

# Administrative notice

## On Tennessee law requiring proof of financial responsibility after roadway accident

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### Abstract

Tennessee’s financial responsibility law applies to all users of the road subject to Tenn. Code Ann. § Title 55, motor and other vehicles. The state in practice makes distinction between what are in effect private users of the roads in cars, using their cars for private business and purposes, and the transportation trades, occupation and industry. Class D licensees are in effect involved in the privilege no less than truckers. But as they do not carry goods or people for hire, the general assembly requires of such motorists a half-way step to being carriers. Carriers must have insurance coverage before getting on the road. Private motorists don’t. Instead, in the public health, safety and welfare interest, the law requires people who volunteer themselves into the purview of Title 55, the regulation of commerce and transportation, to show financial responsibility. For any one motorist, the duty is created when an accident occurs severe enough for the safety commissioner to be informed. The law gives the motorist 20 days after the accident to show he and the other party in the mishap can make themselves whole.

[Document prepared by David Jonathan Tulis]

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## On Tennessee law requiring proof of financial responsibility after roadway accident

Tennessee law requiring subject parties to show proof of financial responsibility following roadway accidents is in chapter 12 of Tenn. Code Ann. § Title 55, motor and other vehicles, and chapter 15 § Title 65, motor carriers. Federal law at 49 U.S. code, transportation, imposes financial responsibility rules on those involved in transportation.

“[T]he 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.” *Se. Greyhound Lines v. Dunlap*, 178 Tenn. 546, 160 S.W.2d 418, 421 (1942)

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: “(A) 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; and (B) Trade, traffic, and transportation in the United States that affects any trade, traffic, and transportation in subdivision (9)(A),” Tenn. Code Ann. § 55-50-102(9). Definitions

## Controlling authorities

Transportation in Tennessee is largely regulated by the department of safety and homeland security. All carriers are required to have insurance policies before putting the first set of tires on the highway. “No interstate or intrastate permit shall be issued by the department until such carrier shall have filed with the department, and the department shall have approved, a policy of liability insurance or bond and also, in the case of intrastate common carriers, a policy of cargo or passenger insurance in some reliable insurance company or association or other insurer satisfactory to the department and authorized to transact insurance business in this state \*\*\* .” Tenn. Code Ann. § 65-15-110(a).

“Except as otherwise specifically provided, the commissioner [of safety] shall administer and enforce this chapter, may make rules and regulations necessary for its administration.” Tenn. Code Ann. § 55-12-103. Parties aggrieved by an agency ruling have 20 days to appeal to the commissioner under the UAPA, the uniform administrative procedures act, Tenn. Code Ann. § Title 4, chapter 5, for a contested case hearing. If still aggrieved, the petitioner “may seek judicial review” in Davidson County chancery court within 60 days. T.C.A. § 4-5-322.

Proof of financial responsibility, for those subject to the rule starting in 2023, is: (a) written proof of liability insurance coverage for \$65,000 applicable to “one accident,” (b) “split-limit policy” of \$25,000 or more for bodily injury or death “in any one (1) accident,” (c ) a \$65,000 cash deposit with the safety commissioner, or (d), “execution and filing of a bond with the commissioner” of \$65,000. Tenn. Code Ann. § 55-12-102. Definitions.

A party to an accident buys the irrevocable bond from a surety company to “guarantee the payment of any final judgment which might thereafter be rendered against the bonded party resulting from the accident up to and including the total amount of the bond.” The bond is filed with the safety commissioner. The bond “may specify a limited payment to those persons who have at the time of its execution filed claims with the commissioner, and shall contain a clause therein that it shall remain in force for one (1) year from the date of the accident or until final determination of any court action brought as a result of the accident, whichever may be the longer period of time.” Tenn. Code Ann. § 55-12-102. Definitions.

Court action following a disputed accident is final when “the time within which an appeal might have been perfected” expires, either at the trial court or on appeal. Tenn. Code Ann. § 55-12-102. Definitions. Judgment.

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 is created to fight odometer fraud. Tenn. Code Ann. § 4-3-2010. Division of motor vehicle enforcement. Duties.

