 of this title apply to the operation of motor vehicles upon streets, roads, and highways within federal reservations or under federal ownership and control if the following conditions exist:

(A) The streets, roads or highways are generally open to public travel; \*\*\*

(C) The streets, roads, and highways covered by the agreement shall be considered public streets, roads, and highways of the state for purposes of enforcement of this chapter or chapter 10, parts 1-5 of this title.

“A law abiding citizen is free to travel anywhere he or she chooses. Where, as here, a citizen is randomly murdered in a high crime area and a perpetrator is convicted and sentenced to death, the citizen's decision to travel into the neighborhood has no bearing on whether the death penalty is disproportionate.” *State v. Bland* 958 S.W.2d 651.

Commercial transportation and private travel are the object of the state’s care, especially when transportation system failure threatens the normal activity on the highway. “(a) In the event of a transportation system failure, an imminent threat of a failure, or other emergency that the commissioner reasonably believes would present a hazard to the traveling public or a significant delay in transportation, then the commissioner shall have the authority to enter into contracts narrowly tailored to remedy the actual or imminent failure or other emergency \*\*\*.” Tenn. Code Ann. 54-1-135. Transportation system failure.

“The fact that a highway is used chiefly by a private individual and is opened and maintained at his private expense does not make it a private highway where the statute declares it public and the whole public has the right to use the way.” *Bashor v. Bowman*, 133 Tenn. 269, 180 S.W. 326, 1915 Tenn. LEXIS 92 (1915).

“We are of opinion that there is no ambiguity about the ordinary meaning of the expression ‘public highway.’ We think there can be no doubt that the common understanding of a public highway is such a passageway as any and all members of the public have an absolute right to use as distinguished from a permissive privilege of using same.” *Standard Life Ins. Co. v. Hughes*, 203 Tenn. 636, 315 S.W.2d 239, 1958 Tenn. LEXIS 229 (1958).

“The streets of cities and towns belong to the public, and the municipality where they are located holds them in trust for it. This interest of the public is generally defined and held to be an easement. *Humes* [citation omitted] The general public have a right to use these thoroughfares for all the purposes for which they are condemned, dedicated, opened, constructed, and maintained; that is, they have the right to travel upon them, and to transport property through and over them, subject to such reasonable police regulations as the proper authorities may promulgate for the public convenience, health, morals, and safety.” *McHarge v. M. M. Newcomer & Co.*, 117 Tenn. 595 (1906).

The right to travel encompasses small, quotidian contexts (using a car to get to the store or to church, see *Bashor v. Bowman*, 133 Tenn. 269; 180 S.W. 326; 1915 Tenn. Lexis 92) and large, demographic-altering ones (relocation of domicile, see *Doe v. State*, 209 Tenn. App. Lexis 296; 2009 WL 637104).

Businesses that use the roads incidentally to their operations are considered to be mere private travelers. “If the employee’s duties created a necessity for travel, then the employee is within the scope of employment while traveling, as long as the employee does not deviate from the employer's business and engage in conduct the employer had no reason to expect. If, however, the employee’s work played no part in creating the reason for travel and was only incidental to the trip, then the trip was not within the scope of employment.” *Tennessee Farmers Mut. Ins. Co. v. American Mut. Liability Ins. Co.*, 840 S.W.2d 933.

“Personal liberty largely consists of the Right of locomotion — to go where and when one pleases — only so far restrained as the Rights of others may make it necessary for the welfare of all other citizens. The Right of the Citizen to travel upon the public highways and to transport his property thereon, by horsedrawn carriage, wagon, or automobile, is not a mere

privilege which may be permitted or prohibited at will, but the common Right which he has under his Right to life, liberty, and the pursuit of happiness. Under this Constitutional guarantee one may, therefore, under normal conditions, travel at his inclination along the public highways or in public places, and while conducting himself in an orderly and decent manner, neither interfering with nor disturbing another's Rights, he will be protected, not only in his person, but in his safe conduct." II Am.Jur. (1st) Constitutional Law, Sect. 329, p.1135.

