

**IN THE CIRCUIT COURT FOR  
LAWRENCE COUNTY, TENNESSEE**

STATE OF TENNESSEE,	)	
	)	
<i>Plaintiff,</i>	)	Case No. 36138
	)	
v.	)	
	)	JUDGE DAVID ALLEN
Arthur Jay Hirsch,	)	
	)	
<i>Accused.</i>	)	
_____	/	

**III  
REQUEST TO JUDGE ALLEN FOR MANDATORY JUDICIAL NOTICE  
Relative To  
PERMISSIVE PRIVILEGE STATUTES TO DRIVE IN COMMERCE**

---

Accused, Arthur Jay Hirsch, hereby requests this Court to take mandatory judicial notice of facts and law pursuant to Tennessee Rules of Evidence, Rules 201<sup>1</sup>, 202<sup>2</sup> relative to Tennessee permissive privilege statutes to drive in commerce, i.e., the TENNESSEE MOTOR VEHICLE CODE (TMVC) and shows as follows:

**I  
CONGRESS CONTROLS/REGULATES COMMERCE**

---

1

**Rule 201: Judicial notice of adjudicative facts.**

**(b) Kinds of Facts** - A judicially noticed fact must be one not subject to reasonable dispute, in that it is either

- (1) generally known within the territorial jurisdiction of the trial court or
- (2) capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned.

**(d) When Mandatory** - A court shall take judicial notice if requested by a party and supplied with the necessary information.

2

**Rule 202: Judicial notice of law.**

**(a) Mandatory Judicial Notice of Law.** The court shall take judicial notice of

- (1) the common law,
- (2) the constitutions and statutes of the United States and of every state, territory, and other jurisdiction of the United States,
- (3) all rules adopted by the United States Supreme Court or by the Tennessee Supreme Court, and
- (4) any rule or regulation of which a statute of the United States or Tennessee mandates judicial notice.

## 1 - CONGRESSIONAL COMMERCE CLAUSE AUTHORITY

- 1.1. U.S. Constitution, Art. 1, Sec. 8, Cl. 3.  
The Congress shall have Power To . . . regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes.

## 2 - "COMMERCE" DEFINED

- 2.1. ● **Tenn. Code Ann. § 55-50-102. Definitions 9(A), 9(B)**  
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.
- 2.2. ● **TCA 68-131-102 (4).** "Commerce" means any and all commerce within the state of Tennessee and **business or service establishment**; (emphasis added)
- 2.3. ● **"Commerce is traffic**, but it is much more. It embraces also **transportation** by land and water, and all the means and **appliances** [e.g. motor freight carriers/motor vehicles] necessarily employed in carrying it on."  
*Railroad Co. V. Fuller*, 84 U.S. (17 Wall.) 568 (emphasis added)

## 3 - CONGRESSIONAL AUTHORITY TO REGULATE INTERSTATE & INTRASTATE COMMERCE ACTIVITIES

- 3.1. \*\* **Comment:** The Supreme Court, through Chief Justice Marshall, first defined the nature of Congress' commerce power in *Gibbons v. Ogden* , 9 Wheat. 1, 189-190, 196 (1824):
- 3.2. ● "The [commerce] power vested in Congress . . . is the power to prescribe the rule by which that commerce is to be governed. . ." *Gibbons v. Ogden*, 22 U.S. 1, Wheat. 1, p. 301-302 (1824); *Brown v. Maryland*, 12 Wheat. 419) *Leisy v. Hardin*, 135 U.S. 100, 108
- 3.3. ● *United States v. Lopez*, 514 U.S. 549 (1995) "The commerce power "is the power to regulate; that is, to prescribe the rule by which commerce is to be governed. This power, like all others vested in congress, is complete in itself, may be exercised to its utmost extent, and acknowledges no limitations, other than are prescribed in the constitution."  
(Quoting from *Gibbons v. Ogden* , 9 Wheat. 1, 189-190, 196 (1824)
- 3.4. ● *United States v. Darby*, 312 U. S. 100, 118 (1941)  
"The power of Congress over interstate commerce is not confined to the regulation of commerce among the states. It extends to those **activities intrastate** which so affect interstate commerce or the exercise of the power of Congress over it as to make regulation

of them appropriate means to the attainment of a legitimate end, the exercise of the granted power of Congress to regulate interstate commerce." (Emphasis added)