The proof of insurance requirement is an authority among many of the department of safety’s duties overseeing carriers. The financial responsibility act, like others, “is enacted for the sole purpose of promoting and conserving the interest and convenience of the public” by conferring upon the departments of safety and revenue “the duty \*\*\* to supervise and regulate the transportation of persons and property by motor vehicle over or upon the public highways of this state” and to “supervise and regulate certain businesses closely allied with such motor transportation.” T.C.A. § 65-15-101. The rule helps the two agencies “ [r]egulate, foster, promote and preserve proper and economically sound transportation and \*\*\* proper coordination of all transportation facilities.” The insurance requirement, like others, “[relieves] existing and future undue burdens upon the highways” from “motor vehicles” and helps “[p]rotect the welfare and safety of the traveling and shipping public \*\*\* in their contact with the agencies of motor transportation and allied occupations” while, at the same time, acting to “[p]rotect the property of the state and its highways from unreasonable, improper or excessive use.”

A proof of financial responsibility lets the state participate in the unified carrier registration system of the U.S. department of transportation under 49 U.S.C. § 13908. T.C.A. § 65-15-101. Trucking regulations protect “the traveling public,” including “those persons who operate motor vehicles” per regulation.

“These statutes and regulations clearly indicate that the legislature, in enacting the Tennessee Motor Carriers Act, has declared that the public policy of Tennessee includes the protection, safety, and welfare of the traveling public, including those persons who operate motor vehicles regulated by the Act.” *Reynolds v. Ozark Motor Lines, Inc.*, 887 S.W.2d 822, 825 (Tenn. 1994).

## Protection of the people, public interest

The financial responsibility act intends to protect the general public from dangers brought by carriers, haulers, transporters and other regulated parties to the public right of way.

This protection duty resides with the safety commissioner. “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. Department of safety powers.

A DSHS trooper obtains evidence of commercial activity and can make arrests “when such violations are committed by a driver or an occupant of a vehicle regulated under this part.” The officer is authorized to “impound any books, papers, bills of lading, waybills and invoices which would indicate” a violation of law at Tenn. Code Ann. § 65-15-106.

A party subject to regulatory action by a trooper can be stopped without probable cause, in the public interest.

Unless a law enforcement officer has probable cause to believe that an offense has been committed, no officer, except members of the Tennessee highway patrol acting pursuant to § 4-7-104, shall have the authority to stop a motor vehicle for the sole purpose of examining or checking the license of the driver of the vehicle.

Tenn. Code Ann. § 40-7-103(c). Warrantless arrest; grounds

“The Tennessee Highway Patrol of the Tennessee Department of Safety and Homeland Security (TDOSHS) is the sole agency in the State of Tennessee responsible for enforcing laws related to size, weight, and safety regulations for commercial motor vehicles.” TENNESSEE Commercial Vehicle Safety Plan[;] Federal Motor Carrier Safety Administration’s Motor Carrier Safety Assistance Program Fiscal Years 2022 - 2024 Date of Approval: August 10, 2022, p. 4

## Report of accident required

A party subject to Tenn. Code Ann. § Title 55 and § 65 is required to report an accident to the commissioner of safety and after such wreck make a security deposit with the commissioner or give proof of financial responsibility if damage exceeds \$1,500 on a 20-day deadline.

The “operator of a motor vehicle” in an accident that kills or injures a person or with total property loss of \$1,500 shall “report the matter in writing” to the commissioner “after the occurrence of the accident.” § 55-12-104(a)(1)

The report should have such detail to let the commissioner “determine whether the requirements for the deposit of security under this part are inapplicable by reason of the existence of insurance.” § 55-12-104(b). If the operator of a motor vehicle misses the 20-day deadline, “the commissioner may issue a notice of suspension of the operator’s license and, immediately upon request by the commissioner of safety, the commissioner of revenue shall issue a notice of suspension of the registration of the motor vehicle

involved.” § 55-12-104(b). A party who gets notice of suspension can request a contested case hearing. § 55-12-104(c).