"The right to travel interstate by auto vehicle upon the public highways may be a privilege or immunity of citizens of the United States. Compare *Crandall v. Nevada*, 6 Wall. 35. A citizen may have, under the Fourteenth Amendment, the right to travel and transport his property upon them by auto vehicle. But he has no right to make the highways his place of business by using them as a common carrier for hire. Such use is a privilege which may be granted or withheld by the state in its discretion, without violating either the due process clause or the equal protection clause." *Packard v. Banton*, 264 U.S. 140, 144.

"The right of a citizen to travel on public highway is a common right which he has under his right to enjoy 'life, liberty, and pursuit of happiness', and the right to 'travel', which means the right to go from one place to another, includes the right to start, to go forward on the way, and to stop when the traveler's destination has been reached, and also the right to stop on the way, temporarily, for a legitimate or necessary purpose when that purpose is an immediate incident to travel." *Teche Lines, Inc., v. Danforth*, 12 So.2d 784, 195 Miss. 226, Words and Phrases, Travel.

According to the most-cited supreme court case, *Hale v. Henkel*, "There is a clear distinction \*\*\* between an individual and a corporation. \*\*\* The individual may stand upon his constitutional rights as a citizen. He is entitled to carry on his private business in his own way...He owes nothing to the public so long as he does not trespass upon their rights. Upon the other hand, the corporation is a creature of the state...its powers are limited by law." *Hale v. Henkel* 201 U.S. 43 (1906).

## Pleasure purpose of private travel

Tennessee maintains its roadways and highways to serve the pleasure of those described as the "free people," Article 1, section 24, Tennessee constitution, in the state, people served by "free governments founded on their authority," Article 1, section 1.

"Can the legislature impose a privilege tax upon the mere taking a pleasure by the people, which is the exercise of an inalienable right, so long as it does not interfere with the rights of others? The taking of pleasure is a great benefit to humanity, and often a powerful agency for the restoration of health, as well as for the preservation of health." Shannon's Compilation of Tennessee Statutes, Vol. 1, 1917.

The state constitution ordains the highway system for the pleasure of the people. "A well regulated system of internal improvement is calculated to develop the resources of the State, and promote the happiness and prosperity of her citizens; therefore it ought to be encouraged by the General Assembly." Tenn. Const. Art. XI, § 10. Internal improvements to be encouraged.

The right of the public to travel pre-exists the constitution, which explicitly guards the people's innocent activity as being invulnerable to claims in court. "Nothing contained in this Constitution shall impair the validity of any debts or contracts, or affect any rights of property or any suits, actions, rights of action or other proceedings in Courts of Justice." Tenn. Const. Art. XI, § 2. No impairment of rights.

In law, pleasure appears most frequently in reference to one official serving "at the pleasure of" a superior, as in "Each commissioner shall hold office at the pleasure of the governor," Tenn. Code Ann. § 4-3-112(b).

Statute recognizes pleasure as an aspect of human nature, that belonging to and attained by individual human beings. "A permit shall be available from the department on an annual basis for individual owners of overdimensional boats used strictly for noncommercial pleasure purposes for double the amount of the regular fee described in subdivisions (h)(1) and (2). Tenn. Code Ann. 55-7-205. Permits for moving vehicles of excess weight or size — Permits for towing vehicles of excess weight, height, length, or width. Clubs are operated "operated exclusively for pleasure, recreation and other nonprofit purposes" Tenn. Code Ann. 57-4-102(8)(a). In provisions for taxes on fuels, "'Recreational vehicle' means vehicles such as motor homes, pickup trucks with attached campers, and buses when used exclusively for personal pleasure by an individual. In order to qualify as a recreational vehicle, the vehicle shall not be used in connection with any business endeavor," Tenn. Code Ann. § 67-3-1201(9) .

"It is well-settled law that every member of the public has the right to use the public roads in a reasonable manner for the promotion of his health and happiness." *Sumner County v. Interurban Transp. Co.*, 141 Tenn. 493.