- 3.5. ● **Congress is powerless to regulate anything which is not commerce.**  
*Carter Coal, et all vs. Gelwring*, 298 U.S. 238, 56 S.Ct. 855 (emphasis added)
- 3.6. ● *United States v. Wrightwood Dairy Co.* 315 U.S. 110, 119 (1942)  
The commerce power "extends to those **intrastate activities** which in a substantial way interfere with or obstruct the exercise of the granted power." (emphasis added)
- 3.7. ● *Wickard v. Filburn*, 317 US 111, 125, 63 S. Ct. 82, 87 L. Ed. 122 (1942)  
Congress may regulate **intrastate activity** that has a "substantial effect" on interstate commerce. (See *NLRB v. Jones & Laughlin Steel Corp.*, 301 U. S. 1, 37 (1937))
- 3.8. ● *Brennan v. Titusville*, 153 U.S. 289 (1894)  
". . . [a] subject matter [e.g. interstate commerce] which has been confided exclusively to Congress by the Constitution is not within the jurisdiction of the police power of the State, unless placed there by Congressional action."
- 3.9. ● *NLRB v. Jones & Laughlin Steel Corp.*, 301 U. S. 1, 37 (1937)  
The Court held that **intrastate activities** that "have such a close and substantial relation to interstate commerce that their control is essential or appropriate to protect that commerce from burdens and obstructions" are within Congress' power to regulate.

#### 4 - CATEGORIES OF COMMERCE ACTIVITY CONGRESS MAY REGULATE

- 4.1. ● *James William Hill, III, Defendant*. Criminal Action No. 3:16-cr-00009-JAG  
"The Supreme Court has identified **three categories of activity** that Congress may regulate under its commerce power: (1) "**the use of the channels of interstate commerce**," such as **highways**, railroads, ships, and rivers; (2) "**the instrumentalities of interstate commerce** [e.g. motor freight carriers/motor vehicles], or **persons or things in interstate commerce**," like **vehicles and aircraft**; and (3) "**those activities having a substantial relation to interstate commerce, i.e., those activities that substantially affect interstate commerce.**"  
*United States v. Lopez*, 514 U.S. 549, 558-59 (1995) (internal citations omitted); *Heart of Atlanta Motel, Inc. v. United States*, 379 U.S. 241, 271 (1964) (Black, J., concurring). (Emphasis added)

#### 5 - HIGHWAYS AS "CHANNELS" AND "INSTRUMENTALITIES" (also motor vehicles) OF COMMERCE UNDER CONGRESSIONAL OVERSIGHT AND REGULATION PURSUANT TO THE COMMERCE CLAUSE

- 5.1. \*\* **Comment:** Highways and motor vehicles are both considered as "instrumentalities of

commerce” as well as being channels of commerce.

- “. . . **thus, the Supreme Court has variously labeled highways both as channels and as instrumentalities.**” *United States v. Ballinger*, No. 01-14872 (11th Cir. 01/10/2005) (Emphasis added)
- 5.2. ● Regulating the . . . **operation of motor vehicles as "instrumentalities" of interstate commerce, on roads and interstate highways which are "channels" of interstate commerce**, must necessarily have an "impact" on interstate commerce.  
*United States of America v. James William Hill, III, Defendant.*  
Criminal Action No. 3:16-cr-00009-JAG (emphasis added)
- 5.3. ● “These **channels of commerce are the interstate transportation routes through which persons and goods move. These channels include highways**, railroads, navigable waters, and airspace.” *United States v. Ambert*, 561 F.3d 1202, 1225-26 (11th Cir. 03/06/2009) (emphasis added)
- 5.4. ● “. . . **highways are "channels of commerce" which can be regulated under Congress' Commerce powers.**” *State of Oklahoma ex rel. Phillips v. Guy F. Atkinson Co.*, 313 U.S. 508 (1941) (emphasis added)
- 5.5. ● “In short, Congress is completely uninhibited by the **commerce clause** in selecting the means considered necessary for bringing about the desired conditions in the **channels of interstate commerce**. Any limitations are to be found in other sections of the Constitution.” *Gibbons v. Ogden*, 9 Wheat. 1, 196 (emphasis added)
- 5.6 ● “It is well established that the Commerce Clause gives Congress authority to "regulate the use of the **channels of interstate commerce.**” *United States v. Lopez*, 514 U. S. 549, 558 147\*147 (1995) (citing *United States v. Darby*, 312 U.S. 100, 114 (1941); *Heart of Atlanta Motel, Inc. v. United States*, 379 U. S. 241, 256 (1964)) In addition, under the Commerce Clause, Congress "is empowered to regulate and protect the **instrumentalities of interstate commerce or persons or things in interstate commerce**, even though the threat may come only from **intrastate activities.**” *Lopez, supra*, at 558 (citing *Shreveport Rate Cases*, 234 U. S. 342 (1914); *Southern R. Co. v. United States*, 222 U. S. 20 (1911); *Perez v. United States*, 402 U. S. 146 (1971)). *Pierce County, Washington v. Guillen, Legal Guardian of Guillen, et al, minors, et at*, 537 U.S. 129 (2003) (emphasis added)
- 5.7. ● (“[C]ommerce, in the constitutional sense,.. embraces shipment...and...to carriers engaged in interstate commerce, certainly insofar as so engaged, and the instrumentalities by which such commerce is carried on -- ...which has been apparent ever since the decision in *Gibbons v. Ogden*, 9 Wheat. 1, and which has not since been open to question... It may not be doubted that the equipment...engaged, in ...commerce,.., are instruments of such commerce. From this it necessarily follows that such... are embraced within the governmental power of regulation...”), *Interstate Commerce Commission v. Illinois Central Railroad Company.*, 215

## 6 - "TRANSPORTATION" DEFINED

6.1. **"Transportation" defined.** "Transportation" is a commercial term.