## Remission of cash or surety proof

An operator or owner shall “[deposit] security in a sum that shall be sufficient in the judgment of the commissioner \*\*\* to satisfy any judgment or judgments resulting from the accident that may be recovered against the operator, owner, or both.” The amount must be greater than \$1,500. Failure to remit bond invites departments of safety and revenue to revoke licenses and registrations, respectively. T.C.A. § 55-12-105. **Deposit of security; proof of security**

An operator or owner of a motor vehicle is given four options to show “acceptable proof of financial security”:

- (b)(1) Filing of written proof of insurance coverage with the commissioner on forms approved by the commissioner;
- (2) The deposit of cash with the commissioner of no less than the amount specified in § 55-12-102, or in the total amount of all damages suffered, whichever is less \*\*\* ;
- (3) The execution and filing of a bond with the commissioner of no less than the amount specified in § 55-12-102, or in the total amount of all damages suffered, whichever is less, subject to a minimum bond of one thousand five hundred dollars (\$1,500); or
- (4) The submission to the commissioner of notarized releases executed by all parties who had previously filed claims with the department as a result of the accident.

T.C.A. § 55-12-105

## Duty of officer to inquire about insurance

When an officer criminally charges a driver or operator of a motor vehicle for a traffic violation (“any violation under chapters 8 and 10, parts 1-5, and chapter 50 of this title; chapter 9 of this title; any other local ordinance regulating traffic”), the “officer shall request evidence of financial responsibility as required by this section.” § 55-12-139(b)(1)(A). Evidence of compliance with financial responsibility law; penalty.

At an accident scene, the officer has a duty to inquire if the parties have insurance. “In case of an accident for which notice is required under § 55-10-106, the officer shall

request evidence of financial responsibility from all drivers involved in the accident without regard to apparent or actual fault.” § 55-12-139(b)(1)(B).

If a motor vehicle driver “fails to show an officer evidence of financial responsibility, or provides the officer with evidence of a motor vehicle liability policy as evidence of financial responsibility,” the officer is authorized to use the digital vehicle insurance verification program as defined in § 55-12-203.

Financial responsibility refers to such items as an insurance policy declaration page, binder or card, a safety commissioner certificate for self-insured parties under § 55-12-111, or if party is a “motor vehicle being operated at the time of the violation was owned by a common carrier subject to the jurisdiction of the department of safety or the interstate commerce commission” or otherwise a government vehicle.

## Offenses

A driver or operator whom by a roadway accident is made subject to the financial responsibility statute who, after the expiry of the 20 days in § 55-12-104, “fail[s] to provide evidence of financial responsibility pursuant to this section” can be prosecuted for a Class C misdemeanor with a possible \$300 fine.

Failure to meet the 20-day deadline to inform the commissioner about an accident and verify financial responsibility “is a Class A misdemeanor, if a person is not in compliance with the financial responsibility requirements of this part at the time of an accident resulting in bodily injury or death and such person was at fault for the accident.” Tenn. Code Ann. § 55-12-139(3)(A). Fault is described as criminal negligence (3)(B) or providing proof that is not valid § 55-12-139 (3)(C).

Parties who must have immediate proof of insurance coverage would be those under court order or privilege suspension by either safety or revenue departments, terms of which require insurance policy coverage as a condition for use of the roads under a restricted license under §§ 55-10-409, 55-50-502 and 55-50-505.

A driver with an insurance policy is exempt from “the requirements of security and revocation” in the chapter. Altogether, 15 categories are exempt, including one “qualifying as a self-insurer,” an owner whose car was used without permission, an owner whose vehicle caused no damage to anyone else than himself, and “Any vehicle owned and operated by a carrier subject to the jurisdiction of the department of safety.”

A person who complies with accident reporting and financial responsibility in sections 104 and 105 is exempt.

(7) Any owner or operator who shall submit, on or before the date of revocation, proof satisfactory to the commissioner of acceptance of liability for the accident and an agreement concerning the payment of damages satisfactory to all parties claiming damages. This exemption shall not apply, however, if the owner or operator fails to carry out the terms of the agreement. The commissioner may at any time within three (3) years after the accident, upon notice of such failure, take any action that might have been taken had the agreement not been made[.]

Tenn. Code Ann. § 55-12-106

The 2015 “James Lee Atwood law,” updating the 1977 financial responsibility law, allows for quicker monitoring of insureds between state agencies and insurance company partners. “Nothing in this part *shall alter the existing financial responsibility requirements* in this chapter.” A provision outlines how revenue and safety departments make sure parties subject to the statute have insurance. “If there is evidence based on either the IICMVA model or the full book of business download process described in § 55-12-207 that a motor vehicle is not insured, the department of revenue shall \*\*\* provide notice to the owner of the motor vehicle that the owner has thirty (30) days” to show proofs of coverage or exemption. T.C.A. § 55-12-210(a)(1).