“Under the general law a public street is a public highway, and, if a highway, it is a ‘road which every citizen has a right to use.’ The right of the citizen to pass and repass on it is limited to no particular part of it, for, as said in the books, ‘the public are entitled not only to a free passage along the highway, but to a free passage along any portion of it not in the actual use of some other traveler.” 1 Hawk. P.C. 22; Ang. & D. Highw. § 226. Under the common law a public highway was ‘a way common and free to all the king's subjects to pass and repass at liberty,’ and it followed, of course, under the law, that an unauthorized obstruction was indictable and punishable as a nuisance.” State v. Stroud, 52 S.W. 697 \*; 1898 Tenn. Ch. App. LEXIS 167 \*\*

A 1915 Davidson County act under private law imposing a privilege tax on all automobiles is overturned on grounds that pleasures are not taxable as vocations and that business use of roads impose more wear on the people’s asset than their use for pleasure. Roadway use “for business purposes generally inflicts greater injury and detriment than their use for a pleasure; and a discrimination by taxing their use for pleasure, and leaving them untaxed for business purposes, is without reason or just cause, and is vicious.” Shannon’s compilation of the Tennessee Statutes, vol. 1, 1917.

The pleasure of travel for private purposes is highlighted in Dred Scott v. Sandford, 1857, securing the institution of slavery and a ban on free travel by African-Americans.

“For if they [blacks] were so received, and entitled to the privileges and immunities of citizens, it would exempt them from the operation of the special laws and from the police [60 U.S. 393, 417] regulations which they considered to be necessary for their own safety. It would give to persons of the negro race, who were recognised as citizens *in any one State of the Union, the right to enter every other State whenever they pleased, singly or in companies, without pass or passport, and without obstruction*, to sojourn there as long as they pleased, to go where they pleased at every hour of the day or night without molestation, unless they committed some violation of law for which a white man would be punished; and it would give them the full liberty of speech in public and in private upon all subjects upon which its own citizens might speak; to hold public meetings upon political affairs, and to keep and carry arms wherever they went. And all of this would be done in the face of the subject race of the same color, both free and slaves, and inevitably producing discontent and insubordination among them, and endangering the peace and safety of the State.” Dred Scott v. Sandford, 60 U.S. 393, 396. 1856.

## Private purpose, civic duty, personal necessity in travel

The General Assembly in statute recognizes the private vs. public/commercial distinction. Regarding parking authorities: They “are authorized to be created to \*\*\* to maintain current data leading to efficient operation of off-street parking facilities, for the fulfillment of public needs for parking and the relation of parking to public transit and other public and private transportation modes.” Tenn. Code Ann. 7-65-109(a). The law recognizes creations such as the “private entity” and the “private non-profit educational institution” Tenn. Code Ann. § 7-90-109(5).

There exist “state, federal and private forests.” A private club “means any club or organization that does not permit the general public access to its facilities or activities” Tenn. Code Ann. § 39-17-1802(10)(A).

People and cargo can be involved in transportation, the court says. “These cases lay down certain fundamental propositions. Among others, that the primary use of the state highways is the use for private purposes; that no person is entitled to use the highways for gain as a matter of common right; that as a proprietor, in preserving its highways, the state may, with little restraint, prescribe the conditions on which those highways can be used.

“One objection made by complainants to the act of 1933 is that it applies only to motor vehicles used for carrying freight and does not apply to motor vehicles used for the hauling of passengers. It is said that a bus with its load often weighs more than a truck with its load, is therefore more destructive to the highway, and that the discrimination between trucks and busses cannot be justified. \*\*\*

“The peculiar importance to the state of conveniences for the transportation of persons in order to provide its communities with resources both of employment and of recreation, the special dependence of varied social and educational interests upon freedom of intercourse through safe and accessible facilities for such transportation, are sufficient to support a classification of passenger traffic as distinct from freight.” Hoover Motor Exp. Co. v. Fort, 72 S.W.2d 1052, 167 Tenn. 628 (Tenn. 1934).

The people of Tennessee use the public right of way for private purposes and for necessity. “Except as provided in §§ 39-11-611 — 39-11-616, 39-11-620 and 39-11-621, conduct is justified, if: **(1)** The person reasonably believes the conduct is immediately necessary to avoid imminent harm; and **(2)** The desirability and urgency of avoiding the harm clearly outweigh the harm sought to be prevented by the law proscribing the conduct, according to ordinary standards of reasonableness.” Tenn.

Code Ann. § 39-11-609. “Necessitas, quod cogit, defendit. (The necessity is a defense to what necessity compels one to do.) As when houses are blown up to stay a conflagration.” Gibson’s Suits in Chancery, 5th edition.