- **Transportation** is defined as "the movement of goods or persons from one place to another, by a carrier." *Interstate Commerce Com'n v. Brimson*, 154 U.S. 447, 14 S.Ct. 1125, 38 L.Ed. 1047. Black's Law Dictionary, 6th Ed., p. 1499.

- **Carrier** is defined as an "individual or organization engaged in transporting passengers or goods for hire." Black's Law Dictionary, 6th Ed., p. 214

## 7 - "TRAFFIC" DEFINED

7.1. **"Traffic" defined.** "Traffic" is a commercial term.

- **Traffic.** "Commerce; trade; sale or exchange of merchandise, bills, money, and the like. The passing or exchange of goods or commodities from one person to another for an equivalent in goods or money. 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, highway, etc. See Commerce." Black's Law Dictionary, 6<sup>th</sup> Ed., p. 1495\_(emphasis added)

7.2. ● **Traffic.** " Commerce, trade, sale or exchange of merchandise, bills, money and the like." Bouvier's Law Dictionary (1856)

7.3. ● **Traffic** - ancient commercial term from biblical times. See Isaiah 23:8; Ezekiel 17:4; 28:5, 18; I Kings 10:15; Genesis 42:34

7.4. ● **Traffic regulations.** "Prescribed rules of conduct to promote the orderly and safe flow of traffic." Black's Law Dictionary, 6<sup>th</sup> Ed., p. 1495 (emphasis added)

## II

### TENNESSEE UNDER CONGRESSIONAL REGULATORY CONTROL OF COMMERCE

#### 8 – T.C.A. TITLES 55 AND 65 COMMERCIAL TRANSPORTATION STATUTES UNDER 49 U.S.C. AND 49 CFR REGULATORY CONTROL

8.1. **\*\* Comment:** Congressional authority to regulate interstate commerce and intrastate commerce nationwide is found at title 49 of the United States Code (USC) and title 49 of the

Code of Federal Regulations (CFR) (“Transportation”).

- 8.2. ● “The power of Congress under the commerce clause of the Constitution is the ultimate determining question. If the statute be a valid exercise of that power [*e.g.* 49 U.S. Code and 49 CFR - Transportation], how it may affect persons or States is not material to be considered. It is the supreme law of the land and persons and **States are subject to it.**”  
*Hoke v. United States*, 227 U.S. 308 (Emphasis added)
- 8.3. ● Tenn. Code Ann. (TCA) 55-50-504. Driving while license cancelled, suspended or revoked (a)(1).....provided, however, that **the department shall abide by all federal rules and regulations relative to the issuance, suspension, and revocation of driver licenses and qualification of drivers....**  
. (a)(2); provided, however, that the department shall abide by all federal rules and regulations relative to the issuance, suspension, and revocation of driver licenses and qualification of drivers. (Emphasis added)
- 8.4. ● U.S. Code Title 49-TRANSPORTATION This title was enacted by Pub. L. 95-473, §1, Oct. 17, 1978, 92 Stat. 1337 ; Pub. L. 97-449, §1, Jan. 12, 1983, 96 Stat. 2413 ; Pub. L. 103-272, July 5, 1994, 108 Stat. 745  
**Title 49**  
**Transportation**

CFR 49 - Code of Federal Regulations Title 49 Code of Federal Regulations. Title 49 encompasses regulations for **domestic transportation**. Issued by the US Department of Transportation, this includes all modes of transportation, rail, **highway**, air, and ocean. DOT CFR Title 49 is updated annually.

- 8.5. ● 49 CFR Subpart B - **Minimum Standards for Substantial Compliance by States**  
The rules in this part **apply to all States.**  
§ 384.301 Substantial compliance-general requirements.  
(a) To be in substantial compliance with 49 U.S.C. 31311(a), a State must meet each and every standard of subpart B of this part by means of the demonstrable combined effect of its statutes, regulations, administrative procedures and practices, organizational structures, internal control mechanisms, resource as signments (facilities, equipment, and personnel), and **enforcement practices** [THP].
- 8.6. ● 49 CFR Subpart B - **Minimum Standards for Substantial Compliance by States**  
The rules in this part **apply to all States.**  
§ 384.301 Substantial compliance-general requirements.  
(a) To be in substantial compliance with 49 U.S.C. 31311(a), a State must meet each and every standard of subpart B of this part by means of the demonstrable combined effect of its statutes, regulations, administrative procedures and practices, organizational structures, internal control mechanisms, resource as signments (facilities, equipment, and personnel),

and enforcement practices [THP].