The law describes the administrative process for getting the owner or operator described in section 101 *et seq*, a party to an accident, to come into compliance with the financial responsibility requirement.

## Court cases explain ‘after-crash’ law

An accident-free motorist “is at liberty to own and operate a motor vehicle without any insurance coverage or with as little insurance coverage as desired.” *McManus v. State Farm Mut. Auto. Ins. Co.*, 225 Tenn. at 109, 463 S.W.2d at 703. Requiring proof of financial responsibility comes into play only after a motorist has been involved in an accident resulting in death, personal injury, or property damage in excess of four hundred dollars. *See* Tenn.Code Ann. § 55–12–104(a). These motorists must report the accident to the Commissioner of Safety.

*Burress v. Sanders*, 31 S.W.3d 259, 263 (Tenn. Ct. App. 2000)

“Tennessee is not a \*263 “compulsory insurance” state because our General Assembly has stopped short of requiring all vehicle owners to obtain insurance. *See McManus v. State Farm Mut. Auto. Ins. Co.*, 225 Tenn. 106, 109, 463 S.W.2d 702, 703 (1971).. Like a majority of states, Tennessee has adopted financial responsibility statutes requiring motorists involved in serious accidents to prove their ability to pay up to a specified amount of

damages or face the loss of their driving privileges. These statutes are intended to provide a more effective means of enforcing payment of automobile-caused damage claims, *see* Legislation, *The Tennessee Motor Vehicle Financial Responsibility Act*, 21 Tenn.L.Rev. 341, 342 (1950), and to take insolvent, financially irresponsible drivers off the roads of this state. *See Erwin v. State Farm Mut. Auto. Ins. Co.*, 232 F.Supp. 530, 538 (E.D.Tenn.1964).

*Id. Burress\_* at 262–63

“A motorist may file notarized releases executed by all persons who filed a claim stemming from the accident. *See* Tenn.Code Ann. § 55–12–105(b)(4). Short of obtaining releases, a motorist may demonstrate financial responsibility three other ways. First, the motorist may file with the Commissioner written proof that he or she has insurance coverage. *See* Tenn.Code Ann. § 55–12–105(b)(1). Second, the motorist may execute and file a bond with the Commissioner. *See* Tenn.Code Ann. § 55–12–105(b)(3). Third, the motorist may file a cash deposit with the Commissioner. *See* Tenn.Code Ann. § 55–12–105(b)(2).”

*Id. Burress* at 264.

An earlier case describes a long-standing legal structure regarding auto users’ financial responsibility duties in Tennessee protecting the public interest.

A number of states, perhaps all of them, now have statutes requiring owners and operators of motor vehicles to have certain financial responsibility or security. Some of the statutes require proof of financial responsibility as a condition of granting driver's license, some have the same requirement as a condition for the registration of a motor vehicle. In some states the statutes require proof of financial responsibility after a judgment has been rendered and not paid and upon failure to comply sanctions are imposed. Some states require security to be furnished after the first accident for the payment of any judgment that may be obtained and also proof of financial responsibility for the future. Upon failure to comply with either or both requirements the offender is penalized.

The Tennessee Financial Responsibility Act is of the ‘after-accident’ type. The Act applies to an uninsured or inadequately insured owner or operator of a motor vehicle who is involved in a first accident resulting in bodily injury or death of a person or damage to property. The Act requires such person within a given time after the accident to deposit security with the Department of Safety in an amount estimated to pay any judgment that might be obtained by reason of the accident, such amount to be fixed by the Commissioner of the Department of Safety, to be not less than five hundred (\$500) dollars. The Act further requires such a motorist to furnish proof of

financial responsibility for prospective liability in the manner prescribed by the Act. If such motorist fails to comply with the Act, his license and registration are revoked and he can no longer drive a motor vehicle in Tennessee unless he is reinstated in the manner the Act provides. Tennessee Code Annotated, sections 59-1204, 59-1220 and 59-1212.

*Erwin v. State Farm Mut. Auto. Ins. Co.*, 232 F. Supp. 530, 533 (E.D. Tenn. 1964)

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