Free travel is required for the discharge of private duties, as well as the private citizen’s public ones. “The public is interested in every citizen having a right of way to and from his lands or residence. [citation omitted] Such a right of way enables a citizen to discharge the duties he owes to the public, among which are mentioned the duties of attending courts, elections, churches, and mills.” *Bashor v. Bowman*. 133 Tenn. 269 \*; 180 S.W. 326 \*\*; 1915 Tenn. LEXIS 92 \*\*\*; 6 Thompson 269.

In a divorce ruling, “The mother also had the right to travel with the child to visit her family and friends for not longer than thirty days.” *Webb v. Webb* 2009 Tenn. App. LEXIS 64 \*; 2009 WL 348362.

An employee who has an accident in his private car during the scope of his employment is held to have been traveling “not within the scope of employment,” but for private purposes. “When an employee’s job requires travel, an employer may be vicariously liable for the employee’s negligence while traveling. The threshold issue in cases involving travel is whether the employment created the necessity for travel. [citations omitted] If the employee’s duties created a necessity for travel, then the employee is within the scope of employment while traveling, as long as the employee does not deviate from the employer’s business and engage in conduct the employer [\*\*12] had no reason to expect. If, however, the employee’s work played no part in creating the reason for travel and was only incidental to the trip, then the trip was not within the scope of employment.” *Tennessee Farmers Mut. Ins. Co. v. American Mut. Liability Ins. Co.*, 840 S.W.2d 933 1992 Tenn. App. LEXIS 629 \*\*.

Commission of a crime “qualifies” the “fundamental right” to move freely on the roadway. “The right to move freely from state to state is an incident of national citizenship protected by the privileges and immunities clause of the Fourteenth Amendment against state interference. \*\*\* [T]he defendant’s criminal conduct within the state necessarily qualifying his right thereafter freely to travel interstate.” *Jones v. Helms* 452 U.S. 412 \*; 101 S. Ct. 2434 \*\*. Travel for religious purposes is qualified to one who is on probation. “The State’s interests in maintaining order, in the form of compliance with court directives, and keeping defendant within the State’s borders, so as to properly monitor him, outweighed his right to travel to Texas.” *State v. Smithson* 2005 Tenn. Crim. App. LEXIS 238 \*; 2005 WL 639132.

“The right of the Citizen to travel upon the public highways and to transport his property thereon, in the ordinary course of life and business, is a common right which he has under the right to enjoy life and liberty, to acquire and possess property, and to pursue happiness and safety. It includes the right, in so doing, to use the ordinary and usual conveyances of the day, and under the existing modes of travel, includes the right to drive a horse-drawn carriage or wagon thereon or to operate an automobile thereon, for the usual and ordinary purpose of life and business.” *Thompson v. Smith*, 154 SE 579, 11 American Jurisprudence, Constitutional Law, section 329, page 1135.

“The general public have a right to use these thoroughfares for all the purposes for which they are condemned, dedicated, opened, constructed, and maintained; that is, they have the right to travel upon them, and to transport property through and over them, subject to such reasonable police regulations as the proper authorities may promulgate for the public convenience, health, morals, and safety.” *McHarge v. M. M. Newcomer & Co.*, 117 Tenn. 595 (1906).

## Travel, travelers

The people of Tennessee are given the legal status of “free people” in the constitution for the state. Court cases make clear the distinction between travel and transportation, between traveler and driver. *Bouvier’s Law Dictionary* distinguishes between a “traveler” and a “driver.” “Traveler — One who passes from place to place, whether for pleasure, instruction, business, or health.” *Lockett vs. State*, 47 Ala. 45; *Bouvier’s Law Dictionary*, 1914 ed., p. 3309. “Driver — One employed in conducting a coach, carriage, wagon, or other vehicle.” *Bouvier’s Law Dictionary*, 1914 ed., p. 940.