- 8.7. ● "...Congress may control the State laws so far as it may be necessary to control them for the regulation of commerce. ....That regulation is designed for the entire result,.... It produces a uniform whole..." *Gibbons v. Ogden* 22 U.S. 1

### III CONSTITUTIONAL LIBERTY RIGHT TO TRAVEL

#### 9- PUBLIC HIGHWAY USE BELONGS TO THE PEOPLE BY RIGHT-NOT BY STATE-GRANTED PERMISSIVE PRIVILEGE

- 9.1. ● 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, 243, 1958 Tenn. LEXIS 229 (1958). (emphasis added)
- 9.2. ● "Public highways". . . are open as a **matter of right** to the use of the public for the purposes of vehicular travel." *Buck v. Kuykendall*, 267 U.S. 307, 314 (1925) (emphasis added)
- 9.3. ● The **right to travel** is an "**unconditional personal right**," a right whose exercise may not be conditioned. *Shapiro v. Thompson*, 394 U.S. 618, 643; *Dunn V. Blumstein*, 405 U.S. 330, 342 (1972) No. 70-13; *State v. Stroud*, 52 S.W. 697, 698 (Tenn. 1899); (Also see 3 Kent, Comm. 432). (emphasis added)

#### 10 - TWO CLASSES OF HIGHWAY USERS

- 10.1. \*\* **Comment:** Both state and federal supreme courts have recognized two separate and distinct classes of users of the public highways, namely, those exercising a free unregulated right to travel, and those operating by taxable, state-granted permissive privilege for which a license, registration and insurance is required, *to wit*,  
(1) **Class One** (primary users)- those traveling freely unregulated by common law right in the ordinary course of life, business and pleasure in the usual and ordinary conveyance of the day; and  
(2) **Class Two** (secondary users) - drivers, operators and chauffeurs engaged in regulated interstate commerce activity under taxable permissive privilege statutes (*e.g.* TCA Titles 55 & 65), transporting people or goods for hire on the roadways by means of a "self-propelled instrumentality of commerce" (*i.e.*, commercial motor carrier/motor vehicle).
- 10.2. ● 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, 243, 1958 Tenn. LEXIS 229

(1958). (emphasis added)

- 10.3. ● The streets belong to the public, and are primarily for the use of the public in the ordinary way. *Packard v. Banton*, 264 U.S. 140, 144 (1924) No. 126
- 10.4 ● "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 . . . that **the primary use of the state highways is the use for private purposes.**" *State v. Harris*, 76 S.W.2d 324, 168 Tenn. 159 (1934) (emphasis added)
- 10.5. ● "The **right of the Citizen to travel** upon the highway and to transport his property thereon in the ordinary course of life and business, **differs radically** and obviously from that of one who makes the highway his place of business and uses it for private gain in the running of a stagecoach or omnibus. **The former is the usual and ordinary right of the Citizen, a right common to all, while the latter is special, unusual, and extraordinary.**" *Ex Parte Dickey*, (*Dickey vs. Davis*), 85 SE 781. (Also see *Hoover Motor Express Co. v. Fort*, 167 Tenn. 628; 72 S.W.2d 1052; 1933 Tenn. LE XIX 71; *Thompson v. Smith*, 155 Va. 367, 377 (1930)) (Emphasis added)
- 10.6. ● "The right to travel is an "**unconditional personal right**," a right whose exercise may not be conditioned." *Shapiro v. Thompson*, 394 U.S. 618, 643; *Dunn V. Blumstein*, 405 U.S. 330, 342 (1972) No. 70-13; *State v. Stroud*, 52 S.W. 697, 698 (emphasis added)
- 10.7. ● "The right to travel is a part of the "liberty" of which the citizen cannot be deprived without due process of law under the **Fifth Amendment.**" *Kent v. Dulles*, 357 U.S. 116 (1958) No. 481. (emphasis added)

## 11 - PUBLIC HIGHWAYS ARE FOR PRIVATE, PERSONAL PURPOSES

- 11.1. ● "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**. . . . that **the primary use of the state highways is the use for private purposes.**" *State v. Harris*, 76 S.W.2d 324, 168 Tenn. 159 (1934) (emphasis added)
- 11.2. ● "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. . ." "A 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). (emphasis added)
- 11.3. ● "The right of the Citizen to travel upon the highway and to transport his property thereon in the ordinary course of life and business, **differs radically** and obviously from that of one who makes the highway his place of business and uses it for **private gain** in the running of



a stagecoach or omnibus. The former is the **usual and ordinary right of the Citizen, a right common to all, while the latter is special, unusual, and extraordinary.**" *Ex Parte Dickey*, (*Dickey vs. Davis*), 85 SE 781. (Also see *Hoover Motor Express Co. v. Fort*, 167 Tenn. 628 \*; 72 S.W.2d 1052 \*\*; 1933 Tenn. LEXIS 71; *Thompson v. Smith*, 155 Va. 367, 377 (1930)) (emphasis added)

- 11.4. ● "It is well established law that the **highways of the state are public property**; that their primary and preferred use is for **private purposes**, and that their **use for purposes of gain is special and extraordinary**, which, generally at least, the legislature may prohibit or condition as it sees fit." *Stephenson v. Binford*, 287 U.S. 251, 264; *Packard v. Banton*, 264 U.S. 140, 144, and cases cited; *Frost Trucking Co. v. Railroad Comm.* U.S. 583, 592-593; *Hodge Co. v. Cincinnati*, 284 U.S. 335, 337; *Johnson Transfer & Freight Lines v. Perry*, 47 F. (2d) 900, 902; *Southern Motorways v. Perry*, 39 F. (2d) 145, 147; *People's Transit Co. v. Henshaw*, 20 F. (2d) 87, 89; *Weksler v. Collins*, 317 Ill. 132, 138-139; 147 N.E. 797; *Maine Motor Coaches v. Public Utilities*, 125 Me. 63, 65 130 Atl. 866. (emphasis added)

## IV TAXABLE PERMISSIVE PRIVILEGE TO "DRIVE" IN COMMERCE

### 12 - "PRIVILEGE" DEFINED (e.g. driving privilege)

- 12.1. ● Privileges are **special rights**, belonging to the individual or class, and not to the mass; properly, **an exemption** from some general burden, obligation or duty; **a right peculiar to some individual or body.**' *Lonas v. State*, 50 Tenn. 287, 307. 06/06/60 *Jack Cole Company v. Alfred T. MacFarland*, 337 S.W.2d 453, 206 Tenn. 694 (emphasis added)
- 12.2. ● Any occupation, business, employment or the like, affecting the public, may be classed and **taxed as a privilege.** *K. & O. Railroad v. Harris*, 99 Tennessee, 684 (emphasis added)

### 13 - ESSENTIAL ELEMENTS OF "PRIVILEGE"

- 13.1. The essential elements of privilege are business and occupation.  
● "**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.**"  
*Phillips v. Lewis*, 3 Shann. Cas. 231. Nashville, January Term, 1877 (emphasis added)
- 13.2. ● "**The power to regulate commerce presupposes the existence of commercial activity to be regulated.** The language of the Constitution reflects the natural understanding that the power to regulate **assumes there is already something to be regulated.**...As expansive as our cases construing the scope of the commerce power have been, they all have one thing in common: **They uniformly describe the power as reaching "activity."**"

*National Federation of Independent Business, et al., Petitioners* (No. 11-393) v. *Kathleen Sebelius, Secretary of Health and Human Services*, 132 S. Ct. 2566. (Emphasis added)

#### 14 - EVIDENTIARY FACTS MUST PROVE ELEMENTS

- 14.1. ● **"No essential element of the crime can be omitted without destroying the whole pleading.** The omission cannot be supplied by intendment, or implication, and the charge must be made directly and not inferentially, or by way of recital." *United States v. Hess.*, 124 U.S. 483, 8 S. Ct. 571 (Emphasis added)
- 14.2. ● "[The] Due Process Clause requires the prosecution to prove beyond a reasonable doubt **all of the elements included in the definition of the offense** of which the defendant is charged. . . **the Due Process Clause precludes States from discarding the presumption of innocence**" *McFarland v. American Sugar Rfg. Co.*, 241 U.S. 79, 86 ... {1916} (Emphasis added)
- 14.3. ● ". . . **every ingredient** of which the offence is composed must be accurately and clearly alleged." *United States v. Cook*, 17 Wall. 174 (Emphasis added)
- 14.4. ● "It is an elementary principle of criminal pleading that, where the definition of an offence, whether it be at common law or by statute, "includes generic terms, it is not sufficient that the indictment shall charge the offence in the same generic terms as in the definition, but **it must state the species -- it must descend to particulars.**" 1 Arch.Cr.Pr. and Pl. 291. *United States v. Cruikshank*, 92 U.S. 542 {1875}(Emphasis added)
- 14.5. ● The legislature cannot 'validly command that the finding of an indictment [*or* traffic ticket, etc.], or mere proof of the identity of the accused, should create a **presumption** of the existence of all the facts essential to guilt.' (Emphasis added)  
*McMillan et al. v. Pennsylvania*, 477 U.S. 79 {U.S. 06/19/1986} No. 85-215.
- 14.6. ● In the framework of criminal prosecution, unclarity alone is enough to resolve the doubts in favor of defendants. *United States v. Mersky*, 361 U.S. 431 (1960) No. 31
- 14.7. ● **"When the privilege ends, the power of regulation ceases."**  
*Munn v. Illinois*, 94 U.S. 113, 147 (1876) (Emphasis added)

#### 15 - TAXABLE PRIVILEGES ON BUSINESS OR OCCUPATION

- 15.1. ● *Privilege tax.* A tax on the **privilege of carrying on a business or occupatin** for which a license or franchise is required. *Gulf & Ship Island R. Co., v. Hewes*, 183 U.S. 66. Black's Law Dictionary, 6<sup>th</sup> Ed., p. 1198 (Emphasis added)
- 15.2. ● Any **occupation, business, employment** or the like, **affecting the public**, may be classed

and **taxed as a privilege**. *K. & O. Railroad v. Harris*, 99 Tennessee, 684. (emphasis added).