“[Robert Booher’s] right to travel within this state or to points beyond its boundaries remains unimpeded. Thus, not only has the appellant’s right to freedom of travel not been infringed, but also, we cannot conclude that this right is even implicated in this case. Rather, based upon the context of his argument, the appellant asserts an infringement upon his right to operate a motor vehicle on the public highways of this state. This notion is wholly separate from the right to travel. The ability to drive a motor vehicle on a public highway is not a fundamental ‘right.’ See *Goats v. State*, 211 Tenn. 249, 364 S.W.2d 889, 891 (Tenn.1963) (emphasis added); *Sullins v. Butler*, 175 Tenn. 468, 135 S.W.2d 930, 932 (Tenn.1940) (citations omitted). Instead, it is a revocable ‘privilege’ that is granted upon compliance with statutory licensing procedures. See *Reitz v. Mealey*, 314 U.S. 33, 36, 62 S. Ct. 24, 26-27, 86 L. Ed. 21 (1941), overruled in part by, *Perez v. Campbell*, 402 U.S. 637, 91 S. Ct. 1704, 29 L. Ed. 2d 233 (1971); *Goats*, 364 S.W.2d at 891; *Sullins*, 135 S.W.2d at 932.” *State of Tennessee v. Robert K. Booher*, 78 S.W.2d 953 (1997).

“The state legislature may properly enact reasonable regulations requiring licensing and registration of motor vehicles as it furthers the interests of public safety and welfare pursuant to its police power. The ability to drive a motor vehicle on a public highway is not a fundamental right. Instead, it is a revocable privilege that is granted upon compliance with statutory licensing Procedures.” State v. Ferrell, 2009 Tenn. Crim. App. LEXIS 629.

Constitutionally guaranteed rights implicate one another. The communication among the people traveling on the public right of way is implied in:

➤ The freedom of worship and religion, as in, “No person shall in time of peace be required to perform any service to the public on any day set apart by his religion as a day of rest,” Tenn. Const. Art. XI, § 15, religious holidays, and as in “That all men have a natural and infeasible right to worship Almighty God according to the dictates of their own conscience; \*\*\* that no human authority can, in any case whatever, control or interfere with the rights of conscience; and that no preference shall ever be given, by law, to any religious establishment or mode of worship.” Tenn. Const. Art. I, § 3. Freedom of worship.

➤ “\*\*\* The free communication of thoughts and opinions, is one of the invaluable rights of man, and every citizen may freely speak, write, and print on any subject,” Tenn. Const. Art. I, § 19. Freedom of speech and press.

➤ “That the citizens have a right, in a peaceable manner, to assemble together for their common good, to instruct their representatives, and to apply to those invested with the powers of government for redress of grievances, or other proper purposes, by address or remonstrance.” Tenn. Const. Art. I, § 23. Rights of assembly. Etc.

## Vocation, profession, business or occupation

The people of Tennessee via their general assembly convert some vocations, professions, businesses and occupations into privileges, allowing them to be taxed. Tenn. Code Ann. § 67-4-1701. Privilege tax established — Collection.

“The occupations, businesses and business transactions deemed privileges are to be taxed, and not pursued without license \*\*\* . Tenn. Code Ann. § 67-4-101. Privileges taxable — License required.

Vocations subject to tax are as follows; lobbyists; agents; broker-dealers; investment advisers; accountants; architects; brokers; engineers; and landscape architects. audiologists; chiropractors; dentists; optometrists; osteopathic physicians; pharmacists; physicians; podiatrists; psychologists; speech pathologists; veterinarians; attorneys; and athlete agents. Tennessee Code Ann. § 67-4-1702. Occupations subject to tax.

“The essential elements of the definition of privilege is occupation and business, and not the ownership simply of property, or its possession or keeping it. The tax is on the occupation, business, pursuits, vocation, or calling, it being one in which a profit is supposed to be derived by its exercise from the general public, and not a tax on the property itself or the mere ownership of it.” ...“The legislature cannot, under our constitution, declare the simple enjoyment, possession, or ownership of property of any kind a privilege, and tax it as such. It may declare the business, occupation, vocation, calling, pursuit, or transaction, by which the property is put to a peculiar use for a profit to be derived from the general public, a privilege and tax it as such, but it cannot tax the ownership itself as a privilege. The ownership of the property can only be taxed according to value.”) Phillips v. Lewis, 3 Shann. Cas. 231.