- 15.3. ● TCA 67-4-101. Privileges taxable -- License required.  
The occupations, businesses and business transactions deemed privileges are to be taxed, and not pursued without license, and shall be such as are declared by this code or by legislative acts that are not to be deemed repealed by the enactment of this code.
- 15.4. ● "Of course, the exaction of a license tax as a condition of doing any particular business, is a tax on the occupation; and a tax on the occupation of doing a business is surely a tax on the business." *Leloup v. Mobile*, 127 U.S. 640, 645
- 15.5. ● TCA 55-4-101 (a)(1)(2)(2) The registration and the fees provided for registration shall constitute a **privilege tax** upon the operation of motor vehicles.
- 15.6. ● 67-4-401. Generally. Engaging in the various businesses mentioned in this part is declared to be a **privilege** for state purposes and **taxable** by the state alone, and any person so engaged shall pay to the commissioner of revenue, unless otherwise provided, the tax stated in this part. No county or municipality may impose any **tax upon the privileges** mentioned in this part, except license fees upon motor vehicles that might be imposed in the absence of this part.
- 15.7. ● **"A privilege tax cannot be imposed upon anything or any act, unless it constitutes 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 (emphasis added)
- 15.8. ● ". . .the power to tax is so far limited that it cannot be used to impair or destroy rights that are given or secured by the supreme law of the land." *Connolly v. Union Sewer Pipe Co.*, 184 U.S. 540 (1902)
- 15.9. ● ". . .In speaking of a license to do business, it was said in *Royall v. Virginia*, 116 U.S. 572, 579: "The payment required as a preliminary to the license is in the nature and form of a tax..."
- 15.10. ● **"When the privilege ends, the power of regulation ceases."**  
*Munn v. Illinois*, 94 U.S. 113, 147 (1876) (emphasis added)

**16 - 5<sup>th</sup> & 14<sup>th</sup> AMENDMENTS  
RIGHT TO TRAVEL vs. STATE GRANTED PRIVILEGE**

- 16.1. ● “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 (emphasis added)
- 16.2. ● "It has long been established that a State may not impose a penalty upon those who exercise a **right guaranteed by the Constitution** . . . `Constitutional rights would be of little value if they could be . . . `indirectly denied'. . . ." *Harman v. Forssenius*, 380 U.S. 528, 540 (1965) (emphasis added)
- 16.3. ● “In any event, **freedom to travel** throughout the United States has long been recognized as a basic right under the Constitution." “[T]he right to travel freely . . . it is a virtually **unconditional personal right**, guaranteed by the Constitution to us all.” *United States v. Guest*, 383 U. S. 745, 757-758 (1966) (emphasis added)
- 16.4. ● “The **right to travel** is a part of the ‘**liberty**’ of which the citizen cannot be deprived without due process of law under the **Fifth Amendment**.” “Freedom of movement across frontiers in either direction, and inside frontiers as well, was a part of our heritage. Travel abroad, like travel within the country, may be necessary for a livelihood.” *Kent v. Dulles*, 357 U.S. 116, 125, 126 (1958) 481, 125 (emphasis added)
- 16.5. ● “Automobile travel . . . is a basic, pervasive, and often **necessary** mode of transportation to and from one’s home [and] workplace.” *Delaware v. Prouse*, 440 U.S. 648, 662 (1979)

## V

### PERMISSIVE PRIVILEGE LICENSE

#### 17 - A LICENSE IS A TAX RECEIPT

- 17.1. ● “The granting of a license therefore must be regarded as nothing more than a mere **form of imposing a tax**, and of implying nothing except that the licensee shall be subject to no penalties under [....] law if he pays it. They were regarded merely as a convenient mode of imposing taxes on several descriptions of business and of ascertaining the parties from whom such taxes were to be collected....But as we have already **said, these licenses give no authority. They are mere receipts for taxes...**” (emphasis added)  
*License Tax Cases*, 72 U.S. 5, Wall. 462, 471, 472 {1866}.
- 17.2. ● “Not having a **tax receipt** [e.g. driver license] or other papers to engage in some business does not prove violation of a tax law **when no business can be shown**.”  
*United States v. Resnick*, 299 U.S. 207, 209, 81 L. Ed. 127, 57 S. Ct. 126 (1936) (emphasis added)

- 17.3. ● 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. Nashville, January Term, 1877 (emphasis added)

## 18 - LICENSE TO SHOW STATE GRANTED PERMISSIVE PRIVILEGE

- 18.1. ● License. *Streets and Highways*. A permit to use street is a mere license revocable at pleasure. *Lanham v. Forney*, 196 Wash. 62, 81 P.2d. 777, 779. 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. Black's Law Dictionary, 6<sup>th</sup> Ed., p. 920

## 19 - PURPOSE OF DRIVER LICENSE, REGISTRATION AND INSURANCE IN COMMERCE

- 19.1. ● "The use of public highways by private intrastate and interstate carriers of goods by motor vehicle may be conditioned by the state upon the carrier's **obtaining a license**, complying with reasonable regulations, **paying a reasonable license fee and a tax**, for expenses of highway administration and maintenance and reconstruction of the highways covered by the license, and upon the filing of an **insurance policy** as security against injuries from the carrier's negligent operations to persons and property other than the passengers and property he carries." *Continental Baking Co. v. Woodring*, 286 U.S. 352, 365 (1932) (emphasis added)

## 20 - NO REGULATIONS WHEN NOT ENGAGED IN COMMERCE

- 20.1. ● "The power to regulate commerce presupposes the existence of **commercial activity** to be regulated. The language of the **Constitution reflects the natural understanding** that the power to regulate assumes there is **already something to be regulated**. . . As expansive as our cases construing the scope of the commerce power have been, they all have one thing in common: **They uniformly describe the power as reaching "activity."**" *National Federation Of Independent Business, et al., Petitioners (No. 11-393) v. Kathleen Sebelius, Secretary Of Health And Human Services*, 132 S. Ct. 2566 (emphasis added)
- 20.2. ● "But we have never permitted Congress to anticipate that activity itself in order to regulate individuals **not currently engaged in commerce**. . . , commerce. . . prosecution of those. . . **not currently engaged in any commercial activity. . . is fatal to the Government's effort to "regulate"**." *National Federation Of Independent Business, et al., Petitioners (No.*

11-393) v. Kathleen Sebelius, Secretary Of Health And Human Services, 132 S. Ct. 2566 (emphasis added)

- 20.3. ● **"When the privilege ends, the power of regulation ceases."**  
*Munn v. Illinois*, 94 U.S. 113, 147 (1876) (emphasis added)

## VI

### RIGHT TO TRAVEL CANNOT BE CRIMINALIZED

#### 21 - RIGHTS CANNOT BE CRIMINALIZED

- 21.1 ● "The claim and exercise of a constitutional [protected] right cannot be converted into a crime." *Miller vs. US*, 230 F 486, 489.
- 211.2 ● "Where rights secured by the Constitution are involved, there can be no rule making or legislation which would abrogate them." *Miranda vs. Arizona*, 384 U.S. 436 p. 491.
- 21.3. ● "There can be no sanction or penalty imposed upon one because of his exercise of his Constitutional rights." *Sherar vs. Cullen*, 481 F. 2d 946.
- 21.4. ● **"No state may convert a secured liberty into a privilege, and issue a license and fee for it."** *Murdock v. Pennsylvania*, 319 U.S. 105 (emphasis added)

## VII

### DRIVER LICENSE ISSUING/REVOKING IN COMMERCE IS ADMINISTRATIVE PROCEDURE

#### 22 - LICENE STATUS DETERMINATION IN COMMERCE

- 22.1. ● ". . . we have held that the grant or refusal of a license to use public highways **in commerce is purely an administrative question.**" *Hoover Motor Exp. Co. Inc. v. Railroad & Public*, 261 SW 2d 233, 195 Tenn. 593 - Tenn: Supreme Court, 1953 (emphasis added)
- 22.2. ● "This Court held in *Hoover Motor Express Co. v. Railroad and Public Utilities Commission*, 195 Tenn. 593, 261 S.W.2d 233 (1953), that the predecessor in name of the present Tennessee Public Service Commission is an administrative board and not a court; that **the grant or refusal of a license to use public highways in commerce is purely an administrative question.**" *McMinnville Freight Line, v. Hon. Z. D. Atkins*, 514 SW 2d 725 - Tenn: Supreme Court, 1974 (emphasis added)

**VIII**  
**TENNESSEE HIGHWAY PATROL - SOLE ENFORCEMENT**  
**FOR**  
**TRANSPORTATION AND COMMERCIAL TRAFFIC LAWS**

**23 - THP IS SOLE ENFORCEMENT FOR**  
**COMMERCIAL MOTOR VEHICLE LAWS**

- 23.1. ● “The **Motor Carrier Safety Assistance Program (MCSAP)** is a Federal grant program that provides financial assistance to States to help reduce the number and severity of accidents and hazardous materials incidents involving commercial motor vehicles (CMV). The goal of the MCSAP is to reduce CMV-involved accidents, fatalities, and injuries through consistent, uniform, and effective CMV safety programs.”

“**The Tennessee Highway Patrol of the Tennessee Department of Safety and Homeland Security is the sole agency in the State of Tennessee responsible for enforcing laws related to size, weight, and safety regulations for commercial motor vehicles.** The Tennessee Highway Patrol is the State's lead agency for the Motor Carrier Safety Assistance Program, and does not fund any sub-grantees.”TENNESSEE COMMERCIAL VEHICLE SAFETY PLAN for the FEDERAL MOTOR CARRIER SAFETY ADMINISTRATION’S MOTOR CARRIER SAFETY ASSISTANCE PROGRAM.”