The courts overturned a 1915 Davidson County ordinance taxing all automobiles by converting their use in pleasure into an occupation or calling. “A privilege tax cannot be imposed upon anything or any act, unless it constitutes a business, occupation, pursuit or vocation. Such use for pleasure does not constitute a business, occupation, pursuit or vocation. Pleasure taking does not constitute a business, occupation, pursuit or vocation, in the sense of the definition of a taxable privilege; and therefore is not subject to privilege taxation.” Shannon’s Compilation of Tennessee Statutes, Vol. 1, 1917.

## Abuses, oppression, nuisances, extortion forbidden

“The claim and exercise of a constitutional right cannot be converted into a crime.” Miller v. United States, 230 F.2d 486 (5th Cir. 1956).

The Tennessee constitution grants state government authority, but it is limited by the rights of the people as secured by that covenant when invoked by a belligerent claimant in person. “The declaration of rights hereto prefixed is declared to be a part of the Constitution of the state, and shall never be violated on any pretense whatever. And to guard against transgression of the high powers we have delegated, we declare that everything in the bill of rights contained, is excepted out of the general powers of the government, and shall forever remain inviolate.” Tenn. Const. Art. XI, § 16. Bill of rights to remain inviolate.

“The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.” 9th amendment to U.S. constitution.

“That government being instituted for the common benefit, the doctrine of non-resistance against arbitrary power and oppression is absurd, slavish, and destructive of the good and happiness of mankind.” Tenn. Const. Art. I, § 2 Doctrine of nonresistance condemned.

## Oppression

Official oppression is “(a) A public servant acting under color of office or employment commits an offense who: (1) Intentionally subjects another to mistreatment or to arrest, detention, stop, frisk, halt, search, seizure, dispossession, assessment or lien when the public servant knows the conduct is unlawful; or (2) Intentionally denies or impedes another in the exercise or enjoyment of any right, privilege, power or immunity, when the public servant knows the conduct is unlawful. (b) For purposes of this section, a public servant acts under color of office or employment if the public servant acts, or purports to act, in an official capacity or takes advantage of the actual or purported capacity. (c) An offense under this section is a Class E felony.” Tenn. Code Ann. § 39-16-403. Official oppression.

## Offenses against religious liberty

“Except as provided in subsection (c), no government entity shall substantially burden a person’s free exercise of religion even if the burden results from a rule of general applicability.

“(c) No government entity shall substantially burden a person’s free exercise of religion unless it demonstrates that application of the burden to the person is: (1) Essential to further a compelling governmental interest; and (2) The least restrictive means of furthering that compelling governmental interest.” Tenn. Code Ann. § 4-1-407. Preservation of religious freedom.

## Nuisances

Under common law, a nuisance is “anything which annoys or disturbs the free use of one’s property, or which renders its ordinary use or physical occupation uncomfortable.” *Caldwell v. Knox Concrete Products Inc.*, 54 Tenn. App. 393, 402 (Ct. App. 1964).

The restatement of torts defines a public nuisance as “an unreasonable interference with a right common right to the general public.” Restatement (Second) of Torts, 821B (1979).

Determining whether an unreasonable interference with the public right exists, the court should consider

1. Whether the conduct and involves a significant interference with the public health, the public safety, the public peace, the public comfort or the public convenience, or
2. Whether the conduct is prescribed by statute, ordinance or administrative regulation, or
3. Whether the conduct is of a continuing nature or has produced a permanent or long-lasting effect, and, as the actor knows, or has reason to know, has a significant effect upon the public right.

Tennessee’s nuisance statute describes gang members as threatening other people and being involved in controlled substances and drugs. (B) A criminal gang, as defined by Tenn. Code Ann. § 40-35-121(a), that regularly engages in gang related conduct.

## Extortion and Racketeering Influenced Corrupt Organizations

**Tennessee law:** “(a) A person commits extortion who uses coercion upon another person with the intent to: (1) Obtain property, services, any advantage or immunity; (2) Restrict unlawfully another's freedom of action; or (3) (A) Impair any entity, from the free exercise or enjoyment of any right or privilege secured by the Constitution of Tennessee, the United States Constitution or the laws of the state, in an effort to obtain something of value for any entity; (B) For purposes of this section, "something of value" includes, but is not limited to, a neutrality agreement, card check agreement, recognition, or other objective of a corporate campaign; (C) For purposes of this section, ‘corporate campaign’ means any organized effort to unlawfully bring pressure on an entity, other than through collective bargaining, or any other activity protected by federal law.”