- 23.2. ● TCA title 4-7-104. Duties.

It is the duty of the members of the Tennessee highway patrol, under the direction of the commissioner of safety, to:

- (1) Patrol the state highways and enforce all laws, and all rules and regulations of the department of transportation regulating traffic [commerce] on and use of those highways; and
- (2) Assist the department of revenue and the county clerks of the state in the collection of all taxes [privilege taxes] and revenue going to the state, and in the enforcement of all laws relating to same.

- 23.3.. ● *Railroad Co. V. Fuller*, 84 U.S. (17 Wall.) 568

“**Commerce is traffic**, but it is much more. It embraces also **transportation** by land and water, and all the means and appliances necessarily employed in carrying it on.” [See TCA re. THP’s authority over “transportation” and “traffic”] (emphasis added)

- 23.4. ● 49 CFR Subpart B - **Minimum Standards for Substantial Compliance by States**

The rules in this part **apply to all States**.

§ 384.301 Substantial compliance-general requirements.

(a) To be in substantial compliance with 49 U.S.C. 31311(a), a State must meet each and every standard of subpart B of this part by means of the demonstrable combined effect of its statutes, regulations, administrative procedures and practices, organizational structures, internal control mechanisms, resource as signments (facilities, equipment, and personnel), and **enforcement practices** [THP enforcement of commerce regulations, i.e., TMVC].

## **IX**

### **PRIVATE AUTOMOBILES ARE NOT COMMERCIAL “MOTOR VEHICLES”**

#### **25- PRIVATE AUTOMOBILES ARE “CONSUMER GOODS” – NOT REGULATED IN COMMERCE**

- 25.1. PRIVATE PERSONAL AUTO IS “CONSUMER GOODS”:
- UCC DEFINITIONS: Consumer Goods: Goods that are used or bought for use primarily for personal, family, or household purposes. (e.g. automobile) U.C.C. § 9-109(1) Black’s Law Dictionary, 6<sup>th</sup> Ed., p.317 (also see TCA title 55-50-102(12)(B)(v) in reference to non-commercial vehicles transporting personal possessions or family members)
- 25.2. AUTOMOBILE DEEMED HOUSEHOLD EFFECT:
- The Supreme Court held that “carriages were properly classified as household effects, and we see no reason that automobiles should not be similarly disposed of.”  
*Arthur v. Morgan*, 112 U.S. 495, 5 S.Ct. 241, 28 L.Ed. 825
- 25.3. AUTOMOBILE CONSIDERED SAME AS CHATTEL:
- “Footnote 11. . . But today, under the regime of *International Shoe*, we see no difference for jurisdictional purposes between an automobile and any other chattel.”  
*Worldwide Volkswagen Corp. v. Woodson*, 444 U.S. 286 {1980} No. 78-1078

## **X**

### **NO DUTY TO THE STATE**

#### **24 - THE INDIVIDUAL HAS NO DUTY TO THE PUBLIC OR TO THE STATE**

**\*\* Comment:** With respect to “stare decisis,” *Hale v. Henkel*, 201 U.S. 43, 44 (1906) has been used 1,600 times in citations to assert the adherence to established precedents and not to disturb or unsettle the same. This is supported by one of the bedrock principles of our legal system, i.e., “stare decisis et non quieta movere” which, according to Black’s Law Dictionary, means “[t]o adhere to precedent and not to unsettle things which are established”.



As found in Black's Law Dictionary, Fifth Edition (1979), page 1261, citing *Ballard County v. Kentucky County Debt Commission*, 290 Ky. 770. (1942), 162 S.W.2d 771, 773. et al.

- 24.1. ● “The individual may stand upon his **constitutional rights** as a citizen. He is entitled to carry on his **private business** in his own way. His power to contract is unlimited. **He owes no duty to the State** or to his neighbors to divulge his business, or to open his doors to an investigation, so far as it may tend to criminate him. He owes no such duty to the State, since he receives nothing therefrom beyond the protection of his life and property. **His rights are such as existed by the law of the land long antecedent to the organization of the State, and can only be taken from him by due process of law, and in accordance with the Constitution.** Among his rights are a refusal to incriminate himself and the immunity of himself and his property from arrest or seizure except under a warrant of the law. **He owes nothing to the public so long as he does not trespass upon their rights.**”  
*Hale v. Henkel*, 201 U.S. 43, 44 (1906) (emphasis added)

End of  
MANDATORY JUDICIAL NOTICE  
OF  
FACTS AND LAW  
RELATIVE TO TCA TITLE 55 & 65 DRIVING PRIVILEGES IN COMMERCE

Date \_\_\_\_\_

\_\_\_\_\_  
Arthur Jay Hirsch  
1029 W. Gaines St.  
Lawrenceburg, TN 38464

CERTIFICATE OF SERVICE

I hereby certify that a copy of the above document was delivered to district attorney general, BRENT COOPER on July 15, 2022.

\_\_\_\_\_  
Arthur Jay Hirsch