\*\*\* (c) Extortion is a Class D felony. Tenn. Code Ann. § 39-14-112. Extortion.

**Federal law** prohibits organizations that thrive on racketeering and other criminal activity. The Racketeering Influenced Corrupt Organizations act is found at 18 U.S. Code, Part I, Chapter 96 § 1961. Among the banned practices is extortion pursuant to 18 U.S. Code § 1951 - Interference with commerce by threats or violence.

- (a) “Whoever in any way or degree obstructs, delays, or affects commerce or the movement of any article or commodity in commerce, by robbery or extortion or attempts or conspires so to do, or commits or threatens physical violence to any person or property in furtherance of a plan or purpose to do anything in violation of this section shall be fined under this title or imprisoned not more than twenty years, or both.
- (b) “As used in this section— (1) The term ‘robbery’ means the unlawful taking or obtaining of personal property from the person or in the presence of another, against his will, by means of actual or threatened force, or violence, or fear of injury, immediate or future, to his person or property, or property in his custody or possession, or the person or property of a relative or member of his family or of anyone in his company at the time of the taking or obtaining. (2) The term “extortion” means the obtaining of property from another, with his consent, induced by wrongful use of actual or threatened force, violence, or fear, or under color of official right.”

## Monopolies

The constitution forbids monopolies. “That perpetuities and monopolies are contrary to the genius of a free State, and shall not be allowed.” Tenn. Const. Art. I, § 22. No perpetuities or monopolies.

## Oppression under federal law

“Whoever, under color of any law, statute, ordinance, regulation, or custom, willfully subjects any person in any State, Territory, Commonwealth, Possession, or District to the deprivation of any rights, privileges, or immunities secured or protected by the Constitution or laws of the United States, or to different punishments, pains, or penalties, on account of such person being an alien, or by reason of his color, or race, than are prescribed for the punishment of citizens, shall be fined under this title or imprisoned not more than one year, or both; and if bodily injury results from the acts committed in violation of this section or if such acts include the use, attempted use, or threatened use of a dangerous weapon, explosives, or fire, shall be fined under this title or imprisoned not more than ten years, or both; and if death results from the acts committed in violation of this section or if such acts include kidnapping or an attempt to kidnap, aggravated sexual abuse, or an attempt to commit aggravated sexual abuse, or an attempt to kill, shall be fined under this title, or imprisoned for any term of years or for life, or both, or may be sentenced to death.” 18 U.S. Code § 242 - Deprivation of rights under color of law.

## Criminal intent requisite in Tennessee law

- (a) (1) A person commits an offense who acts intentionally, knowingly, recklessly or with criminal negligence, as the definition of the offense requires, with respect to each element of the offense.
  - (2) When the law provides that criminal negligence suffices to establish an element of an offense, that element is also established if a person acts intentionally, knowingly or recklessly. When recklessness suffices to establish an element, that element is also established if a person acts intentionally or knowingly. When acting knowingly suffices to establish an element, that element is also established if a person acts intentionally.
- (b) A culpable mental state is required within this title unless the definition of an offense plainly dispenses with a mental element.
- (c) If the definition of an offense within this title does not plainly dispense with a mental element, intent, knowledge or recklessness suffices to establish the culpable mental state.” Tenn. Code Ann. § 39-11-301

In the definitions: “(a) ‘Intentional’ refers to a person who acts intentionally with respect to the nature of the conduct or to a result of the conduct when it is the person’s conscious objective or desire to engage in the conduct or cause the result. “(b) ‘Knowing refers to a person who acts knowingly with respect to the conduct or to circumstances surrounding the conduct when the person is aware of the nature of the conduct or that the circumstances exist. A person acts knowingly with respect to a result of the person’s conduct when the person is aware that the conduct is reasonably certain to cause the result. \*\*\* Tenn. Code Ann. § 39-11-302.

“Individual rights protection is the only legitimate reason for government to exist \*\*\* [T]he duty of this court, as of every judicial tribunal, is limited to determining rights of persons or of property \*\*\*.” Tyler v. Judges of Court of Registration, 179 U.S. 405, 409 (1900).